



MALAWI SUMMARY REPORT

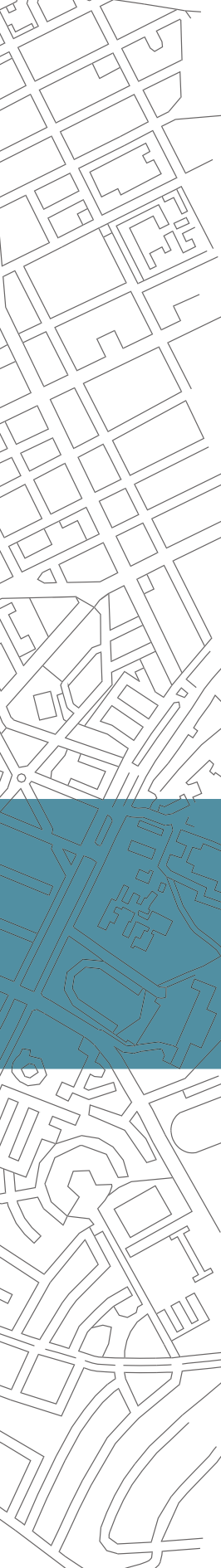
ASSESSMENT OF MALAWI LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

<https://climatelawtoolkit.org/>

PROJECT ON URBAN LAW FOR RESILIENT AND LOW CARBON URBAN
DEVELOPMENT IN MALAWI, NAMIBIA, AND ZIMBABWE

URBAN CLIMATE LAW SERIES | VOLUME 3





ASSESSMENT OF MALAWI LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

PROJECT ON URBAN LAW FOR RESILIENT AND LOW CARBON URBAN
DEVELOPMENT IN MALAWI, NAMIBIA, AND ZIMBABWE

URBAN CLIMATE LAW SERIES | VOLUME 3



Assessment of Malawi Legislation through the Urban Law Module of the Law and Climate Change Toolkit

Urban Planning Law for Climate Smart Cities: Urban Law Module of the Law and Climate Change Toolkit

First published in Nairobi in 2022 by UN-Habitat

Copyright © United Nations Human Settlements Programme, 2022

United Nations Human Settlements Programme (UN-Habitat)

P.O. Box 30030, 00100 Nairobi GPO, Kenya

Tel: 254-020-7623120 (Central Office)

www.unhabitat.org

HS Number: HS/043/22E

ACKNOWLEDGEMENTS:

Coordinators: Anne Amin and Remy Sietchiping

Main Authors: University of Michigan, Taubman College of Architecture and Urban and Regional Planning (United States of America): Anna Pasek, Brigitte Smith, Dylan Vaughn-Jansen, Hayden Zaverreei, Michelle Marin, Zhuyu Shi

Contributors: Anne Amin (UN-Habitat); Zione Ntaba (UN-Habitat local consultant); Samuel Njuguna (UN-Habitat); Prof. Ana Paula Pimentel Walker and Nana-Yaw Andoh (University of Michigan); Christiana Sullivan (UN-Habitat)

Editing support: Vicky Quinlan and Christiana Sullivan

Layout and Design: Martin Achar

DISCLAIMER:

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city, or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

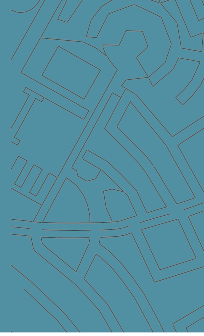
The information provided in this publication does not, and is not intended to, constitute legal advice; instead, all information, content and materials are for general informational purposes only. Information on this publication may not constitute the most up-to-date legal or other information and no liability is assumed for the accuracy or use of information provided. Readers of this publication should contact their legal counsel to obtain advice with respect to any legal matter.

Excerpts may be reproduced without authorization on condition that the source is indicated.

COVER PHOTO:

A hydroelectric dam seen from the Kapichira Falls, Shire river, Malawi. by Joshua Wiese source: Flickr

INTRODUCTION



UN-Habitat, through the Policy, Legislation and Governance Section, in collaboration with the Taubman College of Architecture and Urban and Regional Planning at the University of Michigan (United States of America) supported Malawi, Namibia and Zimbabwe (between December 2021 and November 2022) in conducting country assessments of existing urban laws on climate change for resilient and low carbon urban development. The project was funded by the Konrad-Adenauer-Stiftung Regional Programme Energy Security and Climate Change in Sub-Saharan Africa (KAS) with the aim of improving the capacities and knowledge of the national Governments to support climate-friendly urban development through legal frameworks.

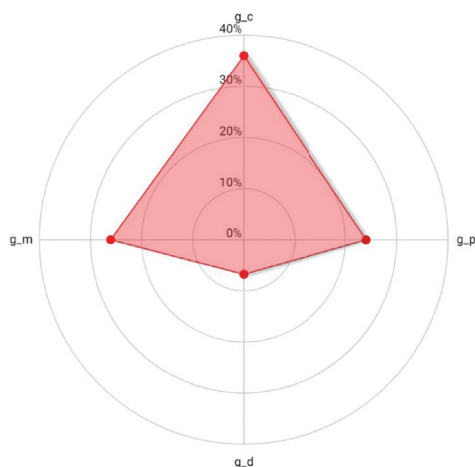
This report is the summary version of the country legal assessment for Malawi in the five assessment areas of the UN-Habitat Urban Law Module of the Law and Climate Change Toolkit namely: a) governance framework for urban and climate planning; b) urban and territorial planning; c) urban planning and design for adaptation; d) urban planning and design for mitigation; and e) economic and non-economic instruments for climate-friendly urban planning.



CHAPTER 1.

GOVERNANCE FRAMEWORK FOR URBAN AND CLIMATE PLANNING

EXECUTIVE SUMMARY



Governance & Institutional Arrangements

g_c	Multi-Level Institutional Coordination
g_p	Participatory Governance
g_d	Data Collection Sharing
g_i	Local Government Mandate

Figure 1: Rating matrix for Malawi on governance framework for urban and climate planning

The magnitude and urgency of climate change calls for an emphasis on strong and effective governance systems and practices. Governance refers to the process through which State and non-State actors interact to design and implement law and policies within a given set of formal and informal rules that shape and are shaped by power.¹ Multilevel governance characterized by intergovernmental (between different levels of government), and intragovernmental (within the same level of government) cooperation built around broad consultative processes and mechanisms for vertical and horizontal

coordination and integration are necessary to achieve climate-responsive governance. Effective climate governance will also require participation by stakeholders, data collection and sharing among public agencies as well as dissemination to the general public, and adequate powers allocated to local authorities on steering and controlling climate-friendly urban planning and land use.²

In Malawi, the Constitution of 1994 promotes decentralized governance and attributes significant functions to local governments, including the promotion of infrastructural and economic development, which must be coordinated with higher tiers of government.³ With respect to urban planning, one of the aims outlined in the 2019 National Urban Policy is to establish a functional urban system in Malawi by creating a “spatially balanced and integrated hierarchy of urban centres and human settlements”.⁴ The Physical Planning Act of 2016 foresees horizontal coordination at the national level to produce the National Physical Development Plan,⁵ and vertical coordination at the subnational levels in the preparation of district and local physical

2 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). “Urban Planning Law for Climate-Smart Cities: Urban Law Module”, Law and Climate Change Toolkit, p. 13.

3 Republic of Malawi (Constitution) Act (Act 20 of 1994). Section 1.

4 Malawi National Urban Policy (2019). Section 1.3.

5 Physical Planning Act (2016). Sections 26, 27 and 28.

1 World Bank (2017). World Development Report 2017: Governance and the Law.

The legal and governance framework in Malawi should comprehensively identify stakeholders, consider specific community needs, require community feedback, and grant access to appeals mechanisms for spatial and climate-related decisions.

development plans.⁶ The National Climate Change Management Policy reinforces the powers and responsibilities of sectoral ministries and highlights priority areas for the country where high-level coordination will be necessary.⁷ In terms of intra-metropolitan coordination, the Physical Planning Act of 2016 calls for the establishment of joint committees when an area earmarked for physical development lies within the boundaries of two or more local government authorities.⁸ Moreover, the Local Government Act of 1998 assigns the responsibility to formulate, approve and execute district development plans to local councils, suggesting that coordination among the various local councils comprising a district is implicitly required and expected to accomplish a larger district goal or project.⁹

6 Ibid. Sections 31 (3) and 36.

7 Malawi Climate Change Management Policy. Section 4.1.

8 Physical Planning Act (2016), Section 19 (2).

9 Local Government Act (1998), Section 6 (1) (c).

Furthermore, the Local Government Act specifically enumerates a requirement for local councils to cooperate “in order to learn from their experiences and exchange ideas”.¹⁰

Regarding participatory governance, the Constitution enshrines principles of democratic, participatory involvement in policymaking and local government.¹¹ The Environment Management Act of 2017 has provisions requiring public authorities with mandates related to the environment and natural resources to take “steps and measures for promoting public awareness and participation in the formulation and implementation of environmental and conservation policies of the Government.”¹² In terms of spatial planning, the Physical Planning Act empowers the competent planning authority to conduct public consultations with identified stakeholders and community members when a plan is being prepared, and specifically requires consultations with those who would be affected by land acquisitions or land readjustment foreseen in any plan under development.¹³ The Act also fosters public access to information in the planning process by requiring that all plans (excepting the National Physical Development Plan) be subject to a public inspection period prior to their approval.¹⁴ Provisions linking participatory processes to specific community needs can be found in the country’s land management legislation and policy, such the National Land Policy, which encourages the use of “community-based approaches” and sourcing local knowledge from the community to inform land policy development.¹⁵ Appeal

10 Ibid. Section 6 (1) (h).

11 Republic of Malawi (Constitution) Act (Act 20 of 1994). Sections 40 and 146 (2) (c).

12 Environment Management Act (2017). Section 3 (2) (e).

13 Physical Planning Act (2016). Section 22 (2) and (3).

14 Ibid. Section 22 (3).

15 Malawi National Land Policy (2002). Section 7.2.2 (a) and Section 6.5.1 (a).

mechanisms which allow parties aggrieved by certain decisions taken by the competent public authority are foreseen in several pieces of urban legislation, such as the Physical Planning Act, which allows appeals of development permission decisions to the local council,¹⁶ and the Environment Management Act,¹⁷ which establishes the Environmental Tribunal to “consider appeals against any decision or action” taken by an environmental authority”.¹⁸ With respect to dispute-resolution, general principles of peaceful dispute resolution through alternative dispute-resolution mechanisms are upheld in the Constitution.¹⁹ Further, the Registered Land Act and the Customary Land Act include provisions for the resolution of land and property disputes.²⁰

There are very few data and information collection mechanisms provided for by law in Malawi that improve the collection, organization and consistency of data relevant to urban and climate planning. The Constitution, Local Government Act, Environment Management Act, National Urban Policy and the 2013 Guidebook on the Local Government System in Malawi do not include any sections, provisions or guidelines outlining a structured policy of data collection and sharing amongst various levels of the country’s system of governance. However, the National Land Policy²¹ and National Climate Change Management Policy²² include some provisions that reference the implementation of or need for data collection and sharing mechanisms.

16 Physical Planning Act (2016). Section 71.

17 Environment Management Act (2017). Sections 72 (7), 107, and 108.

18 Ibid. Section 107.

19 Republic of Malawi (Constitution) Act (Act 20 of 1994).

Sections 10 and 13 (1).

20 Registered Land Act (2014, amended 2017). Section 18 (2); Customary Land Act (2016). Sections 37 (3) and 46 (1).

21 Ibid. Section 6.

22 Malawi National Climate Change Management Policy (2016). Policy Climate Adaptation, Objective 3, Strategy 1; and Policy Research, Technology Development and Transfer, and Systematic Observation, Objective 1, Strategy 1.

While the end goal of such provisions is achieving informational transparency and ease of access to information for the people of Malawi, the national policy commitment has not directly translated into a legal provision requiring data collected to be shared across vertical, horizontal and local structures within the Government.

Finally, several pieces of legislation uphold the mandate of local governments for planning in the urban areas under their jurisdiction. The Constitution includes provisions that broadly define the institutional roles and responsibilities of local governments, including the mandate to promote infrastructural and economic development through the formulation and execution of local development plans.²³ The Local Government Act assigns local governments responsibilities for drawing up development plans “for the social, economic and environmental development of the area” and for mobilizing “resources within the local government area for governance and development.”²⁴ The Physical Planning Act entrusts local government authorities with the responsibility to prepare a district physical development plan and/or local physical development plan for the district or area, respectively, within its jurisdiction. The detailed composition requirements for planning committees responsible for preparing these development plans helps ensure that local governments build and improve their capacities to implement their mandate.²⁵ The Physical Planning Act also includes provisions that facilitate inter-municipal collaborations for urban and infrastructure planning as needed through the creation of “joint planning committees”.²⁶

23 Republic of Malawi (Constitution) Act (Act 20 of 1994). Section 146 (2).

24 Local Government Act (1999). Section 6 (1) (a), (c) and (d).

25 Physical Planning Act (2016). Section 20 (1) (a).

26 Ibid. Section 19 (2) and (3).



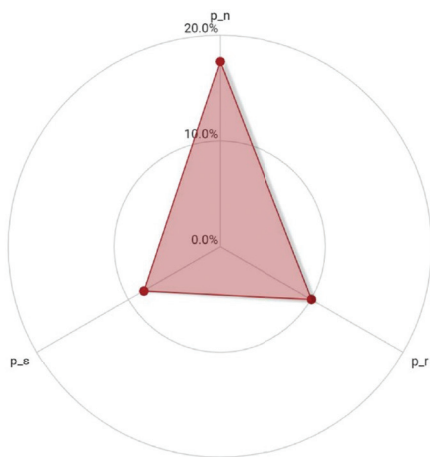
Locals near a water pump, Malawi by Adrian K Mitchell source : flickr

CHAPTER 2.

URBAN AND TERRITORIAL PLANNING



EXECUTIVE SUMMARY



Planning Instruments

p_n	National Planning
p_r	Regional Planning
p_s	Urban Planning

Figure 2: Rating matrix for Malawi on Urban and Territorial planning

Urban and territorial planning establishes long-term, sustainable frameworks for social, territorial and economic development.²⁷ The New Urban Agenda specifically sets out the requirement to integrate climate change adaptation and mitigation considerations and measures into urban and territorial development and planning processes in recognition that cities are both major contributors to climate change

27 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). "Urban Planning Law for Climate-Smart Cities: Urban Law Module", Law and Climate Change Toolkit, p. 27.

and primary subjects of its effects and risks.²⁸ In Malawi, a three-tiered planning hierarchy exists at the national, district and local levels and is primarily defined by the Physical Planning Act of 2016. The Act provides for the formulation of a national physical development plan, district physical development plans and local physical development plans at each of these levels of spatial governance, respectively.

These three plans interact to form a coordinated planning hierarchy in that all district and local physical development plans, as well as any programmes or projects of development, must as far as is practicable, be formulated and prepared to take into account the policies and principles of the National Physical Development Plan.²⁹ The prescribed content of the National Physical Development Plan includes policies, principles and guidelines related to land use designations, transport and infrastructure.³⁰ However, these provisions do not provide detailed requirements related to land-use typologies or the establishment of an integrated transport network and infrastructure system. Instead, other legal and policy documents, such as the Land Act,³¹ the National Land Policy³² and the National Urban Policy,³³ describe land-use classifications at the national level, while the National Transport Policy,³⁴ the Malawi Vision 2063³⁵ and the

28 New Urban Agenda (2016). Paragraph 101.

29 Physical Planning Act (2016). Section 28.

30 Ibid. Section 24.

31 Malawi Land Act No.16 (2016). Section 7.

32 Malawi National Land Policy (2002). Section 6.2.2 (3) (a) and (b).

33 Malawi National Urban Policy (2019). Section 2.3 (iii).

34 Malawi National Transport Policy. Foreword, p. iii.

35 Malawi Vision 2063, pp. 41-43.

National Urban Policy³⁶ more explicitly provide for the establishment of integrated national-level transport and infrastructure systems. The Physical Planning Act does not include provisions requiring the coordination of the National Physical Development Plan with national climate plans and policies, however, the National Climate Change Management Policy,³⁷ the National Adaptation Plan³⁸ and the National Environment Policy³⁹ include linkages to national development planning which can facilitate the coordination of territorial and climate planning at the national level. The Physical Planning Act also does not include provisions requiring the assessment of the climate vulnerability or greenhouse gas emissions associated with the National Physical Development Plan.

Subnational territorial planning operates at the district level rather than at the regional level in Malawi. However, the Physical Planning Act states that a district physical development plan can apply to more than one district or parts of more than one district, which in practice could enable it to play a role approaching the regional level.⁴⁰ District plans are required to “elaborate on, and to apply, the principles and policies of the National Physical Development Plan, if any is in existence in so far as they are relevant to the district”.⁴¹ The Physical Planning Act does not include explicit provisions regarding the coordination of district physical development plans with national climate plans. However, national climate plans are indirectly taken into account at the district planning level to the extent

36 Malawi National Urban Policy (2019). Chapter 4, 4.1.1.

37 Malawi National Climate Change Management Policy (2016). Foreword and Section 2.2, Outcome 6.

38 Malawi National Adaptation Plan Framework (2020). Section 7.2.

39 Malawi National Environment Policy (2004), Section 4.3 and 4.3 (a).

40 Physical Planning Act (2016). Section 29 (2).

41 Ibid., Section 30 (a).

66

The process of preparing the Malawi National Physical Development Plan should require the assessment of the climate vulnerability (resilience of the plan to the effects of climate change) and greenhouse gas emissions associated with the plan's implementation.

99

that they are integrated into the National Physical Development Plan, since the district plans must implement the principles and policies of the National Physical Development Plan. Moreover, several national climate plans and policies in Malawi, such as the National Adaptation Plan⁴² and the Environment Management Act, include provisions for coordination between climate planning and district-level development planning. The Environment Management Act, notably, requires the preparation of a district environment action plan which “conform[s] with the National Environment Action Plan and the District Development Plan”.⁴³ The Physical Planning Act requires district physical development plans to establish an integrated transport network and

42 Malawi National Adaptation Plan Framework (2020). Section 7.2.

43 Environment Management Act (2017). Section 29 (1) and (2) (a).

infrastructure system through the identification of “growth and service centres, the priorities and possible locations of major public investments and the communication and transportation facilities within the district”.⁴⁴ However, district physical development plans are not required to assess the climate vulnerability or greenhouse gas emissions associated with their own implementation.

At the local level, the Physical Planning Act establishes several urban planning instruments which fall under the umbrella of local physical development planning. The law specifically defines the urban structure plan, the urban layout plan, the urban civic plan and the subject physical development plan.⁴⁵ Of these, the urban structure plan⁴⁶ and urban layout plan⁴⁷ serve as land-use or zoning plans at the city and neighbourhood levels, respectively. Both of these plans classify land based on what is and is not allowed within in each category. According to the Physical Planning Act, local physical development plans are required to include maps and plans to show present and future land and transport uses and the location of proposed development.⁴⁸ However, this provision does not explicitly link future land-use planning to the identification of land that is safe from the effects of climate change. Moreover, the Physical Planning Act does not define a specific planning horizon applicable to local physical development plans nor does it explicitly require local development plans to define an urban growth boundary or strategy. In any case, the Environment Management Act and the National Land Policy do include provisions related to planning horizons and the

establishment of urban growth boundaries and management strategies. The former stipulates a 5-year planning horizon for national and district environmental action plans,⁴⁹ while the latter promotes zoning for vertical development and controls of urban expansion onto agricultural land.⁵⁰ Malawi does not have explicit legal provisions in place defining how urban plans should pivot and be re-evaluated as more information regarding climate change impacts becomes available. The absence of requirements regarding planning horizons and the review of physical development plans in light of new climate risks can be partly attributed to the fact the country is still undergoing a process of administrative reform and modernization. Finally, in the Physical Planning Act, local physical development plans are explicitly subordinated to district physical development plans,⁵¹ which are, in turn, subordinated to the National Physical Development Plan.⁵²

44 Physical Planning Act (2016). Section 30 (c).

45 Ibid. Section 33 (1).

46 Ibid. Section 33 (1) (a).

47 Ibid. Section 33 (1) (b).

48 Ibid. Section 29 (1) (e).

49 Environment Management Act (2017). Sections 21 and 19 (a) and (c).

50 Malawi National Land Policy (2002). Section 6.12.1, Section 6.4.1 (e) and Section 4.1.2.

51 Physical Planning Act (2016). Section 41.

52 Ibid. Section 30 (a).

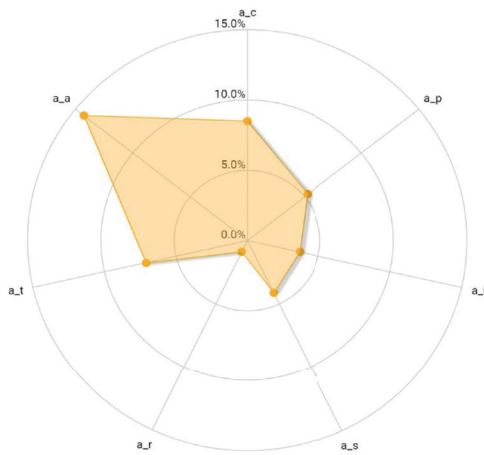


Locals accessing a river, Malawi, by Frédéric MARY source - Flickr

CHAPTER 3.

PLANNING FOR ADAPTATION

EXECUTIVE SUMMARY



Planning for Adaptation

- a_c Climate Risk Vulnerability
- a_p Adaptation Options
- a_i Implementation of Adaptation Options
- a_s Adaptation of Slums
- a_r Planned Relocations
- a_t Security of Tenure
- a_a Development Approval/Adaptation

Figure 3: Rating matrix for Malawi on planning for adaptation

Urban areas stand to be acutely affected by climate change due to their concentration of people, economic activities, assets and social and cultural institutions, and impacts are already being felt by millions of urban dwellers throughout the world.⁵³ Considering that 55 per cent of the world’s population lives in urban areas and this share is projected to increase to 68 per cent by 2050,⁵⁴ there is an urgent need for urban areas to

53 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). “Urban Planning Law for Climate-Smart Cities: Urban Law Module”, Law and Climate Change Toolkit, p. 42.

54 United Nations Department of Economic and Social Affairs (2018). Revision of World Urbanization Prospects.

adapt to the effects of climate change.⁵⁵ Urban law can support cities in becoming more climate-resilient through provisions on assessing climate risks and vulnerability for planned areas and infrastructure; the identification and prioritization of adaptation options; the implementation of the identified adaptation options; the adaptation of slums and other vulnerable settlements; planned relocations from areas at risk of climate change; security of tenure; and development approval and adaptation.

With respect to climate risks and vulnerabilities in urban areas, the Paris Agreement requires countries to engage in adaptation planning processes and to implement actions through, among other things, the “assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems”.⁵⁶ Though the consideration of climate risks and vulnerability for planned areas and infrastructure is not explicitly mandated in Malawi’s urban planning legislation, the Environment Management Act requires public institutions to conduct “strategic environmental assessments” of policies, legislation, programmes or plans that are likely to have an adverse effect on the management, conservation and enhancement of

55 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). “Urban Planning Law for Climate-Smart Cities: Urban Law Module”, Law and Climate Change Toolkit, p. 43.

56 United Nations Framework Convention on Climate Change (2015). Adoption of the Paris Agreement, 21st Conference of the Parties, Paris: United Nations, Article 7.9 (c).

Requiring vulnerability assessments and projections as part of district and local physical development plans will empower different levels of sub-national government to make climate-smart planning decisions

the environment or sustainable management of natural resources.⁵⁷ The Act also requires certain public authorities to identify and formulate guidelines to protect environmentally vulnerable areas along riverbanks and lakeshores⁵⁸ as well as in hilly and mountainous areas⁵⁹ with the participation of lead agencies⁶⁰ and the relevant Local and Environmental and Natural

57 Environment Management Act (2017). Section 30 (1).

58 Ibid. Section 47 (2).

59 Ibid. Section 50 (1).

60 According to Section 2 of the Environment Management Act, "lead agency" refers to any public office public office or organization including a Ministry or Government Department which is conferred by any written law or policy with powers and functions for the protection and management of any segment of the environment and the conservation and sustainable utilization of natural resources of Malawi.

Resources Committee.⁶¹ Furthermore, the National Adaptation Plan calls for climate change risk and vulnerability assessments to be carried out which "entail analysing the current climate to identify vulnerability, risks, along with trends in variables and indices at the national, regional or ecosystem level that could be used to support planning and decision-making".⁶² Provisions related to the identification and consideration of climate risks and vulnerabilities are also found in the National Climate Change Management Policy and its Implementation, Monitoring and Evaluation Strategy as well as in the Safer House Construction Guidelines.⁶³ The former, in particular, establishes the Malawi Vulnerability Assessment Committee to monitor efforts to reduce vulnerability to climate change-related hazards and risks using the Household Vulnerability Index (HVI) as a performance indicator.⁶⁴ However, there are no legal or policy provisions in place in Malawi regarding climate hazard mapping.

Since the identification of climate risks and vulnerabilities are not mandated in Malawi's urban and territorial planning legislation, the legal framework does not contain provisions or regulations on how to identify and prioritize adaptation options during the planning process to address identified risks. However, the Environment Management Act requires authorities and lead agencies to "develop guidelines and prescribe measures for the control and management of factors affecting climate change",⁶⁵ and those guidelines and measures

61 The participation of this committee is only specifically prescribed with respect to the protection of mountainous and hilly areas.

62 Malawi National Adaptation Plan. Section 7.1.3.

63 Safer House Construction Guidelines. Sections 2, 5 and 6.

64 National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Policy Priority Areas 1 and 6.

65 Environment Management Act (2017). Section 54 (1).

promote climate adaptation by “identify[ing] activities, practices and substances that cause climate change and measures for reducing or eliminating their effects”.⁶⁶ The Safer House Construction Guidelines also implicitly require the identification and prioritization of adaptation options related to constructing housing to withstand climatic and other natural disasters.⁶⁷ Legal provisions requiring the assessment and prioritization of climate change adaptation options based on time or benefits and barriers to implementation are largely absent in Malawi; and while several climate change and sectoral policies promote stakeholder engagement at large, these provisions are not strictly related to the process of identifying and prioritizing climate adaptation options. Infrastructure-based and ecosystem-based adaptation measures are referenced in several laws and policies, such as the Malawi Vision 2063,⁶⁸ the National Land Policy⁶⁹ and the Environment Management Act,⁷⁰ however, they are not addressed together as complementary tools to undertake climate change adaptation. Targets to improve the adaptation of urban areas with measurable and verifiable benchmarks primarily exist within national policy rather than law and are specifically formulated in the Implementation, Monitoring and Evaluation Strategy for the National Climate Change Management Policy.⁷¹ Regarding provisions calling for the assessment of the urban plan’s ability to meet the local, sub-regional and national Government’s climate change strategies, adaptations, targets and measures, the Environment Management Act

requires that district environment action plans conform with the National Environment Action Plan and the district physical development plan.⁷²

The implementation of climate adaptation options for planned areas and infrastructure is primarily achieved through provisions of total and partial restrictions on land use and development in climate-vulnerable and hazard-prone areas in Malawi. The Environment Management Act and the Physical Planning Act both contain provisions which enable authorities to restrict development to protect vulnerable environmental areas and mitigate the risk of unsafe or undesirable construction and land development. The Environment Protection Authority can restrict development along protected riverbanks and lakeshores, as well as in wetlands and hilly or mountainous areas at risk of environmental degradation;⁷³ the Environment Protection Authority can also impose land-use and development restrictions on an ad hoc basis through an environmental protection order or an environmental easement.⁷⁴ The Physical Planning Act includes provisions for the control of development through development permissions, which consider any district and/or local physical development plan applicable to the area and the foreseeable impact of the proposed development on the natural or built environment and on adjacent uses of land.⁷⁵ Several other national policies, such as the National Land Policy⁷⁶ and the National Climate Change Management Policy,⁷⁷ make references to restricting development in hazard-prone areas. However, requirements to establish public land

66 Ibid., Section 54.2 (a).

67 Safer House Construction Guidelines (2010). Part 1, p. 35.

68 Malawi Vision 2063 (2020). Enabler 7.

69 Malawi National Land Policy (2002). Sections 6.4-7 and 6.11.

70 Environment Management Act (1996). Section 35.2 (f).

71 Malawi National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Policy Priority Area 1.

72 Environment Management Act (1996). Sections 21, 22 and 23 (1).

73 Environment Management Act (2017). Section 47 (3).

74 Ibid. Sections 74 (2) and 32 (2) (f).

75 Physical Planning Act (2016). Sections 45 and 50 (1).

76 Malawi National Land Policy (2002). Section 9.3.1 (e).

77 Malawi National Climate Change Management Policy (2011). Section 7.

buffers, riparian setbacks and lakeshore setbacks are only nominally provided for in the National Land Policy, the Environment Management Act⁷⁸ and the Safer House Construction Guidelines.⁷⁹ Of those, the National Land Policy most clearly addresses the issue by calling for a public easement equal to 50 meters stretching inland from the shoreline of Lake Malawi as well as any other lake in the country.⁸⁰ None of the referenced legislation explicitly requires that essential infrastructure be planned outside of high-risk, flood-prone areas; however, certain pieces of referenced legislation require that developers plan with flood risk in mind where necessary⁸¹ and under the Environment Management Act large infrastructure projects are subject to an environmental impact assessment which could prevent development on high-risk, flood prone land.⁸² Currently, no specific provisions of law in Malawi allow for or require land information systems to integrate climate vulnerabilities and the exposure of land parcels to climate change hazards. Likewise, planned evacuation routes and identified low-risk safety areas for use during extreme weather events are not mentioned in any legislation, though the Environment Management Act gives the Environment Protection Authority the responsibility for preparing guidelines or plans for coordinating the prevention, mitigation and management of environmental emergencies, including “natural and climate change-related disasters such as floods, cyclones, droughts and major pest infestations, or the introduction and spread of invasive alien species.”⁸³

The uncontrolled growth of slums, informal urban

settlements and other vulnerable settlements in Malawi is mentioned in several pieces of legislation, policies and regulations with a view to supporting the adaptation of these areas. The Customary Land Act,⁸⁴ the Physical Planning Act and the Land Survey Act⁸⁵ include planning and land management tools for urban expansion, infill or redevelopment of informal settlements. The Physical Planning Act in particular has several provisions relevant to the upgrading of informal settlements which may be at risk of climate hazards and other climatic vulnerabilities. These include provisions dealing with the preparation of urban layout plans, which can be applied to “part of an urban area in which [...] there is need for development or redevelopment or revisions or upgrading”,⁸⁶ and provisions regarding the issuance of improvement area orders, which are intended for “any area of land developed [...] in an unplanned and unauthorized manner or in a manner which makes further development or redevelopment of that land or adjacent land difficult to carry out or in a manner detrimental to the environment of the area and the health of the residents of the area or adjacent areas”.⁸⁷ The prescribed process of imposing an improvement area order includes mechanisms, such as mandatory public consultations, to ensure the participation of all owners and residents in the context of slum upgrading and climate change adaptation.⁸⁸ The National Land Policy also includes recommendations for the participation of residents and their local community organizations when upgrading plans are being prepared by local authorities.⁸⁹ Requirements to conduct community-led surveys, maps

78 Environment Management Act (2017). Section 69 (c).

79 Safer House Construction Guidelines (2010). Section 2.

80 Malawi National Land Policy (2002). Section 9.3.1 (c).

81 Buildings Bill (2020). Section 18.3 (c); Safer House Construction Guidelines (2010). Sections 6.4.1 (d) and 9.9.1.

82 Environment Management Act (2017). Section 9.8.1.

83 Environment Management Act (2017). Section 64 (1) (d).

84 Customary Land Act (2016). Section 8.3 (d).

85 Land Survey Act (2016). Section 52.2.

86 Physical Planning Act (2016). Section 33(1) (b).

87 Ibid. Section 62 (2) (a).

88 Ibid. Section 63 (3), (5), and (6).

89 Malawi National Land Policy (2002). Section 6.11.2 (c)

and household enumerations to facilitate the adaptation of slums and other vulnerable settlements are not currently present in the country's legislation or policy. Provisions related to flexible planning and infrastructure standards for the adaptation of slums and other vulnerable settlements are also largely absent from national law and policy. However, the National Land Policy does state that special areas will be designated as "low-income housing with simplified building regulations" and that they will be "provided with services that residents need and can afford".⁹⁰ However, the Physical Planning Act fails to include provisions requiring that affordability of an area subject to an improvement area order be maintained.

There are limited legal, regulatory or policy provisions that support the relocation of populations from areas at risk of the effects of climate change to ensure their safety and health after all reasonable on-site alternatives and solutions have first been explored. Specifically, no legal or policy document includes legal requirements to identify and, if necessary, set aside land for relocation in case of extreme weather events. Nor does any document include the requirement that the land designated for resettlement be safe from current and future climate hazards. The Physical Planning Act provides that "an improvement area order may make provision for the exercise of powers in respect of [...] the relocation of some or all of the residents of the area either within the area or somewhere else".⁹¹ This provision could facilitate climate hazard-based relocations, since improvement area orders are meant to address an area of land where further development or development is "difficult to carry out", or where development has occurred "in a manner

⁹⁰ Ibid. Section 6.11.2 (b).

⁹¹ Physical Planning Act (2016). Section 63 (2) (d).



Local fisherman, Malawi. Photo by Frédéric MARY via Flickr

detrimental to the environment of the area and the health of the residents of the area or adjacent areas".⁹² The law, however, does not specify a legal requirement to provide the relocation site with livelihood opportunities, water and food security, sanitation, education and health facilities prior to occupation.

Several laws, policies, plans and guidelines in Malawi include formal provisions and regulations recognizing a variety of tenure rights to ensure the security of tenure of people living in slums and other settlements vulnerable to the effects of climate change. Customary law is recognized in the Constitution,⁹³ the Land Act,⁹⁴ and the Physical Planning Act, while customary land rights are regulated under the Customary Land Act. The latter acknowledges multiple forms of customary land tenure, stating that traditional management areas will be divided into "communal land", "land which is occupied or used by an individual or family or a group of persons under customary law", and "land which may be available for communal or individual occupation and use through allocation by a land committee".⁹⁵ The Environment Management Act and Physical Planning Act recognize the rights of "occupiers", defined as a person in occupation or control of any premises and, in relation to premises different parts of which are occupied by different persons, means the person in occupation or control of each such different part".⁹⁶ Although several laws and policies recognize the need to regularize informal land and property rights in Malawi, only the Physical Planning Act makes explicit provisions addressing this issue. The law foresees the material regularization of unplanned settlements

through area improvement orders,⁹⁷ while the administrative regularization of unauthorized developments can take place on a case-by-case basis through a notice served by the competent authority upon the owner and/or occupant of an unauthorized development to apply for a grant of development permission.⁹⁸ Though not strictly considered informal regularization, the Customary Land Act also provides for the adjudication of land rights in a customary land estate.⁹⁹ Regarding provisions that allow a variety of tenure forms – including customary rights, informal tenure rights and occupation – to be recorded in the official land information system, the Registered Land Act of 2016¹⁰⁰ and the National Land Policy¹⁰¹ provide for the registration of customary land rights; other forms of tenure which may be susceptible to registration include freehold and leasehold rights. Provisions stipulating the process for conducting evictions are largely absent from law, though provisions requiring compensation for the forfeiture of formal land rights are incorporated into the Land Act, the Customary Land Act, the Land Acquisition Act, and the Physical Planning Act.¹⁰² Additionally, the Physical Planning Act includes provisions which may enable bona fide occupants of informal settlements who are subject to an improvement area order to be compensated for permanent or temporary relocations.¹⁰³ However, there are no legal provisions in force which require compensation for the loss of livelihoods for slum dwellers or for the benefit of host communities which receive resettled people on a large scale. The law offers limited formal appeal processes and dispute-

92 Ibid. Section 63 (1).

93 Republic of Malawi (Constitution) Act (Act 20 of 1994). Section 200.

94 Malawi Land Act (2016). Section 2.

95 Customary Land Act (2016). Section 13.1(a), (b) and (c).

96 Environment Management Act (2017). Section 2.

97 Physical Planning Act (2016). Section 62 (2) (a).

98 Ibid. Section 60 (1) and (5).

99 Customary Land Act (2016). Part VI.

100 Registered Land Act of 2016 (amended 2017). Section 12(3).

101 Malawi National Land Policy (2002). Section 5.14.1 (b) and Section 6.16.1 (b).

102 Physical Planning Act (2016). Section 68.

103 Ibid. Section 63 (1) and (2) (h).

resolution mechanisms to redress grievances and resolve land and property disputes related to the adaptation of slums and relocation of vulnerable groups. Apart from the traditional authorities and tribunals specified in the Customary Land Act¹⁰⁴ and National Land Policy,¹⁰⁵ there are no legal provisions which include alternative dispute-resolution mechanisms for land and property disputes, such as negotiation, mediation and arbitration.

Several pieces of legislation in Malawi link the development approval process to approved urban plans, zoning regulations and collected evidence from climate risk and vulnerability assessments. The Physical Planning Act makes both compliance with approved physical development plans and environmental considerations conditions of being granted a development permission.¹⁰⁶ The Environment Management Act establishes the National Environment Action Plan, which is said to “be binding upon all persons in the public and private sector, including private companies, non-governmental organizations and government departments and agencies.”¹⁰⁷ At the district level, the Act states that “a person shall not implement development activities or projects in any district without consulting the District Environmental Sub-Committee”.¹⁰⁸ While these legal provisions explicitly ensure a linkage between development approval, urban plans, zoning regulations and environmental vulnerability, the scarcity of provisions that are explicitly related to climate risks, vulnerabilities and hazard-prone areas limits the extent to which development controls support climate change adaptation. As such, climate risk and vulnerability assessments are not considered

in the standard development approval processes. The Physical Planning Act includes provisions that allow the competent governmental authority to charge developers for the infrastructure costs associated with the proposed development through conditions attached to the approval of development permission applications.¹⁰⁹ With respect to monitoring compliance with the approved development and its conditions, the Environment Management Act authorizes the Environment Protection Authority to carry out periodic environmental audits of any project for the purpose of enforcing the conditions of granting a development permission.¹¹⁰ However, there are limited provisions regarding the monitoring of development to ensure its compliance with conditions related to climate change adaptation. The Physical Planning Act contains extensive provisions on the enforcement process for developments not compliant with conditions attached to the approval of their submitted application;¹¹¹ meanwhile the Environment Management Act outlines how offences of environmental regulations under the Act are managed.¹¹²

104 Customary Land Act (2016). Sections 24 (1) and 44.

105 National Land Policy (2002). Section 8.12.

106 Physical Planning Act (2016). Section 32 (1) and (2) and Section 50 (1).

107 Environment Management Act (2017). Section 28(3) (d).

108 Ibid. Section 29 (3).

109 Physical Planning Act (2016). Section 50.3 (b).

110 Environment Management Act (2017). Section 32.

111 Physical Planning Act (2016). Part XI.

112 Environment Management Act (1996). Part IX, Section 61.



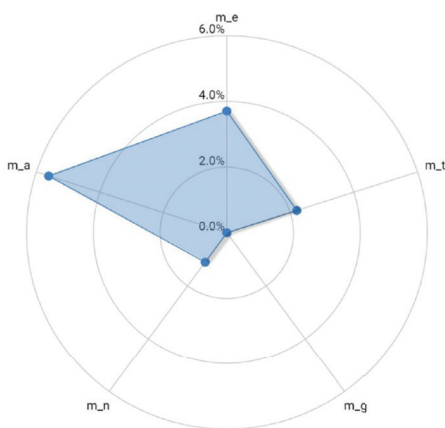
Fetching water at a local well, Malawi. Photo by Villages in Partnership source: Flickr

CHAPTER 4.

PLANNING FOR MITIGATION



EXECUTIVE SUMMARY



Planning for Mitigation	
m_c	Urban Plans and GHG Emissions
m_t	Urban Form and Reduction of GHG emissions
m_n	Neighbourhood Design and Energy Savings in Buildings
m_g	Green Spaces for Environmental and Climate Services
m_a	Development Approval Mitigation

Figure 4: Rating matrix for Malawi on planning for Mitigation

Along with enabling populations to adapt to the risks created by climate change, urban law can play an important role in helping cities reduce greenhouse gas emissions by defining urban forms; determining where land, infrastructure and basic services can be built; promoting the development and maintenance of urban green spaces; incentivizing energy saving in buildings and neighbourhood design; and laying out rules for planning and decision-making.¹¹³ Climate change mitigation considerations

113 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). "Urban Planning Law for Climate-Smart Cities: Urban Law Module", Law and Climate Change Toolkit, p. 82.

should be integrated into urban planning processes by ensuring that urban plans consider mitigation strategies and emphasize assessing greenhouse gas emissions associated with the implementation of final approved plans.

The assessment of greenhouse gas emissions in the preparation of urban plans has largely not been mainstreamed into spatial planning law in Malawi. Instead, provisions requiring the assessment of such emissions are found in the National Climate Change Management Policy and the Environment Management Act. The National Climate Change Management Policy seeks to "promote the reduction of greenhouse gas emissions; and enhance carbon sinks through re-forestation and sustainable utilization of forest resources".¹¹⁴ Though these objectives are not explicitly related to urban planning, the National Urban Policy seeks to link greenhouse gas emissions reduction to the urban sector by referencing the requirement to assess emissions as prescribed in the National Climate Change Management Policy.¹¹⁵ However, the National Urban Policy does not contain specific provisions requiring the assessment of current and planned greenhouse gas emissions and carbon sinks; nor does it call for the production of different planning scenarios to compare potential greenhouse gas emissions and carbon sinks. The Environment Management Act mandates the Environment Protection Authority with developing guidelines "to minimize emissions of greenhouse gases and identify suitable technologies to minimize

114 Malawi National Climate Change Management Policy (2016). Section 3.2, p. 10.

115 Malawi National Urban Policy (2019). Section 1.3.1.

Malawi should consider implementing a policy requiring green spaces throughout metropolitan areas, both for aesthetic and recreational as well as climate change mitigation-related purposes.

air pollution¹¹⁶ and makes the Environment Protection Authority responsible for developing guidelines that prescribe measures for the reduction of greenhouse gas emissions from any sector and the enhancement of carbon sinks.¹¹⁷ These guidelines and measures issued by the Environment Protection Authority can guide spatial planning processes in Malawi, resulting in the assessment and comparison of different urban planning scenarios with respect to greenhouse gas emissions and carbon sinks. Additionally, the requirement to conduct strategic environmental assessments of policies, legislation, programmes [or] plans that are likely to have an adverse effect on the management, conservation and enhancement of the environment or sustainable management of natural resources¹¹⁸ could entail the assessment of greenhouse gas emissions associated with spatial plans.

Urban planning law and regulations in Malawi do not contain explicit provisions to promote a connected, accessible and dense urban form that reduces car trips, that promotes walkability

and the efficient use of public infrastructure. There are no legal requirements that promote connectivity in urban areas through minimum standards for streets or plot design rules for a walkable streetscape. The legal framework does not contain provisions promoting mixed land use to increase accessibility to jobs, housing, services and shopping. However, the National Land Policy does make plot design a top priority specifically for addressing urban sprawl.¹¹⁹ And despite the lack of legislation promoting mixed land use, the Physical Planning Act,¹²⁰ the National Urban Policy¹²¹ and the National Land Policy¹²² include provisions that promote optimal urban density. Nonetheless, the legislation reviewed does not make any mention of determined allowed population densities and thus does not include any legal provisions that require the consideration of existing and planned transport infrastructure relative to determined allowed population densities. However, the National Urban Policy includes provisions which commit the Government to considering the mobility needs of the country's rapidly growing urban

116 Environment Management Act (2017). Section 36 (d).

117 Ibid. Section 54 (2).

118 Environment Management Act (2017). Section 30 (1).

119 Malawi National Land Policy (2002). Section 4.18.2.

120 Physical Planning Act (2016). Section 63.1.

121 National Urban Policy (2019). Section 3.3.1 (iv).

122 Malawi National Land Policy (2002). Section 6.12.1.

population with future growth in mind.¹²³

The promotion of green spaces is an essential element of climate change mitigation in the urban context as the carbon absorption capacity of vegetation can significantly reduce the carbon footprint of urban communities. Public green spaces also contribute to improved health, air quality, rainwater management, increased property values and outdoor recreation opportunities.¹²⁴ However, in Malawi few legal provisions exist to establish an adequately distributed network of urban green spaces. The Environment Management Act does not require that a proportion of urban land be reserved for parks and other green spaces, but it does allow for an environmental conservation order to be imposed on land to preserve fauna and flora and preserve scenic views or open space.¹²⁵ The National Urban Policy seeks to “promote the creation of public amenities including open spaces and parks”.¹²⁶ Meanwhile, the National Climate Change Management Policy encourages the promotion of vegetation and tree cover.¹²⁷ The Malawi Vision 2063 provides that green city spaces, that is parks, sports fields and vegetation, shall be a key element of integrated urban planning, providing spaces for physical activity, relaxation, peace and stress reduction, thereby boosting mental and physical health of the urban population.¹²⁸ However, there are no provisions in law or policy requiring the joint planning of networks of green areas and water

123 National Urban Policy (2019). Section 4.1.11.

124 UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). “Urban Planning Law for Climate-Smart Cities: Urban Law Module”, Law and Climate Change Toolkit, p. 93.

125 Environment Management Act (2017). Section 74 (4).

126 Malawi National Urban Policy (2019). Section 3.3.1.

127 Malawi National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Section 2.2, Objective 1.

128 Malawi Vision 2063, p. 20.

bodies, such as Lake Malawi.

There are limited legal and policy provisions in Malawi which require or incentivize neighbourhood design that achieves energy savings in buildings. While legal and policy provisions commit to energy saving at large, provisions regarding the design of energy saving in buildings at the neighbourhood and local level are lacking. The National Climate Change Management Policy promotes the adoption of a “climate compatible development approach when planning for energy infrastructure needs and to aim for low carbon solutions, including reducing overdependence on biomass-based energy”.¹²⁹ However to date, there are no regulations linking street design, plot layout or building position to sun orientation. In terms of wind direction, the Safer House Construction Guidelines provide specifications for housing construction and site selection based on wind considerations.¹³⁰ Requirements relating to the thermal properties of urban surfaces are another way to improve neighbourhood design for energy efficiency. However, there are no provisions that require the consideration of the thermal properties of urban surfaces in Malawi.

Regulations or provisions in law should exist to ensure that planning and design standards that mitigate the emission of greenhouse gas are enforced through the development approval process. However, there are limited provisions which link development approval to planning and design standards which mitigate emissions in Malawi. The Environment Management Act empowers the Environment Protection Authority to commission national studies on activities, practices or substances that cause climate change and to develop necessary policy and

129 Malawi National Climate Change Management Policy (2016). Section 3.1.

130 Safer House Construction Guidelines. Section e.

legislation for effective control, management and monitoring of such activities, practices and or substances.¹³¹ Legal and policy provisions enabling local governments to charge developers for infrastructure costs associated with their developments exist in the Guidebook on the Local Government System in Malawi,¹³² the National Housing Policy,¹³³ and the Physical Planning Act.¹³⁴ Regarding provisions which require monitoring compliance with the approved development and its conditions, the Environment Management Act specifies that inspectors have the right to monitor “the effects on the environment of any activities carried out on that land or premises and to enforce compliance with the environmental mitigation and management plans”.¹³⁵ Likewise, the National Planning Commission Act mandates the National Planning Commission to develop long- and medium-term development plans and to supervise the implementation of such plans.

131 Environment Management Act (2017). Section 54 (3).

132 Guidebook on the Local Government System in Malawi. Chapter Nine, Section 1 (i).

133 Malawi National Housing Policy (2019). Policy 4.1.3.

134 Physical Planning Act (2016). Section 50.3 (b).

135 Environment Management Act (2017). Section 33 (3).

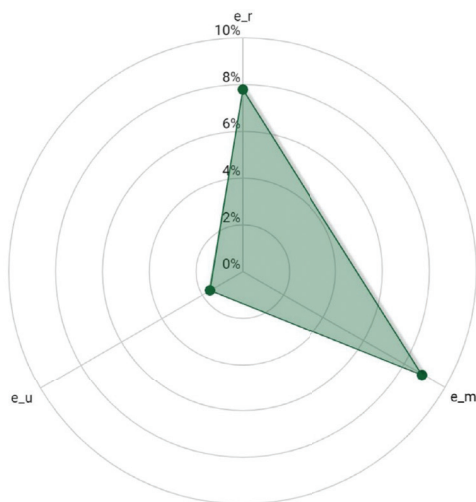


Local farming, Malawi - by Adrian K Mitchell - source : flickr

CHAPTER 5.

ECONOMIC AND NON-ECONOMIC INSTRUMENTS FOR CLIMATE-FRIENDLY URBAN PLANNING

EXECUTIVE SUMMARY



Economic & Financial Instruments

e_r	Resources for Urban Planning and Climate Change
e_m	Incentives for Mitigation and Adaptation in Urban Planning
e_u	Incentives that Promote Unsustainable Urban Land Uses

Figure 5: Rating matrix for Malawi on Economic and Non-Economic instruments for Climate-Friendly Urban Planning

Effective climate change action in urban areas requires local governments to be adequately financed to undertake their functions.¹³⁶ Though the legal framework of Malawi lacks provisions which establish earmarked intergovernmental fiscal transfers to local governments to include climate change mitigation and adaptation in urban planning, other legal provisions and regulations can create a flow of resources to finance climate change mitigation and adaptation

¹³⁶ UN-Habitat, United Nations Environment Programme, United Nations Framework Convention on Climate Change, and the Commonwealth Secretariat (2022). "Urban Planning Law for Climate-Smart Cities: Urban Law Module", Law and Climate Change Toolkit, p. 104.

in urban planning. In both the Constitution¹³⁷ and the Local Government Act,¹³⁸ local governments are given the responsibility to collect and decide how to spend locally generated revenues. The Environment Management Act¹³⁹ and the Land Act¹⁴⁰ empower local government authorities to collect and spend revenue in order to finance the actions required in the respective pieces of legislation, which include climate change adaptation and mitigation measures. However, none of these laws have provisions requiring that local governments earmark resources for urban planning and climate change. The National Environment Policy includes the national goal of establishing and managing an "environmental fund generated from [the] sustainable utilization of natural resources and any other sources", stating that this fund will be used to "facilitate environmental management".¹⁴¹ The National Land Policy also affirms the commitment to better finance the development of urban areas.¹⁴² While there are no legal provisions geared towards creating enabling environments that facilitate the mobilization of investment capital, many policies express commitments and detail government projects attempting to address this issue.¹⁴³

¹³⁷ Republic of Malawi (Constitution) Act (Act 20 of 1994). Section 171.

¹³⁸ Local Government Act (1998). Sections 44 and 46.

¹³⁹ Environment Management Act (2017). Section 86 (1).

¹⁴⁰ Malawi Land Act (2016). Section 35 (1)

¹⁴¹ Malawi National Environment Policy (2004). Section 3.2.8.

¹⁴² Malawi National Land Policy (2002). Section 6.5.1 (b).

¹⁴³ Malawi National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016). Section 2.5, Objective 2; Malawi Growth and Development Strategy III (2017). Section 5.2 and 5.3; National Buildings Policy (2018). Section 1.6 (iv) and (vi); National Construction Industry Policy (2015). Section 3.2.

Malawi should consider implementing both economic and non-economic incentives to support climate change adaptation in urban planning such as tax breaks for green construction or subsidies for emissions reduction technologies.

The National Climate Change Management Policy,¹⁴⁴ the Malawi Growth and Development Strategy III,¹⁴⁵ and the Environment Management Act¹⁴⁶ all focus on the promotion of public-private partnership arrangements to undertake development projects and programmes and achieve environmental management goals. Finally, the country's legislative and policy framework does not make any reference to national public credit guarantees for local governments, though other credit systems are mentioned in the National Land Policy,¹⁴⁷ the Malawi Growth and Development Strategy III¹⁴⁸ and the Malawi Vision 2063.¹⁴⁹

Economic incentives to support climate change mitigation and adaptation in urban planning are provided for in the National Land Policy, the National Climate Change Management Policy, the National Environment Policy and

the Environment Management Act. These incentives include research grants for climate change mitigation work, fiscal mechanisms on externalities that contribute to climate change, and climate change mitigation funds.¹⁵⁰ The Environment Management Act¹⁵¹ and Malawi Growth and Development Strategy III¹⁵² create incentives for the development and adoption of renewable energy sources. The Environment Management Act permits the Minister for Finance to create fiscal incentives to “promote the protection and management of the environment and the conservation and sustainable utilization of natural resources”.¹⁵³

Non-economic incentives to support mitigation efforts are mentioned in several national laws and regulations such as the Customary Land Act and the National Building Policy. For example, the Customary Land Act empowers the competent authority to declare land as hazardous, which then prevents any development that poses a

144 Malawi National Climate Change Management Policy (2016). Section 2.6.4 (i).

145 Malawi Growth and Development Strategy III (2017). Section 5.1.4.

146 Environment Management Act (2017). Sections 8.2 (c) and 9.2 (e).

147 Malawi National Land Policy (2002). Section 8.3.2 (d).

148 Malawi Growth and Development Strategy III (2017). Section 5.3.

149 Malawi Vision 2063, p. 17.

150 Malawi National Climate Change Management Policy Implementation, Monitoring and Evaluation Strategy (2016).

Section 2.4, Objective 4 and Section 2.5, Objective 1, Strategies 2 and 3.

151 Environment Management Act (2017). Section 52 (b).

152 Malawi Growth and Development Strategy III, Annex 2 (Implementation Plan), Climate Change Management, p. 119.

153 Environment Management Act (1996). Section 31 (a).

threat to life or leads to land degradation.¹⁵⁴ A goal of the National Building Policy is to ensure that “new building technologies are researched and developed and used in the built environment” through strategies that include coordinating with academia and mobilizing resources to facilitate research and development.¹⁵⁵

Law and policy in Malawi have few incentives that promote unsustainable land use. Economic incentives that encourage unsustainable urban land uses are expressed in the National Physical Development Plan (1987) which is in force despite the adoption of policies and promulgation of new urban and territorial planning legislation in recent years. The National Urban Policy does not explicitly indicate economic incentives for urban land use, however it seeks to “promote the provision of sufficient energy and other services to meet the increasing demands in urban centres”,¹⁵⁶ which could lead unsustainable energy consumption patterns. The National Land Policy acknowledges that “previous land policies neglected to reform the smallholder sector, in particular, the prevailing attitudes encouraged degradation and a rejection of traditional land resource management ethos in many rural communities”.¹⁵⁷

154 Customary Land Act (2016). Section 19.1.

155 Malawi National Buildings Policy (2018). Section 3.10.

156 Malawi National Urban Policy (2019). Section 3.4.1 (vi).

157 Malawi National Land Policy (2002). Section 1.3.4.

PROJECT ON URBAN LAW FOR RESILIENT AND LOW CARBON URBAN DEVELOPMENT IN MALAWI, NAMIBIA, AND ZIMBABWE

ASSESSMENT OF MALAWI LEGISLATION THROUGH THE URBAN LAW MODULE OF THE LAW AND CLIMATE CHANGE TOOLKIT

Urban areas account for two thirds of greenhouse gas emissions and energy consumption, making them major contributors to climate change. In particular, Malawi cities are already suffering from extreme weather events, flooding, heat waves, water scarcity, among other climate change effects.

Urban law has an important role to play in supporting climate action, increasing cities' resilience and in reducing emissions. Law defines urban forms, where infrastructure and basic services can be built; lays out rules for planning and decision making; and sets the context within which urban authorities, local governments and communities are expected to fulfil their mandate and react to emerging challenges.

UN-Habitat, the Konrad-Adenauer-Stiftung Regional Programme Energy Security and Climate Change in Sub-Saharan Africa (KAS), and the University of Michigan (US), through the project on Urban Law for Resilient and Low Carbon Urban Development, were able to assess the capacity of climate laws and policies in Malawi to adapt to climate change. The assessment was done through the UN-Habitat Urban Law Module of the Law and Climate Change Toolkit – an innovative online tool designed to help countries establish legal frameworks necessary for effective domestic implementation of the Paris Agreement. The assessment was based on the five key performance indicators namely, i) governance framework for urban and climate planning; ii) urban and territorial planning; iii) urban planning and design for adaptation; iv) urban planning and design for mitigation; and v) economic and non-economic instruments for climate friendly urban planning. It is hoped that this assessment will be instrumental in fulfilling the potential of urban areas in Malawi to lead the way and be truly transformative spaces for climate action.

HS Number: HS/043/22E



UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME
P.O. Box 30030, GPO Nairobi 00100 Kenya
Tel: +254-20-7623120
Fax: +254-20-76234266/7 (Central office)
infohabitat@un-habitat.org
www.unhabitat.org

