

# Urban Customary Land Practices in Malawi.

A catalyst for growth of informal settlements: the Case of Zomba City



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## Introduction

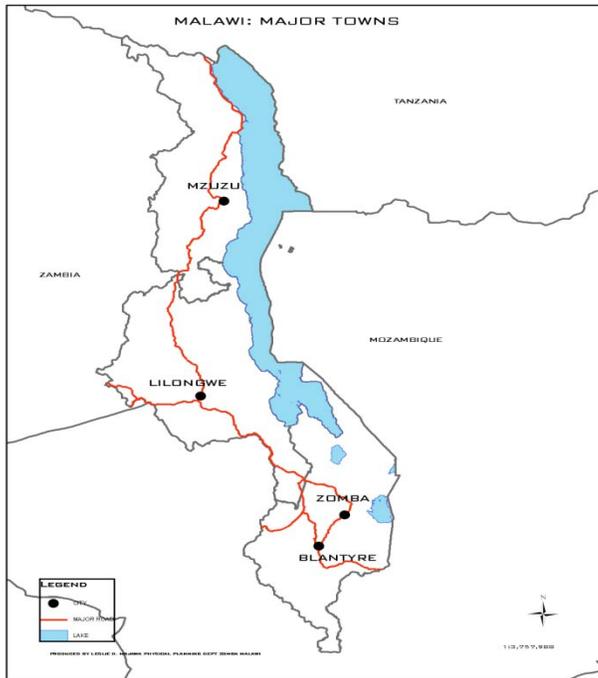
Malawi faces a growing problem of unplanned settlements in her towns and cities. Dysfunctional land and housing market, ineffective development control and urban poverty are singled out as major contributing factors. Customary land practices, rural phenomena have exacerbated the problem by fuelling growth of unplanned settlements thereby worsening an already bad housing and infrastructure situation. Through customary land practices both government and private land has been encroached for residential development.

The author intends to find out the cause of this practice in Zomba, how it has contributed to the spread of unplanned settlements and ways to address the problem in a bid to improve housing situation and socio-economic development for the all income groups, with a special focus on the low income group in the city.

# 1.0 Shelter Situation Analysis

## 1.1 Basic general data

### 1.1.2 Geography and administration



Malawi is located in Southern Africa, and borders Zambia to the North-West, Tanzania to the North and the rest by Mozambique. The total area of the country is 118,484 km<sup>2</sup> of which 24,400 km<sup>2</sup> is for water bodies. Malawi has three regions: northern, central and southern regions. Malawi has four major cities namely Lilongwe, the capital city in the centre; Blantyre, the commercial capital and Zomba, the former capital and the fourth largest city in the south; Mzuzu, the major city in northern region.

### 1.1.3 Demography and Health

#### ***Population***

Malawi has a population of 13, 066, 32, with 6.4 million males and 6.7 million females. The average household size is 4.4. Persons. The population grew from 9,933,863 inhabitants in 1998 representing an increase of 32 % (NSO 2008:2).The country registered an intercensal annual population growth rate of 2.8 % between 1998 and 2008 as compared to 2.0% during the intercensal period of 1987-1998 (NSO 2008:16).

The country has an average population density of 139 persons per km<sup>2</sup> from 105 persons per km<sup>2</sup> in 1998. The country is one of most densely populated countries in Africa but one of the least urbanised, only about 20% live in urban areas. However, a 6.4 percent annual urban growth rate makes the country one of the fastest urbanising globally (Manda 2007:1). The four major towns have been growing steadily over the last four decades especially the cities of Lilongwe and Mzuzu. Progress of Zomba city, though, has slowed over the years due to the transfer of the capital to Lilongwe in 1975.

**Table 1: Population in principal towns ('000)**

	1977	1987	1998	2008
Blantyre	219	333	502	661
Lilongwe	99	323	440	669
Mzuzu	16	44	87	128
Zomba	24	43	66	87

*Source: Statistical Yearbook 2007 and 2008 Preliminary Census Report*

There is a minimum difference in the intercensal annual growth rate amongst the four cities. The annual growth rate for Lilongwe is 4.3%, Mzuzu city is 4%, Zomba 2.9% and Blantyre, 2.8 %, (NSO 2008: 5). The cities are experiencing high population growth due to natural growth and rural-urban migration.

### **Health**

Health services are provided by the government through the Ministry of Health and through private hospitals. Provision of services is free in government hospitals, though it is ranked as one of the poorest countries in Africa. Life expectancy at birth is 40 and 44 for male and females respectively (NSO, Malawi in Figures 2008), shortened among other factors by the HIV/AIDS epidemic.

#### 1.1.4 Access to basic services

Many people have access to protected water supply. 74.2% of population in Malawi had access to clean water<sup>1</sup>, with 87% of rural population and 98% of urban population having access to clean water. 81.1% of population in Zomba use improved source of drinking water<sup>2</sup>.

The country has better sanitary conditions. Most households use improved sanitary facilities which include flush toilets, ventilated pit latrines and pit latrines. About 88% of population of Malawi lives in households using improved sanitary facilities. According to MICS 2006, 97.5 % of urban population and 85.8% of rural population use such facilities<sup>3</sup>. Zomba has 95.0% of its population using improved sanitary facilities. However, in informal settlements, access to clean water is limited and erratic. Most residents access water through communal taps and boreholes. It is not uncommon to see residents in these poor areas washing clothes and bathing in contaminated rivers.

#### 1.1.5 Economy

Malawi is a developing land locked country<sup>4</sup> with a very limited industrial sector. Agriculture contributes about 40 percent of the GDP (Nyasulu and Cloete 2007:55). Main cash crops include tobacco, tea, sugarcane, and cotton. Agricultural produce accounted for 70% of Malawi's export in 2004<sup>5</sup>. The recent opening of uranium mining will diversify the economy and boost the economy. Currently, Malawi depends on economic assistance<sup>6</sup> from multilateral and bilateral donors such as the World Bank, (International Monetary Fund) IMF, Britain, etc.

The economy of Malawi, though small, is growing at a rapid rate and poverty levels are declining. The UK -based Economic Intelligence Unit has forecast Malawi will have the world's

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<sup>1</sup> Clean water accessed from piped water; communal taps; boreholes ;and protected wells and springs , (*Statistical yearbook of 2007* )

<sup>2</sup> MICS 2006

<sup>3</sup> Population using sanitary means of excreta disposal if use of pit latrines is included. Pit latrines are common in both urban and rural areas. Excluding them , only 20% of Malawi's population use improved sanitation facilities( MICS 2006:128)

<sup>4</sup> The country does not have a direct access to the sea and depends on road and rail transport to ports in Mozambique, South Africa and Tanzania. An attempt is being made to open a waterway to Indian Ocean through Shire-Zambezi Waterway project.

<sup>5</sup> 2004 Demographic and Health Survey

<sup>6</sup> 30% of national budget (Malawi in Figures, 2008)

fastest growing economy after Qatar this year (2009) but annual gross domestic product is estimated at only \$313 per capita. The IMF has also projected that Malawi will this year expand by 7% average<sup>7</sup>. Welfare Monitoring Survey (WMS) 2008 found out that percentage of population living below poverty line has declined from 50% in 2005 to 40% in 2008. A majority of the poor people in urban areas live in the informal settlements<sup>8</sup>.

## 1.2 Shelter related fact and figures

### 1.2.1 Access to shelter

The country faces a pressing problem of housing in urban areas. Rapid population growth results in shortage of housing in urban areas affecting mostly the urban poor. Therefore, many poor people resort to renting in informal settlements or squatting on private or government land. The quality of dwellings in informal settlements varies from the simplest shack to permanent structures. Housing conditions are appalling and residents experience overcrowding conditions coupled with tenure insecurity.

*Poor housing in an unplanned settlement in Zomba*



Land in the unplanned settlements is controlled by some ‘self imposed land lords’ who include traditional community leaders<sup>9</sup> who follow customary practices<sup>10</sup>. Many developers including the rich are now acquiring land through this customary system. Zomba city is no exception.

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<sup>7</sup> The Nation Newspaper, 8 June , 2009

<sup>8</sup>Comprehensive figures of slum dwellers unavailable, slum profile project is currently underway

<sup>9</sup> Chief whose authority is duly recognised by his or subjects and it is mostly inherited from ancestors (National Land Policy 2002).

<sup>10</sup> In customary land practices the traditional leader allocates land to individuals and households from land owned by the group. Once allocated the land is held in all respect as private property (National Land Policy 2007:22). The chiefs also serve as adjudication officers and notaries to transactions (Chome and Mc Call 2005:471).

***Housing deficit (quantitative and qualitative)***

Malawi experiences huge deficit in housing supply<sup>11</sup> in urban areas. For instance, Malawi Housing Corporation (MHC), a parastatal created to supply housing for rent and sale in this year (2009) reported that it has a waiting list of about 100,000 against 6,000 available but occupied houses. The Corporation is constructing 40 lower middle to middle housing in Zomba city. Currently it has 684 houses in the city against a waiting list of over 5000<sup>12</sup>. The country does not have any social housing project. Most urban poor find cheap but poor housing in the informal settlements. Housing in these settlements is mainly semi-permanent and traditional<sup>13</sup>. Formal housing is defined as low, medium, high density permanent and high density traditional housing.

***Table 2: National housing situation, 1998***

Year	Permanent	Semi permanent	Traditional	Total
Malawi	355902	491576	2, 071, 933	2919411
Urban	112,128	145, 526	101,765	359419
Rural	243, 774	348,050	1970167	2559991

*Source: NSO (2000) Final Report of 1998 Census*

***Tenure of households***

Most households in rural areas own their dwellings, about 84.1%. However, the number decreases in urban areas where only 39.5% of urban population own their dwellings. About 54.9% of urban population rent their houses. Rent conditions are often atrocious because the sector is unregulated in the country. About 5.5% uses the dwelling without pay. (Statistical Yearbook, 2007)

<sup>11</sup> Current housing numbers for national are unavailable. Dwelling units were not counted in the 2008 Population and Housing Census. (Interview with Zanera, D. Census Manager, National Statistical Office, June 2009)

<sup>12</sup> Interview with Estates Service Manager, Eastern Region, MHC, 2 Sept 2009

<sup>13</sup> Semi-permanent are houses that lack one of the materials of a permanent structure for wall or roof, i.e. a with a roof made of corrugated iron sheets but a wall made of sun baked bricks; traditional defined as a dwelling unit with thatched roof and mud walls or wattle (NSO:2008)

### *Housing standard*

Urban housing is dominated by Traditional Housing Areas (THA's)<sup>14</sup> and informal settlements where most of the traditional and semi-permanent types of houses are found. The 1998 Population and Housing Census shows that there were 359,419 dwelling units in all urban areas of which 112,128 (31%) were permanent, 145,526 (40.5%) were semi-permanent and 101,765 (28.3%) were traditional. This means that about 69% of urban housing in the country is sub-standard.

### 1.3 Housing policy

Malawi has had no formal housing policy since independence, 1964. In the past, policy direction were derived from 10 year development policies (Manda, 2007: 6). The first National Housing Policy was drafted in 1996 and approved by cabinet in 2001 but it was never implemented. A new housing policy was prepared in 2007. The policy has six specific policy goals:

- Access to housing by all income groups;
- Decentralised approach (to housing provision);
- Improving urban land market;
- Improving access to housing finance;
- Upgrading informal settlements ; and
- Improving quality of rural settlements and housing

The Policy puts a special focus on efficient land management as a tool for provision of housing to the low income groups in both urban and rural areas. It, therefore, recognises the shortfalls in land management practises in urban areas that have contributed to a rise in squatter and informal settlements. It says land delivery system is a major contributor to this development. It points out the issue of multiple authorities over land. According to the NHP 2007:14, lack of clear policy makes land delivery fall under several institutions which include traditional leaders and other customary landholders who distribute land irrespective of legal provisions.

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<sup>14</sup> Site and service projects (for low income groups) on peri-urban land subdivided into large house plots and equipped with basic access roads, communal water supplies, pit latrine sanitation and reservation for local facilities (Skinner And Rodell, 1983:183)

The policy also recognises the importance of granting secure tenure to informal landholding as a key to housing access for the urban poor. It says the Habitat Agenda, Millennium Development Goals (MDG's) and International Covenant on Economic, Social and Cultural Rights (ICESCR) can not be achieved if tenure security is not provided for all categories of land.

The policy proposes a change in the building and planning standards so that they should reflect the current demand and needs. The policy says '*planning and requirement for building materials are not affordable for most Malawians and have the effect of discriminating against the use of local materials.*' The policy further states that present planning registration are burdensome, and inappropriate in poverty alleviation strategies.

However, the policy though talks about harmonisation of land management practices in the urban areas, does not state how specifically customary land management practises shall be addressed in urban areas as a way of promoting pro-poor housing.

#### 1.4 Actors in shelter delivery and their roles

The central government formulates policy, standards, laws and regulation governing the housing sector. Through the ministry responsible for housing, government has been constructing houses for its institutions. Department of Lands is the custodian of land in Malawi. It allocates land to shelter developers under lease agreements. It also leases land to Town Assemblies and Malawi Housing Corporation (MHC) for among other thing site and service projects for the low income groups in urban centres. The Department of Physical Planning prepares plans which include allocation of land for shelter development.

Local governments especially city assemblies, are mandated to develop housing for low income areas and provide sites and services for low income groups, however they fail due to inadequate funds and technical capacity.

Malawi Housing Corporation, a public parastatal develops housing for middle and high income areas for rent and sale. The corporation is facing funding problems to construct enough houses to meet the current demand.

Non Governmental Organisations (NGO's) have helped poor people access quality low cost housing. Habitat for Humanity (HfH) has constructed 5528 low cost houses in both urban and

rural areas. Centre for Community Organisation and Development (CCODE) work with the homeless in cities of Blantyre and Lilongwe and Mzuzu through the Malawi Homeless

*Low cost house funded by Habitat for Humanity in Zomba*



People's Federation (MHPF) to develop housing through revolving funds. So far 465 low cost houses have been constructed in Blantyre, 193 in Lilongwe and 83 in Mzuzu; but none of the NGO's providing housing operates in Zomba City. Some private institutions such as Press Corporation are venturing into housing projects.

However, the largest providers of housing in the country are private individual developers.

## 1.5 Physical planning

Integrated physical planning is essential in poverty alleviation, economic growth and environmental sustainability. It aims at preventing chaotic, uncoordinated and disorderly development patterns and inefficient land uses.

Malawi has witnessed poor quality housing and infrastructure simply because there has been uncoordinated approach to housing issues. Physical planning has been particularly difficult where communities 'claim ownership' of public land. The landholders allege that they did not receive compensation from government when their villages were absorbed into the cities. National Land Policy (2002) says that "*Customary land rights were extinguished by effecting the Town and Country Planning Act (1988) without regarding compensation issues*". Therefore, communities of the absorbed villages claim rights to the land. Any attempt by authorities to plan the land is regarded as an intrusion and received with hostility.

## 2 Organisation

The Department of Physical Planning falls under the Ministry of Lands, Housing and Urban Development, mandated to provide physical planning services through The Country and Town

Planning Act (1988) Chapter 23:01 of the Laws of the Republic of Malawi. On housing issues, the department is responsible for:

- Zoning land and creating plots for different uses including housing urban areas.
- Regulating the standards for housing in urban areas according to respective zoning for instance low density, medium density and high density housing.
- It is also a member of plot allocation committees in all urban centres.

Specifically, our office is a regional office (Southern region/ northern Division) located in Zomba city headed by a Regional Commissioner. The office has professional, technical and administration sections.

We provide planning services for the districts in the region which include Zomba city and other three smaller townships. Zomba city has limited mandate in planning and land administration hence they outsource our services.

My organisation faces several challenges. Firstly, as a central government department which has not fully devolved, it feels out of place in planning for decentralised institutions such as local assemblies. It has limited resources such as equipment and finances to ably carry out its function. Members of staff require advanced training in planning and technical fields.

## 3 Shelter Problem

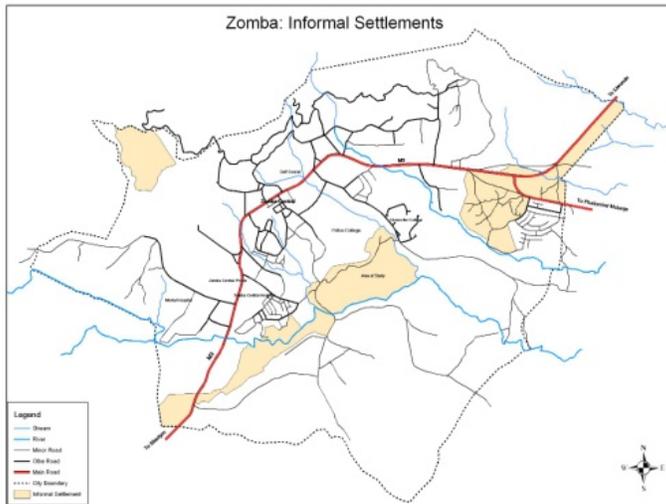
### 3.1 Customary land management practices and growth of unplanned Settlements in Zomba City

Zomba City covers a total land area of 39km<sup>2</sup> of which housing is the biggest land use (85%)<sup>15</sup>. A large percentage of the city's population<sup>16</sup> live in unplanned settlements where customary land practices are common. Many developers, including the high income groups, acquire land through chiefs and other 'customary landholders' because it is the most convenient and often easiest way to acquire land in the town.

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<sup>15</sup> Zomba Municipality , Urban Profile, 2007

<sup>16</sup> About 60 % the population of Zomba ( Zomba Municipality,et al 2007)



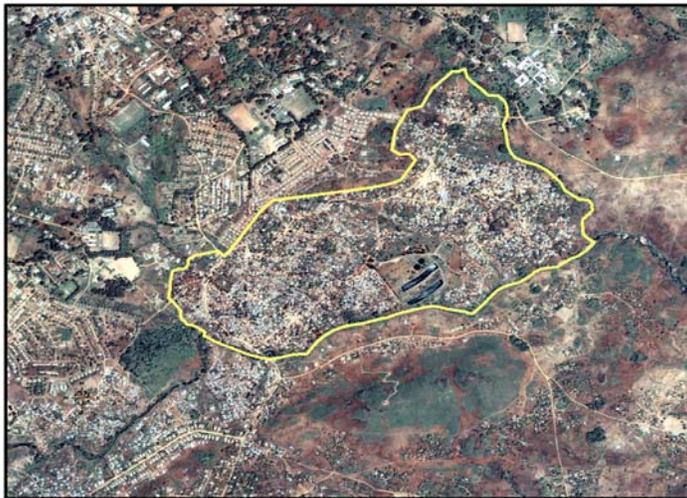
all urban areas of Malawi.

The settlements are growing fast like a ‘cancer on the urban landscape’, a cocktail of a variety of often incompatible land uses. Government and Malawi Housing Corporation land is the most affected by informal settlements. The case of Zomba city will illustrate the phenomena of customary land practice as it influences the development of unplanned areas, a situation common in

### 3.2 Customary land practices in the city

The author carried out a study in Chikanda Area<sup>17</sup>, the biggest and oldest unplanned settlement of the city to find out the extent and the effect of customary practices on growth of unplanned

*Chikanda Unplanned Settlement*



settlements in the city.

#### **Research method**

The study was done through interviews using simple questionnaires and observation. Ten residents ‘owning’<sup>18</sup> land and the area chief were interviewed, to determine the scope of the practice. Others included the Director of

<sup>17</sup> The area has a population of about 10,500 inhabitants (Zomba Municipality, Urban Profile, 2007)

<sup>18</sup> Defacto ownership, without legal documents and acquired informally

Planning and Development (City Assembly) and the Estates Service Manager (MHC). These were interviewed to find out how their operations have been affected by customary land practices. Observation through site visit was designed to see the impact of the customary practices on the physical development of the area.

### ***Findings***

The study revealed widespread application of customary land management practice especially in terms of land transfer and registration, about 40% of all land is under customary ownership<sup>19</sup>. All landholders confirmed that they acquired land from landholders through customary principles though modified. Many received no supporting document for their purchase. A few received a simple notebook letter signed by witnesses. However, all respondents said that the chief was notified of the transaction and endorsed it in the village register. They had no formal lease, did not pay city or ground rates. They did not seek approval from city authorities to build their structures. The housing and infrastructure condition was found to be poor.

### ***Informal land transfer and registration in the unplanned settlements in the city***

The chief is pivotal to all land transactions in the settlements. The chief, sometimes, may not be involved directly in land transaction, however, both parties of the transaction will definitely inform the chief, who writes the name of the buyer in the ‘village’ register and is now recognised as a member of the community, inducted into the community support system<sup>20</sup>. Both parties may make a ‘token payment’ to the chief, ‘Chindapusa’<sup>21</sup> in local language. The buyers then use the land as private property. The community shall there onwards provide defacto security to the new member. Chome and Mc Call (2005:468) say that “although informal registration does not carry an equivalent legal weight to formal registration, the perception of tenure security in the non-titled settlement is as strong.....what is central is the perception of security and the principle of

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<sup>19</sup> Own calculation from satellite image of the city

<sup>20</sup> The village headman (/woman) is the initiator of community support to household in distress or in need, such as in the event of death, illness or wedding. Registered households can be assured of community support in times like these. Chome and Mc Call 2005:464.

<sup>21</sup> Literary it means apologising to the chief for selling the chief’s land (Interviews with a local ‘urban’ village chief, 28 August 2009)

legitimacy found in good governance, ‘a belief that a group-social institution-will defend claims to land’ (Durand-Lasserve 2003, 3)”.

The chief also settles land conflict between land holders in the settlement. Therefore, s/he saves as an adjudicator and a notary to land disputes and transactions, apart from leading the community in social activities such as funerals, weddings and other gathering and mobilising people for self-help development projects. .

An interesting discovery in the area is the process of evolution of customary land practice taking place in unplanned settlements. Customary land has now turned into a market commodity which was not the case in typical customary land practice. The system is now a combination of old customary traditions and modern land transfer system. Chome and McCall call this phenomenon ‘neo-customary land practice’ a hybrid of the old and the new. This evolution to neo-customary land practice has accelerated the sale of land and the growth of unplanned settlements in the city.

### ***Housing and Infrastructure in the unplanned areas of the city***

A walk through the study area revealed that most houses are semi-permanent or traditional. Of late permanent structures are on the increase signalling a transformation of the settlement in terms of socio-economic stature of the population. There is a great mix of uses in the area although sometimes an effort has been made to zone uses. Accessibility is poor, whereby; some houses have only footpaths as access. Drainage is almost non-existent in some areas. The author observed the presence of many traditional pit latrines (90%). Water through communal or standpipes is common and sometimes boreholes.

### ***Urban land use planning and customary land practices in Zomba city***

The city has an Outline Zoning Plans (OZP), albeit outdated, currently being updated, prepared to direct development in the city i.e. through allocating land to specific land uses and as a monitoring tool for development in the City. Land, hereby assumed public, is allocated through committees. Development is supposed to be controlled by the Town Planning Committee. However, this elaborate setup is distorted by the customary system existing in the city, despite being delegalsed by land and planning laws. The Chiefs Act (Act 39 of 1981) specifies that no traditional leader shall exercise jurisdiction over land within a municipality or township.

However, in most parts of the city, these two systems run in parallel, as a result many residential areas are developing without any planning at all. According to one of the chiefs, the practice exists because no effort was made by authorities to compensate the communities that received in the then villages. In addition, authorities have not made an attempt to educate the communities on land issues in the unplanned areas.

Another aspect of land practices encouraging growth of unplanned settlements in these areas is that, though the chief has defacto authority to oversee land transactions in the settlements, s/he has very insignificant control over resulting developments. Developers carry out projects as they please since land is treated as private. Chirwa in Kruse and Manda 2005, 47 says that *“most of such land is initially ‘bought’ for residential uses. However, overtime, other commercial activities such as shops, garages, workshops, saloons, etc spring up in a haphazard manner and not in accordance with development plans..... development control is almost impossible since developers do not recognise the assembly’s authority”*. Therefore, intervention by city planners to plan for or upgrade settlements has been met by open hostility from the traditional leaders and residents.

## 4 Proposal for Change and Improvement

Zomba city continues to face enormous challenges in land management. Some radical changes are required to address some of the prevailing land problems in the city and stimulate housing and socio-economic development of the city while enhancing the urban environment. Improving the land market and reforming land management, strengthening institutional capacity of the assembly in land management, Adopting participatory planning, carrying out infrastructure development in unplanned areas, and reforming the legal frame work governing land administration will definitely improve the land market and encourage sustainable development of housing in the city .

### **A. Improving land market and reforming land management**

- Opening up the land access to all income groups, especially the urban poor.

To access land in the town has proved to be difficult. Many prospective developers have resorted to buy land from the informal market after waiting to avail, for years to acquire land

formally. Improving on the THA concept will definitely increase access to land by the poor in the city.

- Reasonable lowering planning and building standards to make them affordable to the urban poor. Many poor people acquire land in the informal settlements because planning and building standards are tough and expensive to follow in planned areas.

#### **B. Strengthening institutional capacity of the assembly in land management and revenue collection**

- There is need to train of assembly staff handling land issues so as to improve their professional capacity.
- The assembly should be given autonomy to manage land in the city. This will remove the problem of multiple landlords. Leading to effective planning and control of developments in the city
- Strengthening the assembly in revenue collection will increase its capacity to provide infrastructure to the poor areas effectively. Thus, the assembly should be able to collect revenue from various taxes, and for this to happen, some fiscal reforms should be undertaken. Tannerfeldt and Llung 2008: 109 says that “*Municipalities should generally be given greater fiscal autonomy and be free to determine their expenditures without central government approval (subject, of course, to proper audit)*”. With this approach, the assembly can prioritise its expenditure and increase pro-poor projects in the city which definitely will include housing.

#### **C. Adopting participatory planning**

The traditional community leaders have proved to be effective in community governance. Involving chiefs and the communities in planning removes the mistrust that exists between authorities and communities and creates ownership to development plans in their settlements. Sida, 2008:11 says that “*public participation is thus an important ingredient in the creation of sustainable communities, not only when it comes to urban planning. The organisations of the poor have often proven to be strong actors which, in collaboration with local governments could make a difference*”. A window, therefore, should be opened in urban governance to involve communities,

especially in poor areas of the city in urban planning so that plans address issues that really affect the poor residents in the city.

#### **D. Infrastructure Development in unplanned areas**

Both local and central governments should carry out tangible projects in the informal settlements to win ‘hearts and minds’ of these communities, currently, residents feel abandoned and are hostile to city authorities. If the assembly carry out projects in informal settlements, communities are willing to corporate, for instance, follow planning regulations and pay city rates which will boost the city’s finances. Secondly, these projects will go a long way to improve infrastructure and therefore, improve the quality of life in the unplanned settlements

#### **E. Reforming legal framework on urban governance and land administration**

Changing laws to recognise traditional leaders and customary land in urban areas will put customary land holders under the control of urban authorities. Such change is vital in a situation where urban authorities are unable to compensate customary land holders in ‘urban villages’.

### **Conclusion**

Zomba as all cities in the country faces acute problems in land management and administration which has greatly affected the housing sector. Customary land practices operating within the informal land market have taken advantage of the dysfunctional formal system in the city.

Addressing land issues in the city will definitely improve socio-economic and physical development of the city through orderly provision of housing infrastructure and economic opportunities and respect of the urban environment. The greatest result will be development of inclusive cities where every ‘city-zen’ has equal opportunity to urban resources such as housing and reduction of slum dwellers in the country.

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