



Accessing Land in the City's Peri-Urban Areas: The Case of Lilongwe, Malawi

by

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ABSTRACT

Land access is arguably key to the attainment of sustainable urbanisation and development. Studies show that high urbanisation rates have resulted in a high demand for serviced land and housing in the face of a slow rates of formal provision of the same. This is particularly true in Lilongwe's peri-urban areas where, despite presenting itself as an opportunity to facilitate a parallel system of accessing land for the majority of residents, the unrelinquished customary land tenure system in the urban and peri-urban areas is continuously in conflict with the failing statutory land tenure. Therefore, the study asks: *How do Lilongwe's residents access land in the city's peri-urban areas?*

This qualitative case study research sourced primary data through semi-structured individual interviews with residents in Areas 26, 44, 54 and 55 and non-participant observations as well as secondary data sourced through desktop investigation. The findings show that, despite being the preferred mechanism, the formal land access system is marred with numerous challenges emanating from the historicised internal and external inefficiencies which culminate in the government's delayed creation of plots. The challenges include limited human, technical and financial capacity and inconsistent application of the law. These inefficiencies and challenges are rooted in Malawi's historical land dispensation that favours clientelist modes of political legitimation that manifest in poorly coordinated land expropriation programmes and l'aissez faire implementation of planning law. These inefficiencies have led to the proliferation of the uncharted (read informal) mechanisms of land access. The findings also indicate that land access remains gendered, by the prevailing inheritance rules in each area, which is observed to be changing due to intermarriages, modernisation and legal reforms.

By declaring customary land as planning areas without instituting legal procedures to formally extinguish the existing customary land tenure rights, the state and non-state actors disregard international human rights principles, protocols, treaties and conventions. These findings echo scholarship that finds land tenure systems in the global South cities to be precarious. Despite strong commitments, in recent times, to implement urbanisation-focussed SDG 11 "Make cities and human settlements inclusive, safe, resilient and sustainable", the empirical evidence and the historicised trends observed in Lilongwe entails 2030 may come too quickly for Malawi to comprehensively achieve the goal. Based on these findings, the research recommends avenues for future research that will inform the government's land access and tenure formalisation programmes in the peri-urban areas.

Keywords: land access, peri-urban areas, encroachment, land regularisation, tenure

DEDICATION

I dedicate this Mphil dissertation to my loving parents, Ellina Kapinga and Laston Galimoto, whose passion and vision to see me develop have been the main source of my motivation since early years of my academic career. They believed in my potential before anyone did, and their selfless financial and moral support and, especially their unceasing prayers have played a critical role in my success to date.

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LIST OF ACRONYMS

CCODE:	Centre for Community Organisation and Development
CSO:	Civil Society Organisation
DMP:	Data Management Plan
EBE:	Faculty of Engineering and the Built Environment
ECA:	The Economic Commission for Africa
ESCOM:	Electricity Supply Cooperation of Malawi
FAO:	Food and Agriculture Organisation
HfH:	Habitat for Humanity
LCC:	Lilongwe City Council
LDC:	Lilongwe District Council
LGA:	Local Government Act
LWB:	Lilongwe Water Board
MHC:	The Malawi Housing Corporation
MLC:	Malawi Law Commission
MNLP:	The Malawi National Land Policy
MP:	Member(s) of Parliament
MUF:	Malawi Urban Forum
NLIS:	National Land Information System
NPC:	National Planning Commission
NSO:	National Statistical Office
NUP:	National Urban Policy
OECD:	Organisation for Economic Co-operation and Development
PPP:	Public Private Partnership
REC:	Research Ethics Committee.
SDG:	Sustainable Development Goals
SONA:	State of Nation Address
SULSDEC:	Sustainable Urban Land and Shelter Development Consultants
TA:	Traditional Authority
UN:	United Nations
UNHABITAT:	The United Nations Human Settlements Programme
USAID:	United States Aid for International Development
VH:	Village Headperson
WOLREC:	Women Legal Resources Centre

CHAPTER 1: INTRODUCTION

1.1 Background

Access to land is a crucial prerequisite for social and economic development¹. Different national laws, policies and customs exist to determine and facilitate access to, use, control and transfer of land. In Malawi, such laws include the *Land Act of 2016* which defines land as:

Material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes the surface covered with water, all things growing on that surface, buildings, other things permanently affixed to land and free or occupied space for an indefinite distance upwards, as well as downwards subject to limitations upon the airspace imposed and rights in the use of airspace granted by international law.

(Government of Malawi, 2016a, p. 4)

The United Nations (2015) identifies land as a key component of the right to adequate housing for all and for the development of sustainable human settlements in both urban and rural areas (UN-HABITAT, 2003). Equitable access to natural resources, including land, is also understood to be the cornerstone in overcoming discrimination against persons living in informal settlements and rural areas (FAO, 2012; United Nations, 2015). However, formal land governance systems fail to adopt, at all levels, appropriate urban land policies and land management practices to ensure equitable access to land by all residents (UN-HABITAT, 2003). This failure remains a primary cause of inequity and poverty (UN-HABITAT, 2003, p. 7). This has also led to increasing land pressures.² Furthermore, in peripheral areas of cities in the global South:

¹The Constitution of the Republic of Malawi, which recognises the right to development in article 30.1-2, states that:

All persons and peoples have a right to development and therefore to the enjoyment of economic, social, cultural and political development and ... the state shall take all necessary measures for the realization of the right ... Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.

²Land pressures exist when there are competing and inconsistent land uses that emanate from the exercise of one's relative power over land rights by individuals and institutions (Dadashpoor and Ahani, 2019).

This developmental pressure occurs when the peri-urban land planning system fails to respond to the demand and increasing competition for land in meeting new residences and activity needs. Thus, the unplanned and spontaneous functions of these areas lead to an overflowing environment of types of planned and non-planned settlements with formal and informal land tenures.

(Dadashpoor and Ahani, 2019, p. 224).

Also, as Dadashpoor and Ahani (2019) argue, the consequences of the above include insecurity of land tenure, uncontrollable (sprawling) and unorganised development processes without registered and recognized land rights and increasing uneven distribution of land. As Obala (2020, p. 96) notes:

Many scholars thus attribute rapid sprawling to the inability of urban management institutions to efficiently manage land in their control (Obala, 2011; Kombe, 2000). It is for this reason that Locke and Giles (2016) argue that responsible land management is key to the realization and/or maximization of the potential of urbanisation whilst minimizing the negative effects on poor and vulnerable groups. They further posit that poor management is likely to contribute tensions, violence, and destabilization of the relations in the urban periphery.

Consequently, different institutions and instruments exist in Malawi to manage land use, prevent urban sprawl as well as reform land governance. However, these institutions face challenges in effectively executing their functions (UN-HABITAT, 2003). These challenges in turn impact people's social, economic and environmental related challenges to land access (see sections 1.2, 2.3.4 and 4.3).

1.1.1 Peri-urban: A Brief Definition

Calling for a disruption of the ontological and topological readings of subalternity, Roy (2011, p. 224) sees slums and informality as another “terrain of habitation, livelihood and politics.” Therefore, transforming the ways in which the cities of the global South are studied and represented in urban research, and popular discourse “confers recognition on spaces of poverty and forms of popular agency that often remain invisible and neglected in the archives and annals of urban theory” (Roy, 2011, p. 224). It is partly for this reason, that this research examines peri-urban development in Lilongwe.

Whilst “peri-urban areas have no clear boundaries, both in geographic and conceptual terms” (Gonçalves et al., 2017, p. 331), they are generally understood as areas adjacent to the built-up

city. Peri-urban areas are often just outside official city boundaries, characterised by a strong influence of urban³ activities, easy access to markets and urban facilities, and with individuals engaging in rural activities otherwise prohibited in statutory urban areas (Adell, 1999 cited in Winarso, Hudalah and Firman, 2015; Manda, 2004). These areas are urban because their characters, and most of their activities, are dependent on urban infrastructure and services such as electricity and water supply (Manda, 2004). Dadashpoor and Ahani (2019) add that the “peri-urban environment can include a part of urban lands or the margins of urban areas and lands with distance from the city” (p. 219). Effectively, “[t]hese lands may also include urban and rural lands that have officially or informally been occupied” (Allen et al., 1999; Nkwae, 2006 cited in Dadashpoor and Ahani, 2019, p. 219). Gomes and Hermans (2018, p. 932) define peri-urban areas as the “transition zone during urbanisation experiencing a two-way flow of goods, services, and population with nearby urban centres.”

In Bangladesh, Gomes and Hermans (2018, p. 932) have observed the “replacement of traditional land uses like agriculture with industrial activity and infrastructure development to support urban expansion and population growth.” Metsola (2018) has observed peri-urban areas of Windhoek, Namibia growing from being sparsely populated and completely unserved to becoming congested causing people to move. In the peri-urban areas of Lilongwe, Malawi, the in-migration has caused pressure on service delivery (UNHABITAT, 2011; USAID, 2010). Holston (2008 cited in Metsola, 2018) has observed how land occupation and auto-construction

³The question of what constitutes a peri-urban area, begs the question of what constitutes an urban area. In Malawi, the Ministry of Lands, (2011) has established a 6-tier central place hierarchy that ranks human settlements from the national urban centre to the rural village. On one hand, national urban centres provide central place functions, facilities and services that have a nationwide impact or influence. Rural areas, on the other hand, are areas that are dominated by non-urban activities or are agriculture-oriented (Ministry of Lands, 2011; Manda, 2004). It can be argued that this definition of urban is more of a dichotomy than a continuum. This suggests that a more nuanced definition could offer a clearer distinction between what is urban and what is rural. Notwithstanding this, it is generally understood that what may be urban in Malawi is only rural elsewhere (Manda, 2004). Therefore, the urbaneness of a place should be “determined based on a range of elements encompassing population size and density, social and economic organisation, and the transformation of the natural and agriculture environments into a built environment” (Weeks, 2010, p. 43). Because of spatial and temporal variability of the elements above, the degree of urbaneness varies across space and through time suggesting that urban and rural are, in fact, ends of a continuum as Weeks (2010, p. 37) argues. Therefore, what makes urban areas ‘urban’ and rural areas ‘rural’ is worth exploring to understand the rural-urban transition. Crucially, this knowledge is also critical in defining what constitutes an urban, peri-urban and rural area.

are intrinsic and key practices within transitioning peri-urban areas in the global South including Lilongwe (Malawi Government, 1999, p. 43). The observations in Bangladesh, Brazil, Malawi and Namibia confirm Pieterse's (2011, p. 6) observation that "the shanty city is by and large the *real* African city... [and] that the bulk of city building can be attributed to actors outside of the state and formal business sector."

Autoconstruction is a practice undertaken by ordinary people as they "build their houses and cities step-by-step according to the resources they are able to put together at each moment in a process" (Caldeira, 2017, p. 5). Theoretically, this is termed peripheral urbanisation, which involves a distinctive form of agency whereby residents are agents of urbanisation, not simply consumers of spaces developed and regulated by others (Caldeira, 2017). Peripheral urbanisation, firstly, concerns itself with the:

[M]odes of the production of space that, (a) operate with a specific temporality and agency, (b) engage transversally with official logics of law, and [land administration systems], (c) generate new modes of politics, and (d) create highly unequal and heterogeneous cities".

(Caldeira, 2017, p. 4)

Second, it does "not only produce heterogeneity within the city as it unfolds over time but also varies considerably from one city to another" (Caldeira, 2017, p. 4). For instance, Obala (2020, p. 97) observes that a significant proportion of Nairobi's urban population "find it impossible to access affordable housing in the city and opt to live in the periphery." Obala (2011 cited in Obala, 2020, p. 97) further notes that "rapid urbanisation coupled with poor policies as well as institutional failure contribute to inequitable access to land, particularly for the poor". Consequently, a large proportion of the population moving to the urban edges in search of a "more livable environment" (ibid, 2020, p. 97).

Autoconstruction is practiced by both wealthier and poorer classes of people. However, as Roy (2011, p. 233) observes, how expressions of class power command infrastructure, services and legitimacy. Roy (2011, p. 233) notes that "[i]nformalized spaces are reclaimed through urban renewal, while formalized spaces accrue value through state-authorized legitimacy." For instance, Weinstein (2008 cited in Roy, 2011, p. 233) notes that various shopping centres in Mumbai were "built illegally... by the city's largest and most notorious mafia organisation, on land belonging to the state government's public works department." Weinstein further notes that

the land was formalised as well as legitimised by the state while other forms of informality remain criminalized.

1.2 Issue under Study

The major landowners in Lilongwe include, but are not limited to, the Ministry of Lands, the Malawi Housing Corporation (MHC), Airports Development Limited (ADL), Press Corporation Limited, and private developers (UNHABITAT, 2011; Malawi Government, 2013). Furthermore, chiefs, who serve as custodians of customary land, take part in land administration in the city despite not being legally mandated to administer land in urban areas (UNHABITAT, 2011). The multiplicity of landowners and custodians observed in the city has widely been cited as one of the major challenges to land access (Malawi Government, 1999; 2002; 2013). This status quo has given rise to complex land governance arrangements whose complexity deepens daily in the wake of increasing urbanisation and, inter alia, increasing land pressures (UNHABITAT, 2011; Malawi Government, 2013). One indicator of the increasing land pressures is the amount of time taken for individuals to be allocated land by the government. The Africa Housing Finance Year (2022, p. 147) observes that:

It takes at least two years for a client to be allocated land for purchase from the government, and even longer to find a government house to buy or rent. For private sector housing, clients can complete these transactions within a month.

Consequently, and as Malawi's Minister of Lands, Honourable Sam Kawale (2022), notes in a statement presented in Parliament:

The pressure for land for residential developments has particularly been felt in Lilongwe City, largely because of rapid urbanisation being experienced within the city. From 2017 to 2021, the Ministry of Lands managed to create only 742 residential plots (in Area 43 Sector 7 and Area 44 Sector 1) against an existing annual demand of over 1,000 residential plots.

This demand is rooted in a history of low rates of land release and housing development by the government. Chingoli (2000) reveals that between 1964 and 1997, the MHC⁴ constructed 2,769

⁴ MHC is a statutory body which was established in 1964 by an Act of Parliament and is wholly owned by the Government. The Corporation draws its mandate from the MHC Act of 1964 (amended in 2017) which empowers the Corporation to acquire land; develop plots; construct houses; purchase, maintain or dispose of plots and buildings (<http://www.mhcmw.org>).

permanent houses in Lilongwe. This equates to an average of about 84 dwellings per annum. The report also estimates that the housing waiting list stood at over 66,000 applications at the beginning of the 1990's (World Bank, 1992 cited in Chingoli, 2000). More than 20 years later, Mwachunga and Donaldson (2018) found that between 2007 and 2011, the MHC developed a total of 1,883 plots in the central region of Malawi where Lilongwe is situated.

The periodic statistics, dating back to 1964, indicate rates of land release and housing development that are incommensurate with demand at the time (Mwachunga and Donaldson, 2018). Chingoli (2000, online) notes the “actual need for serviced plots is much larger than the 66,000 recorded in the MHC's waiting list as some people do not bother to apply”. The Ministry of Lands estimates an existing annual demand of over 1,000 residential plots (Kawale, 2022). Currently, “[t]here are more than 100,000 applicants for MHC houses, compared to the ... stock of [just] 6,446” (Kamanga et al., 2022, p. 146). It is for this reason that, as the USAID (2010) concludes, some residents have resorted to alternative means of accessing land. They are these alternative mechanisms of accessing land that constitute the issue under study.

1.3 Research Aims

The overall aim of this study is to determine the mechanisms through which residents of Lilongwe access land in the city's peri-urban areas. With this aim in mind, the research also seeks:

- i. To examine the linkages between different mechanisms of accessing land in peri-urban areas;
- ii. To determine the implications of different mechanisms of accessing land in the peri-urban areas.

1.5 Research Question

The main research question asks:

How do Lilongwe's residents access land in the city's peri-urban areas?

The research focuses specifically on the mechanisms used to access land. This is based on the revelation that inadequate rates of housing provision, namely by the government have resulted in residents and private investors finding their own means of accessing land for housing and other purposes. Research conducted in 2015 found that from 2010 to 2014, the Lilongwe City Council (LCC) offered 1,565 residential plots (Galimoto, 2015). This equates to the provision

of land to just 19.6% of the 8,000 eligible applicants at the time. The study also reveals that the Ministry of Lands has since offered an additional 1,174 (41.3%) residential plots (out of 2,843 eligible applicants). Thus, the question remains: how do applicants – both eligible and ineligible – access land in Lilongwe given such low rates of formal housing or plot delivery? In responding to this research question, the study draws on such concepts as autoconstruction and moves between the underpinnings of property as bundle of powers and property as bundle of rights, to examine multiple land access mechanisms (see chapter 2).

1.7 The Case: Lilongwe, Malawi



Figure 1.1: Map of Malawi (Source: Galimoto, 2015)

The case for this research is Lilongwe, Malawi (figure 1.1). Lilongwe has grown from a small fishing village on the banks of the river Lilongwe (see figure 1.3) built in 1902 by the British colonial government. It was declared a capital city in 1975 in order to concentrate government administration in one city and to stimulate development in the Central and Northern Regions by establishing a major growth point in the centre of the country (UNHABITAT, 2011; LCC, 2020).⁵ Thus, while Blantyre is the commercial hub of the country, in Lilongwe government and public institutions, finance, banking, retail trade, construction, transport, public administration, tourism, and tobacco manufacturing are the main economic activities (LCC, 2020). Lilongwe has grown to become Malawi’s largest city by area and population (UNHABITAT, 2011; LCC, 2020; see figure 1.2). In terms of the six-tier central place hierarchy established by the Ministry of Lands (2011), Lilongwe has national level influence and. Coupled with its central location, the city attracts rural-urban migrants as well as migrants from other secondary urban centres across the country.

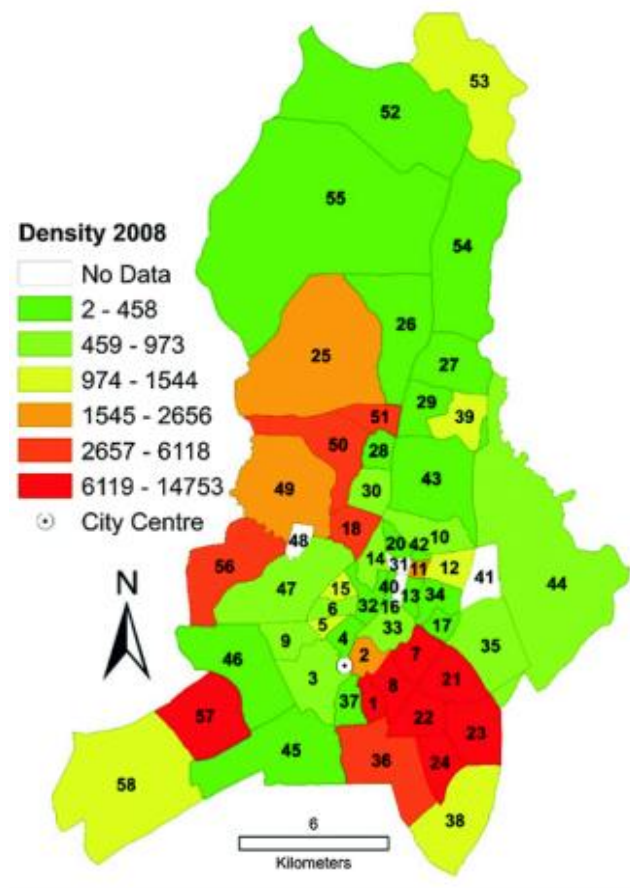


Figure 1.2: Density of Lilongwe City's Areas (Source: LCC, 2020)

⁵Until then, the capital was Zomba.

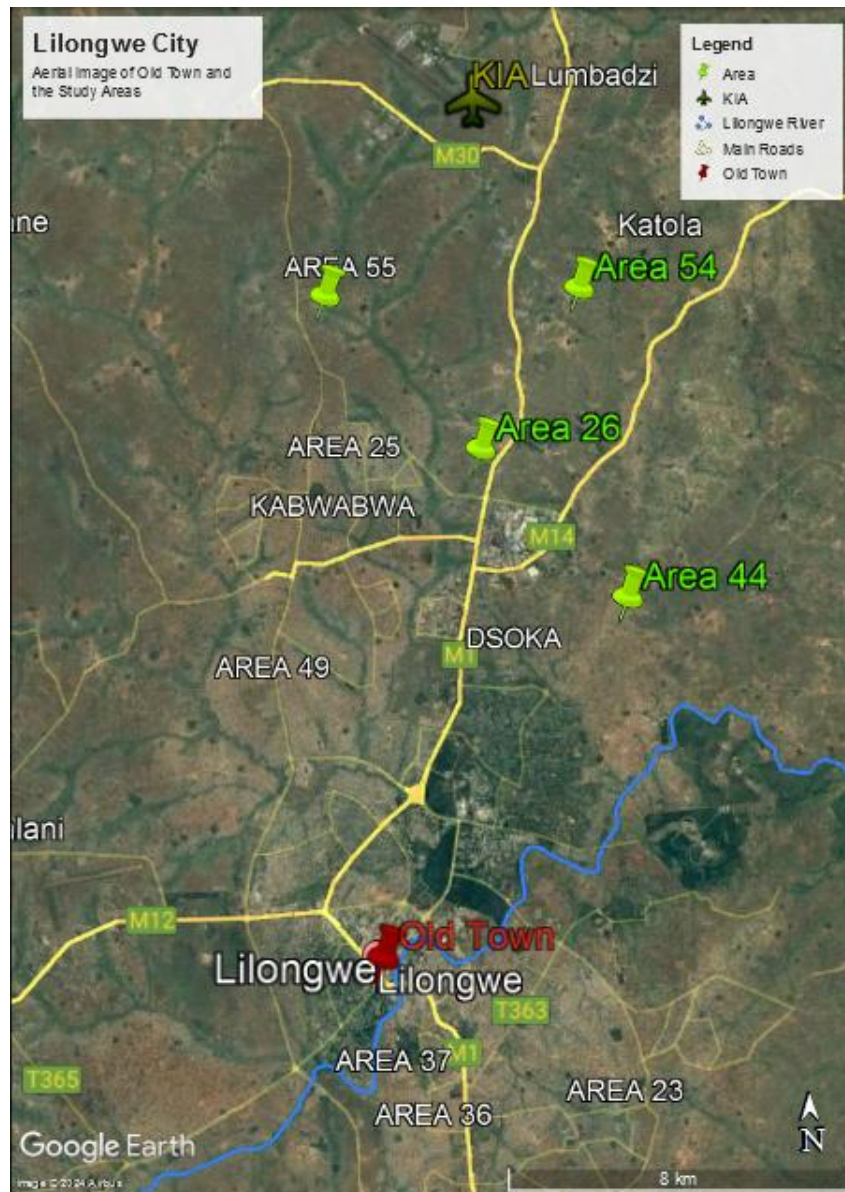


Figure 1.3: Aerial Image of Lilongwe showing the Old Town in Relation to the Study Areas

As of 2023, the population of Lilongwe stood at 1,276,000, which respectively positioned the city at 471st, 57th and 1st in the world, Africa and Malawi in terms of population size⁶. The city has a land area of 474 square kilometres and is divided into 58 areas with the numbers assigned chronologically, not geographically (LCC, 2020). The research examines land access in areas 26, 44, 54, and 55 of Lilongwe (see figure 1.2). These have been selected as the study areas because the city’s administrative boundaries continue to expand outwards to incorporate land otherwise classified as rural areas (see figure 4.1).

⁶<https://populationstat.com/malawi/lilongwe>

Lilongwe has also been selected as the case for this research because it is estimated that about 76% of Lilongwe's population currently lives in informal settlements, which is higher than the 60% national average "proportion of urban population living in slums, informal settlements or inadequate housing" in 2020 (LCC, 2020; National Planning Commission - NPC, 2020, p. 52). Growing at almost 4% per year, the population is expected to almost double by 2035 (National Statistical Office - NSO, 2019). On one hand, poverty (estimated at 25%) and unemployment (estimated at 16%) are cited as contributing factors to the growing number of informal settlements in the city (LCC, 2020). On the other, the high urbanisation rate and inefficient land administration have been identified as the additional factors causing informality whereby individuals are unable to access adequate housing at rates commensurate with the demand (Kawale, 2022; Galimoto, 2015). This research, therefore, seeks to examine whether the latter, particularly inefficiencies within the land administration system, are contributing to the high incidences of informal settlements observed in the city's peri-urban areas.

1.8 Significance of the Study

This case presents an opportunity to study the interaction of formal and informal land administration processes in the city at a point in time when the Ministry of Lands has embarked on a process of demarcating plots for residential, institutional and industrial purposes in the city's peripheral areas. This is in line with the Ministry's core mandate, which is to provide orderly access to land, housing and urban development services (Kawale, 2022). However, the Ministry is facing challenges in fulfilling its functions because of delays associated with relinquishing customary land rights and encroachments. Furthermore, a statement by the Ministry of Lands mentions unspecified emerging issues in urban developments as another factor that has necessitated plans to "review the existing detailed layout plans for commercial, institutional and residential plots covering the land from Daughters of Mary Immaculate (DMI) University all the way to the junction to the [Kamuzu International] Airport" (Public Relations Office, 2022: online; see Figure 1.3). Thus, the research offers an understanding of the emerging land administration issues the Ministry is grappling with. This research contributes insights that can inform the review of layout plans, which in turn informs formal mechanisms for accessing land. Although not one of the primary aims of this research, the case also provides insights into the implications of how individuals access land for the land regularisation processes as per the Ministry's mandates. More importantly, as this study examines land access in peri-urban areas, the concept of 'peri-urban' has been widely contested as noted above. Therefore, the findings of this research contribute to the nuanced understanding of the concept.

1.9 Structure of the Dissertation

This dissertation has five chapters. **Chapter One** forms the introduction of this dissertation, which introduces the issue under study, and the motivation and purpose of the research. **Chapter Two** is a review of the relevant literature, namely the literature on customary, informal and formal land access mechanisms. Importantly, the chapter defines access in relation to land. **Chapter Three** outlines the research methods and techniques used in this study. This is a qualitative case study research that presents multiple lenses to explore, reveal and understand complex phenomena such as access to land in the peri-urban areas. The study used semi-structured interviews, non-participant observations and desktop research techniques to collect data. These are also discussed in chapter three. **Chapter Four** presents the research findings and discussion. This chapter draws on the literature presented in chapter two to discuss the findings. **Chapter Five** concludes this study and puts forward several avenues for further research.

1.10 Conclusion

This chapter has elaborated on the study's motivation, purpose, justification and geographic coverage. Thus, the chapter lays-out the foundation for this research, particularly the literature review chapter. Importantly, the chapter defines land and takes a position on the contested concept of the peri-urban area. Thus, the study acknowledges messiness of the cities such as Lilongwe where there are no clear geographic and conceptual boundaries, and therefore divorces from the traditional definition that considers peri-urban areas as areas outside the city. Therefore, the research adopts a definition that understands peri-urban areas as area outside the city administrative boundaries. This understanding allows the researcher to assess the mechanisms of accessing land in the target areas which are within the city boundaries. This is also important as it offers the researcher the opportunity to contribute to the broader theoretical and conceptual learnings of peripheral urbanisation and the practice of autoconstruction. That is, the study contributes to the empirical evidence of the non-traditional definition of the concept of peri-urban area. To further strengthen this conceptual and theoretical grounding of this study, the discussion turns to the literature review chapter.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

Building on the introduction chapter (see section 1.1), which draws on literature on rural-urban interface, that is, on peri-urban areas, this chapter centres on literature on land access. Consequently, the chapter is divided into five sections as follows: The first section (the current) introduces the chapter. The second, nuances the definition of ‘access’ in relation to land tenure. In this section, the issue of rights, property, related theories and frameworks that in turn impact equitable access to land are discussed. The third section discusses practices and the underpinnings of customary, informal and formal mechanisms of accessing land. Discussing the in-betweens, the fourth section presents contestations of formal and informal land access mechanisms in the context of peri-urban areas and the fifth, concludes the chapter.

2.2 Access to land: A Nuanced Definition

Land rights, and access thereof, are determined by two distinctive characteristics of ‘land’ that set it apart from other categories of property. First, the land is durable property, which means that it cannot be “physically transferred from one person to another” (Hanstad, 1998, p. 649). This makes it physically secure and peculiarly capable of lasting records (Bullard, 2002; Hamstad, 1998). Second, land is immovable. That is, “it cannot be increased, decreased, or destroyed as can all other forms of wealth” (Hanstad, 1998, p. 650). As the FAO (2002, p. 3) notes:

[L]and has been recognized as a primary source of wealth, social status, and power. It is the basis for shelter, food, and economic activities; it is the most significant provider of employment opportunities in rural areas and is an increasingly scarce resource in urban areas. Access to water and other resources, as well as to basic services such as sanitation and electricity, is often conditioned by access to rights in land.

It is for these reasons that the development literature presents land as a cornerstone in the economic development process. And, it is not surprising, therefore, that access to land is subject to conflicts (Hanstad, 1998).

Scholars, such as Schlager and Ostrom (1992, p. 250) for example, understand access as the “right to enter a defined physical property”. Others define access to natural resources including land based on a narrow conception of ‘property as a bundle of rights.’ That is the right to benefit

from things (Ribot and Peluso, 2003). In this case, the physical commodity, land, is attached to a bundle of rights which, in turn, determine the value of the land being transacted (Demsetz, 1967).

The recognition of property as a bundle of rights that convey the right to benefit oneself or others, through improvements and use of force, entails it is not a complete framework in determining access to land (Demsetz, 1967). This incompleteness, as Ribot and Peluso (2003) argue, has prompted the shift from the idea of ‘property as a bundle of rights’ to the more nuanced idea of ‘property as a bundle of powers’ (Ghani 1995 cited in Ribot and Peluso, 2003). Thus, ‘access’ is redefined as the “ability to benefit from things – including material objects, persons, institutions, and symbols” (Ribot and Peluso, 2003, p. 153). As Neale (1998, p. 48 cited in Ribot and Peluso, 2003, p. 154) argues:

[T]his formulation brings attention to a wider range of social relationships that can constrain or enable people to benefit from resources without focusing on property relations alone... [Furthermore, this expanded idea] explores a range of powers - embodied in and exercised through various mechanisms, processes, and social relations - that affect people’s ability to benefit from resources.

Thus, the analysis of access in a particular context entail:

1) Identifying and mapping the flow of the particular benefit of interest; 2) Identifying the mechanisms by which different actors involved gain, control, and maintain the benefit flow and its distribution; and 3) An analysis of the power relations underlying the mechanisms of access involved in instances where benefits are derived.

(Ribot and Peluso, 2003, pp. 160-1)

Such an analysis helps scholars, researchers, planners, and policy makers understand and empirically map “patterns of resource distribution, sites of struggle over power and authority, and ways [through which the] notion of ‘webs of power’ could be more effectively structured and defined” (Peluso and Ribot, 2020, p. 300). It is for this reason that this definition of ‘property as a bundle of powers’ is used in this research. Thus, a subsidiary research question raised by the discussion thus far is: *Which definition of ‘access’ informs the land-related policies and strategies that are being enforced in Lilongwe?*

Critics argue that a more explicit positioning and discussion of power is missing from the conceptualisation of access as a bundle of powers (Myers and Hansen, 2018). In response to this critique, Peluso and Ribot (2020, p. 301) argue that the “analysis of ‘relations of access’ parallels and expands ‘relations of production’ by moving the basis of analysis from ownership-based relations to the multiple access mechanisms”; whereby the examination of multiple access mechanisms is central to this research.

Moreover, understanding property access as a ‘bundle of powers’ also enables the interrogation of the ability of certain individuals and institutions to exclude other people from accessing property. In relation to land, Hall et al. (2011, p.7):

Define exclusion as ... the ways in which people are prevented from benefiting (from... land) ... by fencing it, posting guards around it, or simply making it known through signs or public knowledge and associated sanctions that someone has claimed it.

However, Myers and Hansen (2018, p. 6) “see exclusion as the inverse of access; defined as the ways in which people are prevented from benefiting from things.” Building on this conceptualisation, Hall et al. (2011, p. 7) consider exclusion as a double-edged tool “that can be replaced with ‘inclusive’ relations” so much that “some form of exclusion of some actors is a necessary precondition for other actors for deriving sustained benefits from, in this case, land” (Myers and Hansen, 2018, p. 6). Hall et al. (2011) specify three main classes of exclusions, the first being defined in the ways through which existing access to land is maintained by way of preventing other potential users. This type of exclusion is identical to the notions of maintenance and control as understood by Peluso and Ribot (2020). Secondly, the term exclusion is used to refer to instances when people who have access lose it. Lastly, it is used to refer to those who lack access being prevented from getting it (Hall et al. 2011). Myers and Hansen (2018, p. 7) conclude by highlighting that “no matter how well exclusion is enforced, there is no guarantee of benefits for any actor.” Furthermore, and as Baban and Gorman (2015 cited in Myers and Hansen, 2018, p. 7) have found, exclusion is a necessary and yet, insufficient “precondition for deriving sustained benefit from the land.”

The “interaction between regulation, force, the market and legitimation” (Hall et al., 2011, p.4) amongst the actors, brings about exclusion which sometimes results in a highly skewed distribution of land; “with substantial numbers of people not having access to or owning any while a few hold large amounts (Chinsinga, 2021; Hall et al., 2011, p.7). This is a status quo in

many countries in Southeast Asia, Central America, South America, and Southern Africa, including Malawi where inequality and land speculation are rampant, causing increased landlessness or limited access to land in both rural and urban areas (Byamugisha, 2016; Gray and Kevane, 1999; Hall et al., 2011).

2.2.1 A Note on Land Tenure

Moreover, because access patterns have been observed to change over time, mechanisms of access to land must be understood as processes (Berry, 1993; Lund, 1994; Peluso, 1996 cited in Ribot and Peluso, 2003, p. 160). Consequently, it is argued that formal rights to property do not always guarantee access, because not all formal claims are enforceable implying that ownership, title-holding, or rights-based benefits are only a part of the puzzle of access (Peluso and Ribot, 2020). In fact, and as De Schutter (2010, p. 322) argues:

Land [t]itling itself ... should be seen as one tool among many others to improve security of tenure, which in turn should be seen as an instrument to ensure the equitable access to productive resources for all, particularly for the most vulnerable groups.

Equitable access to land has many dimensions, but generally concerns itself with ensuring that land is not concentrated in the hands of a few elites (Meyfroidt et al., 2021). Oftentimes, equitable access to land is deemed unattainable unless the land is formalised. However, De Schutter (2010, p. 320) warns that “[t]rue legal empowerment of the poor... should not be reduced to the formalisation of property rights” since transforming land (that poor people use to provide them their basic means of livelihood) into a marketable asset without alternative social safety nets, increases vulnerability. This is so because formalisation provides leeway for elites to capture the land through exorbitant fees, bureaucratic hurdles, un-transparent and un-monitored titling processes (De Schutter, 2010; De Janvry et al., 2001; Malawi Government, 1999b). Thus, Peters (2010, p. 191) argues introducing gender equity considerations in land acquisition processes offers a point of departure from existing norms and practices which “fundamentally reshape kinship and residence patterns and the multiple social relations involved therein.”

The Economic Commission for Africa (ECA, 2004, p. 4) recognises that land tenure is a “social construct, defining the relationships between individuals and groups of individuals by which rights and obligations [with respect to control and use of resources] are defined”. To this, the FAO (2012b, p.3) adds that:

Tenure systems [the] rules, ... based on written policies and laws, as well as on unwritten customs and practices [that] determine who can use which resources, for how long, and under what conditions.

As the discussion thus far intimates, there are several different tenure systems. The literature recognises a diverse categorisation of land tenure systems, which are often presented in four categories, namely freehold, leasehold, statutory and customary. The term ‘freehold’ is a “traditionally western concept implying the absolute right to control, manage, use and dispose of a piece of property” (ECA, 2004, p. 5). Leasehold tenure is a form of tenure in which “land belonging to one entity is, by contractual agreement, leased to another entity for a fixed period of time” (ibid.). Statutory allocation refers, on the other hand, to state land that “by virtue of some statutory provision, is allocated for the use of some legally constituted body” (ibid.). In the Southern African region, statutory tenure is derived from English common property laws⁷ and Roman-Dutch law⁸. Lastly, customary tenure is a system in which “tenure rights are ostensibly controlled and allocated according to traditional practice” (ibid.). Each of these is discussed at greater length in section 2.3 below.

2.3 Mechanisms of accessing land highlight

According to Ribot and Peluso (2003, p. 156), the literature on common property and resource tenure states that: “Law whether written, oral, formal or customary, can never completely delineate all the modes and pathways of resource access along complex and overlapping webs of power.” The use of the ‘bundle of powers’ notion to determine mechanisms that delineate land access modes and pathways entail ascertaining whether access rights can be coffered or

⁷ **Common law**, also called **Anglo-American law**, originated from the common-law courts of England since the Middle Age has evolve, and is currently being practiced in the USA and in most of the Commonwealth member states including Malawi (KiralfyGlendon, Lewis and GlendonKiralfy, 2023, July 4). The main character identified with the common law is its embodiment of judicial decisions and reports of cases decided by courts of law (ibid).

⁸ **Roman-Dutch law** is characterised by a legal system derived from civil law, widely applied in Europe and Dutch colonies such as Sri Lanka and South Africa (which mixes with English law) (Lee and Cowen, 10 May 2017). For instance, it is considered that property law is still predominated by its Roman-Dutch character whereas English Common Law influenced the development of Constitutional law and administrative law (ibid). The law first existed in the Netherlands between the 15th and the early 19th century after amalgamating Roman, or civil law systems, and Germanic tribal or customary law to make the modern Dutch law (ibid).

claimed. In other words, a subsidiary research question the study asks is: *What access mechanisms are used to confer or claim rights to land?*

As a verb the word ‘claim’ is subjective. It is used to denote that something is factual regardless of the claimant’s (understood as a proprietor) difficulties in proving it even if other people might not believe it⁹. As a countable noun, a claim is a demand for something that the proprietor thinks they have a right to (ibid). The Women’s Legal Resource Centre (WOLREC, 2011, p.5) understands “[r]ights to land imply security that is tied to an enforceable claim, while access to land is more informal and less enforceable.” In relation to the mechanisms of accessing land, this study’s understanding of a claim is not limited to the proprietor’s formal property rights, which are legitimately¹⁰ conferred by ‘politico-legal authority’¹¹ (Sikor and Lund, 2009) but also considers people’s illegitimately perceived entitlements to own or access any given piece of land regardless of the difficulties to prove its moral or legal standing. With this understanding, the study not only confirms Ribot and Peluso’s (2003, p. 156) view of the complexity and overlapping webs of powers of access to land but also sides with Sikor and Lund (2009, p. 2) who view property as “part of a larger picture of access to resources, whether legally recognized or not.”

Nonetheless, by exploring the ‘grey conceptual zone’ within the context of what people have legal and moral rights to and what they merely claim to have access to - the perceived entitlements - the study takes this contestation to a step further and therefore addresses the gap Sikor and Lund (2009) identifies. Still, this study locates the conundrum of access and property rights in geographic (peri-urban areas) terms.

⁹ Collins Online Dictionary (2023)

¹⁰ The FAO (2012a) argues that state and non-state actors including business enterprises should seek to ensure that tenure rights whether registered or not, are enjoyed without infringements by exercising due diligence when completing land transactions. Specifically, FAO (2012a, pp. 3-4) challenges all actors to:

Recognise and respect all legitimate tenure rights holders and their rights; safeguard legitimate tenure rights against threats and infringements; promote and facilitate the enjoyment of legitimate tenure rights; provide access to justice and deal with infringements of legitimate tenure rights; as well as prevent disputes, violent conflicts and corruption.

¹¹ The politico-legal authorities, including the state, are understood as the institutions that are charged with mandates to administer or govern land and property rights.

Ribot and Peluso (2003, p. 161) see two sets of “mechanisms that shape access processes and relations” in resource governance. These are classified as rights-based access mechanisms and structural and relational access mechanisms. The former is sanctioned by law, custom or convention. “Customary or conventional access occurs via social acceptance of a given circumstance or practice by which people gain benefits” (Ribot and Peluso, 2003, p. 162). Similarly, Meyfroidt et al. (2021) recognise customary, legal and ‘other’ land access mechanisms. Whilst, as Meyfroidt et al. (2021) argue, it is these unclassified forms of access to land, often established through multiple ways of making claims that are more important in practice than legal titles. Ribot and Peluso (2003) contend that, broadly, it is the structural and relational access mechanisms that shape how benefits are gained, controlled, and maintained by mediating or operating parallel to rights-based and illegal access mechanisms. Illegal access, which occurs when the benefits are obtained through illicit actions, is discussed in section 2.3.2 below.

It is important to note that the mechanisms of accessing land are not comprehensive, nor are they fixed or unique. Depending on the circumstances, the ability to derive benefits from land is different from one person or entity to another. This is because the nature of the ability itself is mostly varied and heavily contested, which makes it hard to pinpoint the bundles of powers at play. This study uses three categorizations which are: Customary mechanisms, formal or statutory mechanisms and informal mechanisms. These categorisations move away from the binary classifications of land access mechanisms (Olapade and Aluko, 2021). In so doing, they can reflect the multi-dimensional issues ordinary people (who are in the majority) endure to access land (Easterling, 2022; Olapade and Aluko, 2021). Olapade and Aluko (2021) observe that a narrow(er) view encourages the formation of policies that disregard the prevailing conditions, are not encompassing and are, therefore, difficult to implement.

2.3.1 Customary Mechanisms of Access to Land

For much land, who legally holds rights and titles is unclear, with some actors benefiting from these ambiguities. Indeed, perhaps up to 65% of the world’s land area is covered by various forms of customary rights by Indigenous Peoples and local communities, but only a small part of this is formally recognized as either owned by (10%) or controlled by (8%) them.

(Meyfroidt et al., 2021, p. 5).

The customary land is guided by traditional, usually unwritten rules that determine the tenure system (Takane, 2008). By virtue of membership in a community, every indigenous inhabitant¹² is, under customary law¹³, entitled to access to a piece of land (Takane, 2008, p. 274). As custodians of customary land, chiefs play a crucial role in processes relating to the allocation, transfer, conversion of the land to private or public and dispute settlement mechanisms (Takane, 2008; WOLREC, 2011). These mechanisms serve as a cornerstone for combating customary land dispossession and eradicating land grabbing during the implementation of land reform programmes (Government of Malawi, 2016b). In this sense, the customary land allocation and dispute settlement mechanisms are seen to integrate both the unwritten customary law and the legal statutes, which is not without challenges. For instance, subject to the availability of vacant land and the recipients' commitment to respect the traditions and customs of the community, non-indigenous inhabitants may also be allocated a piece of land (Takane, 2008). Due to population increases, however, uncultivated customary land is increasingly becoming scarce making the allocation powers of chiefs less pronounced in recent times (Government of Malawi, 2002; Takane, 2008). Nevertheless:

Once acquired land rights can be handed over to heirs on a quasi-permanent basis. When a landholder and his or her kin members all die or move out of the village, however, land must be returned to the community for reallocation to other community members.

(Takane, 2008, p. 274)

In Malawi, as in many other southern African countries, land is primarily accessed through inheritance (52%) and marriage (18%) (Matchaya, 2009 cited in Urban LandMark, 2013). In “both matrilineal and patrilineal societies, land is gifted to an heir when the heir gets married, gives birth to a baby, or becomes mature enough to form an independent household” (Takane, 2008, p. 274). In consultation with lineage members, the head decides who inherits the

¹² An indigenous person is understood as someone whose roots can be traced and has continued to live on the land under consideration.

¹³ Though appearing to dictate norms in the socialization process, Peters (2010, p. 194) observes that customary law and especially customary land tenure is “an unsatisfactory label for the complex, multi-faceted and transformational ideas and practices... that it claims to describe.” In Malawi, the label ‘customary land tenure’ is applied to a range of types and degrees of rights implying “a wide discrepancy between the declarations in the Constitution and the actual relationships between men and women” (WOLREC, 2011, p. 5). Therefore, speaking only of matrilineal systems of land tenure as contrasted with patrilineal systems without specifying post-marital residence is inadequate (Peters, 2010).

deceased's land (Takane, 2008). Whilst patrilineal rules are predominant in the Northern region of Malawi, the central region is dominated by the Chewa tribe which practices matrilineal kinship (Berge, 2014 and Takane, 2008). Therefore, Malawi has both customary tenure systems. In patrilineal tribes, mostly Tumbuka and Ngoni, land rights belong to men and are typically transferred from fathers to sons or male relatives whereas through matrilineal rules, land is inherited by daughters from mothers (Takane, 2008; Peters, 2010 and WOLREC, 2011).

Payment of bride price or *lobola* in Chichewa from a husband to the wife's kin legitimises the marriage in patrilineal societies, which means the husband can "establish his right to take his wife and children to his own village" (Takane, 2008; WOLREC, 2011, p. 12). However, the "husband has no decision-making power regarding the transfer of his wife's land rights" (Takane, 2008, p. 274). Similarly, "since daughters are transient, that is, they are expected to get married and live in their husband's village; they do not inherit property, including land" (WOLREC, 2011, p. 12). Studies show that associating women's land rights with their position in relation to men – as mothers, wives, sisters, and daughters degrades their access to land, mostly limiting them to use rights (Gray and Kevane, 1999). Kameri-Mbote (n.d., p. 11), notes that "[u]nder all systems of law in many African countries, land ownership is anchored in patriarchy" making them prone to lose access after widowhood, divorce, desertion or male migration. This is worsened when the frequently protracted and contested legal reforms equally reinforce social injustices and gender inequity (see section 2.4). Ultimately, observance of both matrilineal and patrilineal systems promotes systematic discrimination between male and female children so much that men and women's most basic form of security is provided by stable marital relations (Kishindo, 2010a cited in Berge, 2014; Peters, 2010; WOLREC, 2011).

It is important to note that this conceptualisation does not necessarily amount to regard customary land access mechanisms as informal. Mabogunje (1992 cited in Olapade and Aluko, 2021) argues that customary channels of accessing land represent an alternative formality. Therefore, this study asks the following subsidiary research question: *To what extent are the customary land access mechanisms perceived to be formal or informal?* Takane (2008, p. 269) argues that as a socially constructed tool, customary land tenure does "not only induce individuals to obtain land by any means possible but [should] also encourage the obstruction of flexible land transfers to prevent lineage land from being alienated to non-kin." As such, land titling programmes (see section 2.4) have been negotiated and implemented in recent times not only to protect vulnerable groups from losing their land but also to build solidarity (Hall,

Hirsch and Li, 2011; Sapignoli, 2016; Pieterse, 2011). Nonetheless, Sapignoli (2016) argues that customary land tenure does not obstruct investments nor act as an inalienable safety net for the poor to legitimise the reforms. For instance, the Botswana government has, in a bid to allow private companies and individuals to take over land that was categorised as communal, formulated various land policies and legislations (Sapignoli, 2016). Further, Easterling (2022) argues that such tenure regularisation approaches (see sections 2.3.3 and 2.4) favour succession rather than co-existence whereby the new right must replace the old right.

2.3.2 Informal Mechanisms of Accessing Land

Events in the political economy at international and national levels affect property access, withdrawal, management, exclusion, and transfer with trickle-down effects at the local level. The effects transcend from the politico-legal authority's (see section 2.3.3) ability to manage and enforce de jure property rights so much that the rights originate among users when ordinary people cooperate to define and enforce de facto rights among themselves (Schlager and Ostrom, 1992). The users improve and invent livelihoods, homes and neighbourhoods in uncoordinated and unorganised processes, the thought of as social non-movements, by quietly encroaching or occupying public land without recognition of the formal institutions thereby defying the official plans for urban spaces (Ballard, 2015; Schlager and Ostrom, 1992). By enforcing these rights amongst themselves, land users who develop de facto rights act as if they have de jure rights (ibid). "In some settings, de facto rights may eventually be given recognition in courts of law if challenged, but until so recognized they are less secure than de jure rights" (Schlager and Ostrom, 1992, p. 254).

However, it should be noted that informal land access does not only manifest through illicit mechanisms such as the use of force to grab private or customary land, quietly squatting on public land or the use of deceptive mechanisms to access land. It also manifests "through purchase of privately owned lands from customary authority" (Olapade and Aluko, 2021, p. 4). De Janvry et al. (2001) and Olapade and Aluko (2021) identify land rentals organised through informal loans, informal land rental contracts and acquisition of privately owned lands from the customary authority, as another pathway to accessing land. This is in sharp contrast with the criminal activities associated with the informal mechanisms, which do not only go against formal mechanisms enshrined in the state laws and regulations, but also against recognised moral values and human rights (Olapade and Aluko, 2021).

2.3.3 Statutory (Formal) mechanisms of Accessing Land

It is argued that rights and systems of access to land must evolve from customary to formal systems as former is relatively inefficient, costlier and therefore unsustainable to maintain than the later property regimes (UN-HABITAT, 2015). This is partly because, besides lacking development control, which becomes costly to be negotiated and policed, informal and customary land holding involves many people making it equally costly to adjudicate whenever there are disputes (UN-HABITAT, 2015). On the contrary, the cost of negotiations in the formal land administration is cheaper because there are fewer people involved (ibid).

It is generally understood that the formal land administration system exists to enforce de jure rights (see also section 2.3.2). The de jure rights are given lawful recognition by formal, legal instrumentalities such that the rights-holders believe to stand a better chance of succeeding “if their rights were challenged in an administrative or judicial setting” (Schlager and Ostrom, 1992, p. 254). A study conducted in Latin America has established a correlation between tenure security and increases in the level of investment and land values (Broegaard, 2013 cited in Ogbu and Iruobe, 2018). This confirms De soto (2001, p. 44) who argues that the reason why property law does not work in the global South is because vast land rights are not registered making it difficult to productively convert the material capital, land and real estate into “ctive capital” and assets through its use as collateral among others. Formal registration of land rights helps to remove other encumbrances such as multiple land claims and therefore liberates the property to trade outside “local circles of trading partner” (De soto, 2001, p. 44; see sections 2.3 and 4.2.1). Empirically, there are more economic benefits in holding formal rights to land. It is, therefore, unsurprising that formal rights are a central tenet and preferred symbol of developmentalism¹⁴ and modernisation¹⁵. Both these agendas are unable to recognise the

¹⁴ Developmentalism is a philosophy that progress entails the temporal advancement of societies along universal trajectories (Temin, 2023). This has however been critiqued for advancing Eurocentric discourses as a cornerstone for development. There is an embedded connotation that without it, it is not possible to attain the desired socio-economic development (Temin, 2023). Eurocentrism risks promoting strengths, weaknesses, opportunities, challenges, constraints and threats that are not in tandem with the prevailing political underpinnings, conditions and ramifications (Allen, 2003).

¹⁵ Modernisation theory holds that all societies progress to a stage where they attain inevitable and irreversible political, economic and social attributes of a modern society (UN-HABITAT, 2015). To this effect, property theories are labelled evolutionary theories of property (UN-HABITAT, 2015). Building from the conceptualisation of pre- and post-colonial informal land administration, the proponents of modernisation theories

complexity, continuum-like nature of tenure rights (UN-HABITAT, 2015). “As a metaphor, [a continuum] can be used to describe and explain a land tenure situation from different ideological and theoretical perspectives”, which is contrary to the common narrative that privileges formal private ownership and regards informal or unregistered customary rights as less secured (UN-HABITAT, 2015, p. ii).

Factors such as the accessibility and usability of the administrative instruments (such as land titles and cadastral surveys) across a range of social, cultural, religious and economic classes of people should be considered if landholders prefer private property (Barry et al, 2012 cited in UN-HABITAT, 2015). The FAO (2002, p. 5) observes that “[l]and administration, whether formal or informal, comprises an extensive range of systems and processes to administer”. Significantly, formal land identifies itself with very modernised and sophisticated methods of surveying, planning, data capturing and management, record keeping and retrieval among others (Allen, 2003). However, the implementation of these administrative instruments faces huge challenges. For instance, despite its importance, the progress and gains in planning processes are hampered by random interpretation and enforcement mechanisms, mostly from mixed regulations and decrees leading to poorly coordinated piecemeal developments (Allen, 2003).

In the context of peri-urban areas (which are often characterised by the convergence of sectoral mandates and overlapping institutional and geographic boundaries), Allen (2003) sees the stress endured by mainstream government decision-making machinery in integrating such areas into the urban fabric. In this case, more powerful and vocal urban-based interests are

perceive customary land tenure systems as primitive, which should therefore disappear as part of natural social evolution and be replaced by individualized, private property systems (Nkwae 2006 cited in UN-HABITAT, 2015). But, this notion too, has been criticised for being more ideological than practical. For instance, Schlager and Ostrom (1992) argue that “[n]o real-world institution can win in a contest against idealized institutions” justifying calls to consider comparative performance analysis of various types of institutional arrangements when confronted with similarly difficult environments.

It is argued that rights and systems of access to land must evolve from customary to formal systems as the former is relatively inefficient, costlier and therefore unsustainable to maintain than the later property regimes (UN-HABITAT, 2015). This is partly because, besides lacking development control, which becomes costly to be negotiated and policed, informal and customary land holding involves many people making it equally costly to adjudicate whenever there are disputes (UN-HABITAT, 2015). On the contrary, the cost of negotiations in the formal land administration is cheaper because there are fewer people involved (ibid).

often favoured at the expense of the neglected needs of the peri-urban poor (Allen, 2003). Still, Pieterse (2018, p. 40) observes that “the planning and financing of infrastructure falls to the most powerful centres of the state: ministries of finance, economic development, and infrastructure, and typically the presidency” which are dominated by ritualised bureaucratic practices and service delivery systems. This revelation raises questions on accessibility of the formal land administration services, effectiveness of the administrative instruments and the mechanisms used in Lilongwe.

In Lagos, Nigeria, Olapade and Aluko (2021) observe four land delivery channels through which statutory allocation of developable parcels of land are assigned. These include direct allocation of plots in government sites and services schemes, private developer schemes, secondary allocation from government agencies, and formal private land (ibid). On the first hand, land accessed through secondary allocation from government agencies or private developer schemes requires that the landlord provide the necessary infrastructure, demarcate it into plots before selling or leasing them out to members of the public (Olapade and Aluko, 2021). On the other, secondary allocation from government agencies works within the framework of devolution and decentralisation, which divert implementation responsibilities by devolving administrative and political authority to the district and local levels (Malawi Government, 1998). Some agencies other than the central government or its agencies are involved in the allocation of land to the public (Olapade and Aluko, 2021). This is a corporate mechanism, which works to shift the “conception of the state from distributive to market-based mechanisms” by giving land to intending developers (Mwathunga and Donaldson, 2018, p. 2).

In this arrangement, the government regulates the amount of land allocated to the state agency or the developer, issues leases, who in turn leases it out to the allocatee (Olapade and Aluko, 2021). According to the UN-Habitat (2015), the allocatee should be a natural person who becomes a private landholder with their rights to the parcel recorded in a registry in ownership or near ownership as is the case with the long-term lease. The parcel may be depicted on a cadastral map (UN-HABITAT, 2015). Therefore, the allocatee derives their title from the developer whose title is in turn derived from the government, such that at the end of the term, the rights revert to the superior landlord, the government. By implication, the private landholder may not have longer-term ownership than the private developer. Subject to government statutory regulations, the “owner has the right to transfer the parcel by sale or by

bequeathing it to his or her heirs”, exclude others as well as alienate certain rights to others through mortgaging or leasing (UN-HABITAT, 2015, p. 6).

2.4 Contestations of Formal and Informal land access mechanisms

With primary application in people’s ability to access food, the entitlement framework concentrates on each person's entitlements to commodity bundles which may include land, and views landlessness as resulting from a lack of entitlement to a bundle of rights with the available land (Sen, 1981). However, noting the shortcomings of the entitlements approach, which include control over resources supported by formal legal property rights, an extended approach is suggested to include non-legal, extra-legal and illegal mechanisms of obtaining different bundles of land rights (Myers and Hansen, 2018). This, therefore, means that a range of entities with different institutional nomenclature such as semi-formal, non-legal, extra-legal and non-formal categorisation may be considered formal or give rise to formally recognised access to land. Importantly, this recognises that the degree of the formality of the channels varies and therefore departs from the formal-informal binary classification of land delivery channels (Olapade and Aluko, 2021, p. 5).

In line with UN-HABITAT (2015, see also section 2.3.3) which refuses to unjustifiably privilege formal private ownership at the expense of the informal or unregistered customary, Roy, (2009, p. 80) observes that “informality is inscribed in the ever-shifting relationship between what is legal and illegal, legitimate and illegitimate, authorized and unauthorized.” Furthermore, Roy (2009, p.80-81) observes that:

[Formal-informal or legal-illegal] relationship is both arbitrary and fickle and yet is the site of considerable state power and violence. [Thus], the state itself is a deeply informalized entity, [that] is able to place itself outside the law in order to ... actively utilize [the] informality as an instrument of both accumulation and authority [as it] practices development.

As such, Roy (2009) refuses a generalist approach that considers informal as un-regulation. Instead, she considers informality as de-regulation– an indication of:

“a calculated informality, ... that involves purposive action and planning, and one where the seeming withdrawal of regulatory power creates a logic of resource allocation, accumulation, and authority. It is in this sense that informality, while a system of deregulation, can be thought of as a mode of regulation. And this is something quite distinct from the failure of planning or the absence of the state.

(Roy, 2009, p83)

Still, Olapade and Aluko (2021) identify regularisation¹⁶ (see figure 2.1) as the land access mechanisms whereby precarious title, which does not represent ownership title gets converted to ownership title.



Figure 2.1: Showing Plots Regularisation charges in Lilongwe (Source: LCC, 2024)

2.5 Conclusion

The multiplicity of customary, statutory and informal landlords in urban areas poses a coordination challenge to the statutory land administration. This is made more challenging in

¹⁶ Regularisation occurs when, subject to payment of specified charges, land that was previously bought or allocated using customary mechanisms or informally occupied is formalized by the state considering among other things, land use planning (Ogbu and Iruobe, 2018).

instances when various bundles of rights such as rights to allocate, lease, sale, use or travel across the same piece of land (also known as easement) are held by different parties (FAO, 2002). The discussion in this chapter depicts a thin line between legitimately owned land, that is formally or customarily acquired land, and that which is not. This revelation makes the scholarship enshrined in the FAO (2012a) prone to error by romanticising informal access to land derived from actions that are not socially sanctioned and illegal under state law (Ribot and Peluso, 2003).

Building on notion of rural-urban interface presented in chapter one, this chapter draws on land access literature. The chapter essentially adopts underpinnings of the property as bundle of powers and pays little attention to the conception of property as bundle of rights to examine the double-edged nature of exclusionary of access mechanisms. The chapter uses theory of access, and such concepts as the entitlements approach, developmentalism, regularisation, non-legal, extra-legal, illegal, formal and informal to contextualise different mechanisms of obtaining different bundles of land rights. Therefore, literature reveals messiness of these notions and concepts. As such, the study refuses to unjustifiably privilege the state-controlled formal private ownership of land. Lastly, the chapter identifies three land access mechanisms which are customary, informal and statutory mechanism. Using empirical evidence from Lilongwe, these land access mechanisms have been discussed in chapter 4.

CHAPTER 3: RESEARCH DESIGN AND METHOD

3.1 Introduction

Chapter 2 presents the literature review. In this chapter, subsidiary research questions were also identified. This chapter discusses the research design and methodology. The first section contains a discussion of this study's research paradigm: Qualitative research. Then, to answer the main research question, the case study method and several research techniques – semi-structured interviews, non-participant observations and desktop research – were utilised. These are discussed in detail in the second and third sections of this chapter. This chapter also discusses the sampling techniques that were used to identify the research participants, how the collected data was analysed, ethical considerations and the limitations of the data collected in subsequent sections.

3.2 Qualitative Research Paradigm

Given the nature of the issue under study – access to land in Lilongwe's peri-urban areas – a qualitative research paradigm was adopted. As Aspers and Corte (2019) understand, defining qualitative research methodology in precise terms is difficult because such a definition should shy away from the common narrative that considers the absence of numerical methods as the main differentiating character of qualitative research. With this in mind, this study adopts Aspers and Corte's (2019, p. 139) definition of qualitative research as “an iterative process in which improved understanding to the scientific community is achieved by making new significant distinctions resulting from getting closer to the phenomenon studied.” Qualitative research is advantageous in many ways. These advantages stem namely from the ability to generate and analyse data from empirical evidence which, in turn, enables one to improve scholarly understanding and, generate and test theory of the phenomena under study (ibid). Further, qualitative research recognises the complexity of life. Therefore, it “capitalizes on ordinary ways of getting acquainted with things” such as observations (Smythe and Giddings, 2007; Stake, 1995, p. 49). As such, the qualitative research paradigm “moves between theory and evidence to connect them” and bring clarity to everyday experiences (Aspers and Corte, 2021, p. 600; Smythe and Giddings, 2007).

Case study research uses a variety of data sources and therefore multiple lenses to explore, reveal and understand complex phenomena within their context (Baxter and Jack, 2008). According to Stake (1995, p. 65), the case study's strengths lie in their ability “to aggregate

perceptions or knowledge over multiple respondents [and data collection techniques]”. Yin (2003) uses ‘propositions’ whereas Stake (1995) uses ‘issues’ to probe respondents in a qualitative case study. Regardless, Stake (1995 cited in Baxter and Jack, 2008, p. 552) finds these propositions can be biased and the issues “not [to be] simple and clean, but intricately wired to political, social, historical, and especially personal contexts.” As demonstrated in section 3.4, the ability to aggregate all these meanings remains a key strength as it “leads to the development of a conceptual framework that guides the research” (ibid).

3.3 Research Method: The Case Study Method

This research utilised the case study method. Miles and Huberman (1994, cited in Baxter and Jack, 2008, p.545) define a case as “a phenomenon of some sort occurring in a bounded context [which is effectively, a] unit of analysis”. Therefore, a case study is understood as a detailed examination of a single example of a class of phenomena to provide reliable information about the broader class using a variety of data sources (Flyvbjerg, 2006; Baxter and Jack, 2008). According to Yin (2003), the case study method allows the researcher to explore individuals or organisations, simple and complex interventions, relationships, communities, or programs. Effective application of the case study method requires determination of the type of case to be studied. This, in turn, should be informed by the research question and the overall purpose of the research (Baxter and Jack, 2008). Different researchers use different terms to describe varieties of case studies. However, the majority use Yin (2003) and Stake’s (1995) categorisations: Explanatory, exploratory, descriptive, intrinsic, instrumental or collective case studies¹⁷. Baxter and Jack (2008) group Yin (2003) and Stake’s (1995) categorisations into a single case, single case with sub-units and multiple cases studies.

This research was designed to be a single case with sub-units. This approach allows a researcher to look at the same issue – access to land in Lilongwe’s peri-urban areas – as it plays out in different areas in the city. As Baxter and Jack (2008) argue, the ability to analyse each sub-unit as situated in a larger context serves to better illuminate the case. However, there is an inherent risk that the researcher falls into the trap of analyzing at the individual sub-unit level and failing to return to the global issue initially set out (Baxter and Jack, 2008). The key is to always stick

¹⁷ A range of other categorisations exist. These include single, holistic and multiple-case studies (Yin, 2003). See also Baxter and Jack (2008).

to the research question (Yin, 2003) by asking it from different contexts and in multiple ways (cf. chapter 2).

The case study method is criticised for its inability to generalise findings of a single case to contribute to scientific development (Flyvbjerg, 2006). However, proponents of qualitative research counter this claim. For instance, Strauss and Corbin (1998) argue that social scientific disciplines have rich research findings and good conceptual and theoretical frameworks that new research can be built upon. Therefore, the aim is to contribute to a nuanced understanding of the complex phenomena and not to generalise, which is invaluable. For instance, understanding nuanced trajectories of developmentalism (see section 2.3.2) helps demystify theories of property rights so that discourses and programmes remain relevant to the applicable development agenda. The case study method is also criticised for containing a bias towards verification. Bacon (1853 cited in Flyvbjerg, 2006) counters this, noting that verification bias, also known as confirmation bias, is a fundamental tendency for human characteristics to be moved and excited by affirmatives rather than negatives in all circumstances. Also, this critique is viewed as fallacious because case studies have their own rigor, no less strict than in quantitative studies, which is built from the method's ability to let the researcher triangulate "real-life situations and test views directly in relation to phenomena as they unfold in practice" (Flyvbjerg, 2006, p. 19). Through triangulation of data sources, the researcher can explore phenomena from multiple perspectives. Therefore, to say case studies contain bias is a demonstration of a lack of knowledge of what is involved in such research (Baxter and Jack, 2008; Flyvbjerg, 2006).

3.4 Research Techniques

This section discusses the techniques – non-participant observation, semi-structured individual interviews, and desktop research – that were utilised to collect the data for this research. Each of these is discussed below.

3.4.1 Non-participant observation

Non-participant observation, also known as field observation, is a form of investigation where the researchers observe the given phenomena without interacting with the study population (Marko and Weil, 2010). It is contrasted with participant observation in which the researcher takes part in the activities under observation (Stake, 1995). 15 observational visits were made from 3rd July to 3rd August 2023 (see annexure 6).

The researcher observed and compared the land uses, planning processes and the materiality of infrastructure development in all the target areas. By monitoring land uses, infrastructure development, road networks and footpaths, the researcher learnt about people's everyday lives, how they contend with being located in these transitioning spaces and land access mechanisms. However, in conducting the observations, the researcher was mindful of the critique levelled of this technique.

First, and like the case study method, non-participant observation is argued to be susceptible to verification bias (DeCarlo, 2018). For non-participant observation, the verification bias is introduced when the researcher only pays attention to observations that fit their preconceived ideas and ignores those that do not. DeCarlo (2018) terms this *selective observation*. He also cautions against overgeneralization, that is, making conclusions about a broad pattern based on only a few observations. Marko and Weil (2010, p. 991) argue that “[u]nderstanding the effects of such bias and the strategies used to limit these effects is critical to performing high-quality observational research.”

To counter these limitations, the researcher conducted multiple observations on different days and times of the day. Additionally, the researcher took short notes and photos, and drew sketches of the observations to guide the transcriptions, which were done either in the evening of the day observations were done when possible or within two days in some instances. Where possible, these observations (and accompanying notes and sketches) were verified through formal interviews and informal conversations with different participants including residents, local leaders and land administration officials. Data sourced latterly was anonymised (see section 3.6).

3.4.2 Semi-structured individual interviews

Interviews are done with the understanding that not everything is observable, the issue under study is not understood the same by everyone, and that descriptions and interpretations of others are crucial (Stake, 1995). Interviews are formal conversations whereby a researcher uses a set of guiding questions to steer an informative engagement with the research participants and obtain their descriptions and interpretations of the phenomena being researched (Stake, 1995). Interviews allow the researcher to observe non-verbal communication, which is important for providing subtle clues and making inferences (Strauss and Corbin, 1998). In addition, Strauss and Corbin (1998) argue that understanding cultural values and social behaviour requires interviewing or intensive

field observation as these are the only methods of data collection sensitive enough to capture the nuances of a human living such as customs and values.

The semi-structured interviews used open-ended questions administered in either Chichewa – the local language or English – depending on the interview respondents’ preferences. The open-ended questions were preferred to close-ended questions because the latter elicited simple ‘yes’ and ‘no’ answers which are limiting (Stake, 1995). The questions posed to interview respondents were not asked in the same way or in the same order to every respondent because the contexts were different. Importantly, during the interviews, the researcher used insights gleaned from the observations and the respondent’s answers to probe and evoke more descriptive responses that helped answer the main research question. Probing allowed the interviewees to clarify issues as well as to compare and contrast different phenomena thereby offering alternative views to complex issues. Since the researcher’s mother language is Chichewa, he did not engage any translators when conducting the interviews as he was able to understand not only the language but also the social nuances embedded therein.

The researcher conducted a total of 17 interviews; 6 interviews with residents and 11 with professionals. The interviewed professionals included officials from Policy Planning Unit as well as Departments of Lands and Physical Planning in the Ministry of Lands (4), Lilongwe District Council (LDC, 1), Lilongwe City Council (LCC, 2), Malawi Law Commission (MLC, 1), Sustainable Urban Land and Shelter Development Consultants (SULSDEC, 1), Centre for Community Organisation and Development (CCODE, 1), and Lilongwe Water Board (LWB, 1). The researcher also interviewed Traditional Authorities (TAs) in whose jurisdiction the study areas are situated and residents of the area. All the interviews, except for one, which was conducted and recorded telephonically, were conducted in person. The interviews were approximately 40 minutes long. In addition to this, informal conversations (5) were also conducted with the community members. Some residents (4), investors (2) and Traditional Authorities (5) refused to participate for the reasons outlined in section 3.7 below. Through these in-depth interviews, the researcher aimed to hear in the respondents’ own words, about their roles in land management and administration processes and essentially, how people access land in Lilongwe.

Table 3.1 Details of the Study Interview Respondents

NAME OF THE RESPONDENTS	GENDER	AGE	ROLE
Ministry of Lands	M	48	Policy Planning Unit
Ministry of Lands	M	54	Planning
Ministry of Lands	M	53	Estates Management
Ministry of Lands	F	35	Land Administration
Lilongwe City Council	M	48	Development Control
Lilongwe City Council	F	36	Planning
Lilongwe District Council	M	50	Land Administration
Lilongwe Water Board	M	34	Engineering & Water Connections
CCODE	M	40	Community organisation & women Empowerment
Malawi Law Commission	M	41	Law Reform
Sub-traditional Authority	M	45	Customary Land Administration
GVH	M	59	Customary Land Administration
VH	M	44	Customary Land Administration
Area 55 Resident	M	44	Resident
Area 54 Resident	M	27	Resident
Area 44 Property Developer	F	50	Property Development
SULSDEC	M	36	Marketing and Communications

3.4.3 Desktop research

This research uses a broad spectrum of published and unpublished literature and data sources to answer the research question. The unpublished literature is generally termed as grey literature (Bellefontaine and Lee, 2013). A term coined in the 1970's, grey literature describes literature and research documents that exist outside of 'traditional' research world (Bagus, 2014). Consequently, this study has consulted both peer-reviewed and self-published literature such as journal articles, books, social media, reports, blogs, white papers eBooks, press statements, news articles, budgets, policy briefs, detailed layout plans and policy documents. This information has helped the researcher nuance the data collected through the interviews and observations. According to Bagus (2014), grey literature poses a great risk of capturing inaccurate, biased and incomplete information. This limitation is put forward primarily by those who regard peer-review mechanisms as an essential indicator of quality in literature

(Abby et al., 1994; Hopewell et al., 2008 cited in Bellefontaine and Lee, 2013). However, Bellefontaine and Lee (2013, p. 3) argue that peer reviewed literature may equally be erratic as it may include disproportionate number of positive findings that may affect causal links and overestimate the true effects of treatment. Clearly, both peer-reviewed and non-peer reviewed literatures may be defective in any research findings. As such, the ‘researcher’ scrutinised the author, publisher, purpose, content, and timeliness of the information in each publication reviewed. As the Ministry of Lands is still constructing its Land Information System, the researcher collated the grey literature from various online sources including Google Scholar, Google Advanced Search engines and social media platforms.

3.5 Sampling

This research used non-probability sampling methods. These are sampling techniques in which a person’s likelihood of being selected for membership in the sample and the extent to which the sample is truly representative of a larger population are unknown (DeCarlo, 2018). Specifically, the researcher used *purposive sampling*. This technique is advantageous because recruitment to participate in the research comes from selecting those the researcher already knows to have the characteristics and perspectives needed in the research (Flyvbjerg, 2006). Therefore, before recruiting the participants, the purposive sampling method requires that the researcher knows who could shed light on the issue under study. Conversely, DeCarlo (2018) argues that the requirement of having prior information about the research participants before recruiting them is considered a common mistake because he needs to know their perspectives or experiences first before knowing whether he wants to sample them. With these strengths and limitations in mind, the researcher identified people who have directly or indirectly tried to access land or are involved in the land regularisation programme by the Ministry of Lands in areas 26, 44, 54, and 55 in Lilongwe (see figure 1.2 above).

3.6 Data Analysis

As is the hallmark of case study research, this research used multiple sources of data. Baxter and Jack (2008) realise these multiple sources are a piece of the puzzle that should not be handled individually but rather converge in the analysis process to enhance data credibility and promote a greater understanding of the case. Data analysis is a phase in qualitative research that is about identifying, describing, and explaining patterns (DeCarlo, 2018). In this study, one of the aims of the data analysis process has been to condense large amounts of information

captured through field notes, interview transcripts and the grey literature. These have been presented in usable and understandable chunks. Unlike in quantitative research, which allows definitions to be explicitly spelled out in advance, qualitative research allows the definitions of concepts to emerge during data analysis (DeCarlo, 2018). In doing so, careful relations with the existing bodies of literature can be drawn.

Field notes were primarily recorded in English, irrespective of the language spoken during the interview. In some cases, such as when the respondent from the community reflected on an experience or a process (see section 4.2.2), the Chewa language was used. In such instances, the information was recorded in Chichewa, the researcher's local language before being translated into English to maintain its original touch as well as ensure accuracy in the information relayed. Also, words that carry a specific connotation such as *“ku ndatola”* or *“anthu amatola malo”* to signify an abundant *near-abandoned-vacant* land (see section 4.2.3), were captured in Chichewa and discussed in English. Detailed translation of the Chewa to English was done when writing the transcripts by playing and listening to the audio recordings of the individual interviews. Therefore, researcher approached data analysis from an inductive perspective¹⁸ that allows themes to emerge from the data. Thematic analysis was conducted, using Braun and Clarke's framing, which proceeds “along six sequential phases: familiarizing with the data set, generating initial codes, searching for themes, reviewing themes, defining and naming themes and reporting data” (Braun and Clarke, 2006 cited in DeCarlo, 2018, p.379). The analysis was limited to the most prevalent themes that best respond to each research objective while attending to exceptional or divergent cases. Some of the divergent cases that emerged were considered in the current research whereas those that were beyond the scope of this research have been noted and are recommended as avenues for future research endeavours (see chapter 5).

3.7 Ethical Considerations

In research, it is always essential to provide well-established procedures to guide the researcher's conduct to protect their participants (Fouka and Mantzourou, 2011). This research followed appropriate ‘due diligence’ to protect the participants. Of paramount importance, the

¹⁸ Other techniques of qualitative research data analysis include: pattern matching, linking data to propositions, explanation building, time-series analysis, logic models, and cross-case synthesis (Baxter and Jack, 2008; Yin, 2003); categorical aggregation and direct interpretation (Stake, 1995).

researcher applied for ethics clearance from the Faculty of Engineering and the Built Environment's (EBE) Research Ethics Committee. The application was approved with two main conditions as follows: Firstly, provide the Data Management Plan (DMP) which should indicate that storage of data will be password protected and destroyed after submission of the dissertation and that this plan should be communicated on the consent form. Secondly, revise the project's field work commencement date, in the project schedule, from 1st March 2023 to any date after the ethics application approved date of 11th May 2023. Subsequently, this meant destroying data collected prior to the ethics approval or applying for non-compliance to the Dean with a motivation. In response, the fully revised DMP was supplied to the Research Ethics Committee (REC) through the eRA system. The statement about the protection of the data was communicated on the consent form (see annexures 2 and 3). In relation to the second condition, the researcher delayed the data collection until the ethics application was approved (see annexure 1). The schedule was revised accordingly. In addition to these conditions, the researcher sought approval to collect data from the gatekeepers, namely the Ministry of Lands and the Lilongwe City Council (see annexure 4).

In addition, the researcher sought free prior and informed consent from all the potential research participants. "[The] informed consent is defined as a subject's voluntary agreement to participate in research based on a full understanding of the research and the possible risks and benefits involved" (DeCarlo, 2018, p. 115). Sourcing data free of any influence is crucial in research so the sourced data is not biased and therefore reflective of reality. Therefore, during the initial contact with the participants, the researcher emphasised that participation was voluntary and that the data would be securely managed and destroyed after the thesis had been assessed. To ensure that the consent was informed, the researcher introduced the study topic to the research participants focusing on the goal and specific objectives. The participants' privacy and confidentiality were respected and where necessary, such as in the case of documenting personal experiences related to gaining access to land, pseudonyms were used.

The researcher also sought permission to audio record the interviews for transcription and eventual research report writing. As outlined in the Data Management Plan (DMP) created for this research to guide data handling and disposal, the data – both audio and transcripts – were saved in a password-protected laptop computer and cloud drive which only the researcher had access to. Verbal consent confirmed through signing consent forms was sought from all the

respondents except one whose permission was audio-recorded through a recorded phone call as he participated remotely.

Some residents, such as the two old ladies in their 80s, refused to participate unless an approval of engagement from their village headwoman was secured in the form of accompaniment. In turn, the Village Headwoman (VH) declined arguing the researcher needed to secure a letter of approval from the office of the Lilongwe District Council (LDC), the TA of the area or the Ward Councillor. The researcher failed to meet with the TA who gave excuses on three occasions. Apparently, through his clerk the TA advised the researcher to bring an unspecified amount of money to secure his participation in the research, a request which the researcher declined. Consequently, the researcher was not able to interview some people as it would, ultimately, be unethical for the researcher to pay the research participants such as the local leaders and the local estate agent the demanded service fee in exchange for the information.

3.8 Reflection of Challenges Encountered in the Field

From the foregoing, it is clear that the data collection was not without challenges. Whilst data sourced from these potential research participants could have enriched the findings and help the researcher answer the main research question, it was equally important for the researcher to conduct the research in accordance with the highest standards of ethics. It is for this reason that if permission was not granted either by the relevant gatekeeper or the individuals themselves, then the interviews would not be conducted with those individuals.

Additional challenges surfaced of which, if not for the measures undertaken, had the potential of affecting the integrity of the data. Firstly, a discussion on the mechanisms people use to access land was a delicate subject with participants treating the interviews as a sensitive matter. One investor who produces cement blocks in Area 55 declined the interviews and claimed, *“responses to the questions you are asking are highly classified”* (Investor A, personal communication, 03 August 2023). Secondly, it was not possible to interview a Chinese scrap metals investor in Area 54. A security guard advised as follows, after being shouted at in Chinese by his manager upon seeing the researcher entering the gate when I first attempted to contact the company: *“You should come tomorrow and book an appointment if you want to either speak to the Chinese Manager who understands English or our lawyer”* (Security Guard, personal communication, 25 July 2023). On the day of the appointment, both Chinese managers

drove off from the factory premises when the researcher arrived. The company’s lawyer was not available. Eventually, all the efforts to interview the investor did not materialise.

Equally difficult were efforts to interview the residents earmarked for compensation and relocation in Areas 54 and 55. It was difficult to interview the residents on, broadly speaking, two accounts. Firstly, the residents and village headpersons presumed the research was connected to the impending state land acquisition programme and that the researcher was an agent looking to document and publicise their views. During one of the visits to a local meat market in Area 54, the researcher experienced an aggressive reception when one of the affected persons nearly attacked him before being confronted by fellow villagers and the VH of the area who was visiting the place. The person was heard yelling: *“This state land acquisition programme has promoted idleness amongst us ... we were told to stop development and we cannot farm”* (Person A, personal communication, 20 July 2023). Using an example of how the scrap metal investor dubiously accessed part of their customary land and the need to document such evidence and steer policy reforms, the VH helped the individual understand the purpose of the research.



Figure 3.1: Shows one of the communities earmarked for compensation and relocation in Area 54

Anticipating the shortcomings these challenges could have had on the research, the researcher utilised informal conversations conducted with various actors during the observation period, in addition to the observations themselves and desktop research, to nuance the data. In addition,

the researcher conducted more non-participant observations (15) and used the data to engage residents formally or informally in addition to using the same to probe participants' responses during the semi-structured interviews. Importantly, the researcher sourced data from other equally experienced respondents such as the SULSDEC (see section 4.3) other village heads, a sub-traditional authority, Ministry of Lands and the Malawi Law Commission (see sections 4.1.1 and 4.2.2).

3.9 Conclusion

Methodology is widely considered as a critical component of any research. Knowing which research methods and techniques best respond to the research question, and especially how to engage with the participants is therefore critical for any research project. This chapter has illustrated how the study was conducted. Specifically, this chapter has demonstrated that this is a qualitative research project. Thus, a qualitative methodology was deployed. This methodology was mainly chosen because of the need to engage in-depth with research participants. This is a crucial requirement when the aim is to document people's lived experiences such as how they access land in the peri-urban areas of the city. The methodology is also suitable for the in-depth analysis of the qualitative data collected through non-participant observations and in-depth interviews.

In the execution of this research, the researcher has used a non-probability sampling method – purposive sampling. With this technique, the researcher was able to select those already known to have the characteristics needed in the research, to participate. In total 15 observational trips were made. It was, as I noted above, difficult to formally interview residents, developers, local gatekeepers and other key stakeholders in land administration in the target areas. This is for various reasons including the absence of landholders, demanding money as a condition for participation and fear of the unknown. Nevertheless, a total of 17 respondents participated in this research. Appropriate mitigation measures such as conducting more non-participant observations and informal conversations were adopted to ensure the data collected was legitimate as well as credible. The information collected using these methods was crucial in probing interviewees during the formal in-depth interviews. Having outlined how the data required for addressing the research questions was collected, the next chapter discusses the findings and the analysis thereof.

CHAPTER 4: RESEARCH FINDINGS AND DISCUSSIONS

This chapter presents an analysis and discussion of the research findings, drawing on the literature presented in chapter two. The chapter is organised as follows: First, the chapter presents Malawi's historical land dispensation, focusing on the colonial land policy whose residual effects have endured into the post-colonial era. The second section discusses the underlying conditions, practices and occurrences of formal, customary and informal land access mechanisms. The third section discusses the impacts of the informal land access mechanisms noting that these are enabled by the l'aissez faire implementation of planning law observed in the peri-urban areas of Lilongwe. Section 4 concludes the chapter.

4.1 Malawi's Historical Land Dispensation

Alienation and labour appropriation are a cornerstone of the colonial land regime that was enforced in several African countries including Nyasaland (present-day Malawi) (Banda, 2019). When Britain colonised Nyasaland¹⁹ (1891-1966), all land was appropriated by the British sovereignty and administered by the representing Commissioner and Governor (Banda, 2019; Malawi Government, 1999b). Understanding "that communities and their chiefs had ownership and control over their [customary] land", these administrators used fraud, treaties, conventions, conquest and coercive agreements to facilitate private access to land for the settler community and businesses owned by British nationals (Banda, 2019; Malawi Government, 1999, p. 15). Meanwhile, natives were strictly granted occupation rights which discouraged the establishment of permanent settlements (Malawi Government, 1999b).

In line with Ribot and Peluso's (2003) conceptualisation of informal land acquisition, the colonial government in Malawi "ensured the availability of cheap labour for settler agriculture" by extinguishing indigenous customary landholders' rights at will and turning those whose villages were enclosed by the claimed land into tenants (Malawi Government, 1999b, p.20). By 1951, these private land concessions had been formalised through Land Ordinances as "something akin to freehold title" (Malawi Government, 1999b, p.17) (Malawi Government, 1999b, p. 17). However, these ordinances categorised land as either public or private with customary land being regarded as a mere species of public land (Malawi Government, 1999b).

¹⁹ Present day Malawi.

Chinsinga (2021, p. 4) argues that the politics of transitioning from a three-decade-long-one-party system (1964-1995) to democracy (1995 – to date), and the reorientation of the elites from agriculture to commerce as a principal means of accumulation and “either getting or maintaining political power,” have greatly shaped Malawi’s political economy, policy and development. Consequently, public policy implementation processes are oftentimes influenced by political interference with short-term rent-seeking, political consideration and direct benefits for the political elites being prioritised over the long-term national development agenda (Chinsinga, 2021). In this case, rents often rise from market inefficiencies or information asymmetries that particular institutions create by increasing incomes or benefits over that which is economically or socially necessary (Chinsinga, 2021; Khan, 2017). These tendencies “usually dictate a clientelist mode of political legitimation, not one based on delivery of public goods required for economic and social transformation” and defy efforts to attain equitable access to land (Chinsinga 2021; Meyfroidt et al., 2021).

4.1.1 Post-Colonial Land Policies and Reforms

According to the National Planning Commission (2020, p. 10), one of the state’s long-term goals is to build “an inclusive, wealthy and self-reliant nation [seeking to excite the nation to responsibly] enjoy the freedom brought about by the struggle for independence and democratic governance”. The state pursues this inspiration by among others formulating land use plans such as the Urban Structure Plans (USPs)²⁰ and detailed layout plans, duly approved by Town Planning Committee and surveyed to specify the extent of the city boundaries and “give details of specific urban land uses within the jurisdiction of the urban areas [and] guide plot allocations” (Malawi Government, n.d., p. 11; 2002, p. 33).

²⁰ Also known as an Outline Zoning Plan, USP is:

[C]omprehensive land use plan dealing with spatial development prepared for an urban area meant to secure orderly, coordinated, and efficient and environmentally sound urban development and proper use of land.

(Manda, 2004, p. 168).

It includes plan drawings showing different land use zones usually drawn to a scale of 1:5000, or 1:10,000 (ibid.). Depending on different factors such as the availability of resources, changes in population size and demands and other world trends such as globalisation, USPs outline proposals which can be implemented in the short or long terms (Manda, 2004). Limited resources, competing demands, conditioning to fund access and infrastructure development have justified preference for a comprehensive Urban Development Fund to improve planning practice (Dowall and Clark, 1996 cited in Manda; Malawi Government, 2019).

Additionally, several reforms, seeking to reconstitute land back into the hands of the indigenes, have been implemented through the Ministry of Lands and its associated departments. These reforms include, for example, attempts to legitimize customary land (ensuring that enjoyment of tenure rights, registered or not, is without undue infringements) in the post-colonial era and expropriate and relinquish private ownership of such land as a Law Commission official (interview, 2 August 2023) argues:

There are a lot of laws [and practices] in our statutes which were adopted from the colonialists. So, we have a lot of work to do ... the problem is that some stakeholders do not understand which matters require law reform commission ... even if they do, I don't think we have the capacity to handle every other need throughout the country. There are just so many laws that need to be changed and reviewed.... Well, maybe increase the capacity of the Law Commission could help but still more, ugh, like I said there are just too many laws.... because even the laws that are being enacted require reforms.

Thus far, the reforms have been sluggish, with the highlight being the removal of provisions that were meant to reconstitute all foreign-owned freehold land back to indigenous Malawians as land to leasehold tenure from the *Land Bill (2016)*. This has reserved the state's derivative rights (*escheat*), which subject all private land to common residual rights to, among other things, compulsorily acquire the land if conditions of the grant including non-development are fraught (Malawi Government, 2002). This is contrary to the common understanding that freehold properties are "held free of any superior title, and that the Government of Malawi has no legal right ... to pass legislation affecting the conduct of use of such properties" (Malawi Government, 1999, p. 70). However, the Commission is not persuaded and questions this understanding as it does not hold "even in England, from where that jurisprudence is derived" (Malawi Government, 1999, p. 71). This, therefore, implies that while conferring the "ample proprietary freedom known to the law of Malawi, [the freehold grant] does not oust the residual power of the State to ensure, [compliance to the law]" (Malawi Government, 1999b, p. 71). Regardless, the provisions that sought to initiate legal land restitution are not included in the amended land laws of 2022.

Despite being in line with the findings of the *Report of the Presidential Commission of Inquiry on Land Policy Reform (1999b)*, these reforms are being fiercely resisted and therefore met with complicated judicial processes, endless legal challenges, corruption, nepotism, and threats of social, political and economic sanctions (Malawi Government, 2002, 1999; Malawi Law

Commission (interview, 2 August 2023). As such, in the absence of much needed reforms, the post-colonial land policy environment continues to suffer the residual effects of colonial land governance (Malawi Government, 2002). The lack of reforms, coupled with the shift from being an authoritarian and developmental regime to a competitive, clientelist regime, has caused “counter-hegemonic planning practices” and “grassroots rebellion manifesting through public land encroachments and increasing customary land purchase (De Soto, 2000 cited in Roy, 2011, p. 233; Chinsinga 2021; Malawi Government, 1999; Miraftab, 2009, p. 33; see chapter 4.2.3). Elite settlers, political elites, and “those with connections to such people, including the state’s president” either continue to enjoy private tenure to land that was dubiously acquired or benefit from the land expropriation programmes, while the ordinary people (also understood as economically poor, young and unskilled labour), continue to be disadvantaged by the land laws and policies (Banda, 2019, p. 340; Malawi Government, 1999; NPC, 2020). Thus, the formal system appears to be conferring land rights, to the elites and the connected, through clientelism whereas the ordinary people and the disadvantaged, who are in majority, claim their land rights through encroachments (Ribot and Peluso, 2003).

As such, the ordinary people consider land regularisation and compensation arrangements, a liberator from their socio-economic hardships (Resident A, follow-up interview, 05 December 2023). Thus, such trade-offs and inconsistent application of the law show that “policymakers in Malawi are committed to reforms on paper and not to making the reforms work as intended in practice” (Bridges, 2016 cited in Chinsinga, 2021, p. 14). This, as discussed in the following sections, manifest in poorly-coordinated-land-acquisition mechanisms and l’aissez faire planning approaches. It is to these discussions that the chapter turns.

4.2 Mechanisms of Accessing Land in Lilongwe’s Peri-Urban Areas

This section discusses land access mechanisms observed in Lilongwe.

4.2.1 Statutory Access to Land

The *Malawi National Land Policy* (MNLP, 2002) recognises the Ministry of Lands as a superior authority, empowered by law, to administer de facto customary rights and enforce de jure rights (Schlager and Ostrom, 1992). The Ministry draws its mandates from legal statutes such as the *Land Act 2016a*, the *Physical Planning Act 2016c*, and the *Land Acquisition Act 2017*. In addition to the legal statutes, the Ministry develops other instruments such as guidelines and procedures to execute its mandate in relation to the designation of statutory

planning areas, formulation of land use plans and development control (Malawi Government, 2002).

The Ministry is divided into departments. Notably, the Ministry has a Department of Physical Planning that is “responsible for land use planning and the enforcement of development controls and standards” (Malawi Government, 2002, p. 31). The Department of Lands is responsible for land services and works to “regulate, manage and control land use, make grants, leases and other disposition, levy ground rent and monitor and force covenants” (Malawi Government, n.d., p. 1). In areas managed by the Department of Lands at the local government authority level, the Ministry performs various functions related to plot allocation, land titling and registration, land adjudication, enforcement of lease covenants, provision of valuation services, infrastructure development and land dispute resolution. The management and administration of land by local government authorities is also governed by the *Local Government Act (LGA) of 1999a* which defines local government authorities as City, Municipal, Town and District Councils constituted under the Act.

Apart from providing oversight on land matters, the Ministry of Lands implements some functions at the local government level including allocation of the plots to citizens and developers. The ministry does this through the plot allocation committees established under the Department of Lands. The committees, composed of sector heads and government institutions such as the police, can adopt non-member checkers to enhance transparency (Malawi Government, n.d.). Without clear guidance on how such checkers are identified, their objectivity remains doubtful. In fact, the absence of a well-organised and properly coordinated civil society effort to advocate in support of urban planning and sensitisation of the general public on such issues as the existence of plots and the closing date for receipt of applications (Malawi Government, 2015; Blantyre City Council, 2003) entails the land allocation process can be abused. However, experiences from the Lilongwe District Council reveal for instance that the committee works well with its ex-officials which include TAs, MPs and Ward Councillors. As a Lilongwe District Council official (interview, 17 July 2023) notes:

The committee has members from different government sectors and elected leaders who are Members of Parliament, Councillors and Traditional Chiefs but they know their role is solely an oversight, so the system is transparent and accountable. We work with them perfectly well and there are no squabbles. It is them who then report to the Full Council about the process of land allocation and figures.

It is important to note such divergent cases because it, not only divorces from the common narrative that the formal land administration systems presents a leeway for elites to capture the land through bureaucratic hurdles, un-transparent and un-monitored titling processes (De Schutter, 2010; Malawi Government, 1999b), but also that which qualifies global South land administration systems and practices as poorly coordinated and therefore precarious (Bhan, 2019; Pieterse, 2011; Roy, 2011).

The committees continue monitoring the allocated plots. Failure to comply with the set responsibilities, rights and conditions of ownership by the beneficiaries calls for the plot repossession and re-entry (re-allocate to other developers on fresh terms). These conditions include payment of the required fees and charges within 90 days, development of the plot within two years except for good reasons, restriction against selling bare land and failure to use the land for the intended purpose. The Ministry of Lands (Interview, 18 July 2023) observes, an approximate amount of MK6,700,000 per plot is not affordable for an average Malawian. Arguing that the MK2,000,000 development fee the Lilongwe District Council charges is affordable, the council conceives frequent cases of plots re-entry due to non-payment of the charges entails the argument is not entirely true (Lilongwe District Council official, interview, 17 July 2023). This supports the argument that formalisation mechanisms present a leeway for elites to capture the land through exorbitant fees and bureaucratic hurdles (De Janvry et al., 2001; Malawi Government, 1999b).

Thus, the development does not commence until specific design and type structures recommended by the Directorate of Urban Development are approved by the Physical Planning or Town Planning Committee. The approval process, which goes further to the Minister of Lands, is followed by the granting of an offer of lease by the Directorate of Land Services. The lessee is also required to request a cadastral survey, necessary for the preparation of deed plans to the Surveyor General or Department of Land Surveying Services. Finally, a draft lease document is prepared (in triplicates), signed by both parties, stamped and registered by the Chief Executive Officer or Commissioner of the Government Authority (case dependent) on behalf of the Malawi Government and the lessee which can be an individual or an organisation. As can be seen, the process of accessing land through the formal landlord is long and involves obtaining approval from different committees and authorities. This confirms Pieterse's (2018) observation that the formal land administration mechanism is dominated by ritualised bureaucratic practices and service delivery systems.

In line with Allen (2003) who observes that a formal land administration system identifies itself with very modernised and sophisticated methods of record keeping and retrieval among others, it is expected that the computerised National Land Information System (NLIS) implemented under the land reforms programme (Malawi Government, 2002) will improve the system.

The NLIMS, completed in January 2023, has taken two years to develop, and will significantly help the ministry properly manage land records within the ministry. We are now testing the system so it can go live

(Ministry of Lands Official, interview, 31 July 2023).

Broadly, this study agrees with Manda's (2004) observation that plot allocation procedures remain a guarded secret. The secrecy around the criteria and procedures for allocating plots opens the system to corruption, nepotism and allocation of land through political dictates (Manda, 2004 and 2005). Coupled with insufficient funding, low technical capacity to perform land use planning and administration, which renders the formal land administration system inept. The result is that more people find it increasingly difficult to access plots in urban and peri-urban areas (Malawi Government, 2019; Manda, 2005; Obala, 2020). Giving an estimated figure of "more than 3,000" (Ministry of Lands, Interview, 18 July 2023) as the number of plots the Department of Lands has issued since 2010, the ministry comprehends the insufficient levels of plot creation and allocation to residents and developers commensurate with the increasing number of applications the ministry receives.

It is not surprising that during the Third Malawi Urban Forum (MUF) conducted in January 2018, the Lilongwe City Council through then deputy Mayor Juliana Kaduya, announced they had stopped accepting plot applications because of a long waiting list. This confirms Allen's (2003) comprehension of the stress endured by formal land administration entities when trying to integrate peri-urban areas into the urban fabric. The stress, which climaxed at the dawn of multiparty democracy, has historically been rampant in Lilongwe city (see section 4.2.3).

4.2.2 Customary Land Access: A Gendered Process

The ethnic composition of Lilongwe urban and Lilongwe rural has a direct implication on the prevailing customary land tenure in the study area. The Population and Housing Census conducted in 2018 shows that in Lilongwe, the Chewa is the largest ethnic group with 6.0 million people (34.4 percent). Research on lineage and land reforms in Malawi establishes that

between 90% and 100% of the villages in the districts in the northern region are classified as patrilineal whose matrimonial home can be classified as either virilocal or neolocal (Berge et al, 2014). The central region, especially Lilongwe, is predominantly matrilineal and the expectation is that the dominant ethnic group of Chewa should be practicing an uxorilocal system of marriage where the husband moves to the wife's village after marriage. However, five out of the region's nine districts, including Lilongwe, are classified as matrilineal with virilocal settlement (Berge et al, 2014).

Nearly a decade ago, it was established that 51.6 percent of the villages in Lilongwe Rural were classified as matrilineal and virilocal descent whilst 41.3 percent were matrilineal who practice uxorilocal and neolocal marriage settlements (NSO, 2010 cited in Berge et al., 2014). Meanwhile, 6.9 percent were classified as patrilineal whereas only 0.2 percent of the villages did not know their descent (ibid). After a decade, the heterogeneity in the systems of marriages, descent types and property inheritance rules has likely increased due to intermarriages and land reform advocacy campaigns among other factors. Despite further amplifying Berge et al.'s (2014) observation of the study area's population being increasingly matrilineal-virilocal which contradicts the expected narrative of matrilineal-uxorilocal, the denial by some women to participate in the research for being in a virilocal matrimonial home (see section 3.6), where they are understood to have little or no say on land administration, the documented evidence of both men and women's land access in the study areas, is not enough to establish the extent of the change which merits the recommendation for further studies (see section 5.5.2).

In addition to land, heterogeneity and neolocal inheritance rules are crucial factors to consider in the debates about land equity and equality:

There are five children in our family. Two females and three males. Every one of us is allocated land by our parents. I am forth born that is surely the reason why my piece of land is not as big compared to my elder siblings, especially the first and the second. When the time was due for me to be given my inherited land, my elder siblings, both females, had already been given theirs. Usually, one is allowed to inherit land either when they marry, the parents are deceased or the circumstances demand that the land is allocated... I was not there when the land assessments were done but my mother stood in my behalf and I will receive K6,500,000 for about quarter of an acre.

(Area 54 Resident, interview, 31 July 2023)

Crucially, large-scale land-based investments such as the establishment and expansion of urban centres, equally affect male and female holders unlike when only men or women have ownership rights. As Peters (2010) conceives it, customary land registration and titling either jointly as spouses or as family, in a quest to improve women's secure tenure access to land is equally problematic as it dispossesses highly secured and privileged women and men in matrilineal-matrilocal and patrilineal-patrilocal societies respectively. Learning from the short-lived and unsuccessful *Lilongwe Rural Land Development Project*²¹, Peters (2010) argues the impacts are particularly severe for women's rights when the land is registered in the name of the family head who is typically a man, either husband or brother, inconceivable in matrilineal-matrilocal communities.

It can be argued that lessons learnt from land registration pilot programmes²² have informed final stipulations of the *Customary Land Act of 2016 (Amended in 2022)* which looks to have been carefully crafted to include security against potential losses of the registered land. Introduction of the customary land committees is the forerunner of such provisions outlined in section 29 of the Act. The Act requires all parties to jointly register land, including those with derivative rights, to consent to its surrender or disposal (Government of Malawi, 2016b). If the surrender, purported to deprive entitlements of women or the underaged to occupy the land, has already occurred, the Act invalidates it. These lessons have also shaped debates on land reform in Malawi in two ways. First, is the need for gender considerations in land governance. This seeks to address Kameiri-Mbote's (n.d., p. 11) concern that land ownership, under all systems of law in the majority of African countries, is anchored in patriarchy which makes women vulnerable to undue exclusion. This is also in line with Peters' (2010) argument that introducing gender equity considerations in questions on land access is a point of departure from the prevailing exclusionary norms and practices. Second, is a call to decolonise property rights without being seen to be applying the law retrospectively (Malawi Law Commission

²¹ Also known as the Ndunda System, it is a land registration system implemented in the Lilongwe West Development Project area in the 1970s to secure people's tenure rights over customary land through the registration of title (Malawi Government, 2002). To date, the Lilongwe City boundaries are sprawling into land previously registered as customary freehold estates and have been affected by the ministerial suspension order of plots lease processes (Ministry of Lands Official, Interview, 18 July 2023).

²² As the State President stated in the State of Nation Address (SONA) recently, the programme has "adjudicated and demarcated 152,681 customary land parcels and issued 16,000 customary land certificates" (Parliament of Malawi, 09 February, 2024).

official, interview, 02 August 2023). The debate about the retrospective application of the law is that it is directed at addressing injustices caused by past land regimes, primarily colonial land alienation (Malawi Government, 1999; see also chapter 4.1.1). Failure to comprehensively address these concerns as the Malawi Law Commission (interview, 02 August 2023) understands, renders the legal framework unresponsive, inevitably putting to question the rationale of the land reform efforts in the post-colony.

The estate agent phenomenon discussed below is complicated by the “[p]resence of chiefs... [who are] corrupt [and] allocate land without following any land use plans... and failure of formal land allocation system” (Ministry of Lands Official, Interview, 18 July 2023).

Additionally, developers that access land through chiefs face challenges when they come to this Ministry to have legal papers and secure their tenure. [Because they disregard] planning, it becomes a challenge to provide services such as water and access roads. [As such,] recently, the Ministry has stopped legalizing land allocated by chiefs. They come [to our offices] but they are not assisted.

(Ministry of Lands Official, Interview, 18 July 2023)

“With respect to chiefs claiming jurisdiction over land within city boundaries,” the Malawi Law Commission (interviews, 02 August 2023) understands that “they have to have limits on what they can do” since the government is the superior landholder. Chiefs and customary rights remain unrelinquished and, therefore, they are the logical custodians of the land. The revelation that their land transactions are not recognized by the formal land administration system not only confirms the observation that “planning... falls to the most powerful centres of the state [and] ministries” which unavoidably raises questions on the accessibility of such services (Pieterse 2018, p. 40), but also points to Dadashpoor and Ahani’s (2019) argument that individuals’ and institutions’ exercise of relative power over land rights causes land pressures in global South cities.

Therefore, the politico-legal authority’s disapproval of the bundle of land rights sanctioned by societal norms (Takane, 2008), not only forsakes the advice to adopt a broad range of institutional nomenclature (Myers and Hansen, 2018) but also limits customary land access to temporary usages such as seasonal agriculture and the erection of traditional houses using non-permanent materials (Malawi Government, 2016; see figures 4.5 and 4.6) which inevitably inflict environmental and socio-economic challenges to the residents (see section 4.1.1). This

romanticizes the exclusionary powers (see section 2.2) of the formal land administration system (UN-HABITAT, 2015), as an ideological mechanism that has been criticised for not being applicable in a real-world institutional setup (Schlager and Ostrom, 1992). Again, the customary land holders' inability to maximise benefits from their land favours the definition of access as the "ability to benefit from things" (Ribot and Peluso, 2003, p. 153) which entails that such is the definition that informs the land-related policies and strategies that are being enforced in Lilongwe.

Thus, empirical evidence from Lilongwe's peri-urban areas advantages the conceptualisation of the land tenure continuum as a metaphor that seeks to dismantle the underpinnings privileging formal land administration and formal private ownership at the expense of the less secured informal or unregistered customary rights (UN-HABITAT, 2015). Mr. Yona Wiseman (interview, 3 July 2023), Chief of area 25, testifies:

Tsikulina kunacha bwinobwino ine ndi anzanga tidapita kukadyetsa ziweto za makolo athu monga mwachizolowezi munthawiyo. Tidangoona a survey ndi zoyezera zawo akuyeza malo athu. Titawafunsa chimachitika nchyani chimachitika ndipo anatiuza kuti iwo anali ogwira ntchito aboma kuyeza malo aboma. Boma linali lovuta nthawi imeneyo. Ndikusaphunzira kwa makolo wa palibe amene anapita kukafunsa n'ngakhale ku ma offesi kwawo. Mmenemo ndi mmene malo athu anasinthidwira kupita kuboma. Sanatiuze za kusintha ku n'ngakhale compensation sapanereke.

On one beautiful morning I joined a group of boys and we were grazing our parents' animals as it was the tradition, back then. We just saw surveyors with their equipment surveying the land. We asked what was going on and we were told that they were government surveyors surveying government land. The government was so autocratic and coupled with low literacy levels of our parents, no one dared to follow up with the responsible department or officers working in the area. That is how our land was converted from the customary to statutory planning area. The conversion was without prior notification or engagements, let alone, compensation.

Clearly, the state is at the centre of the controversy and, therefore, contravenes provisions of the international human rights law and resolutions of UN treaties, declarations and charters on human rights that it is a party to. For instance, the *United Nations Declaration on the Rights of the Indigenous Peoples* (2007, pp. 7-8) proclaims that the "[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental

freedoms.” This is in fact “a standard of achievement to be pursued in a spirit of partnership and mutual respect” (United Nations, 2007, p. 7). Presuming land as public through the declaration of planning areas without instituting legal procedures to formally extinguish the existing customary land tenure rights is a blatant disregard for people’s human rights, a syndrome that citizens sought to do away with when they fought for independence and voted for democracy (Banda, 2019; Mtambo, Interview, 3 August 2023).

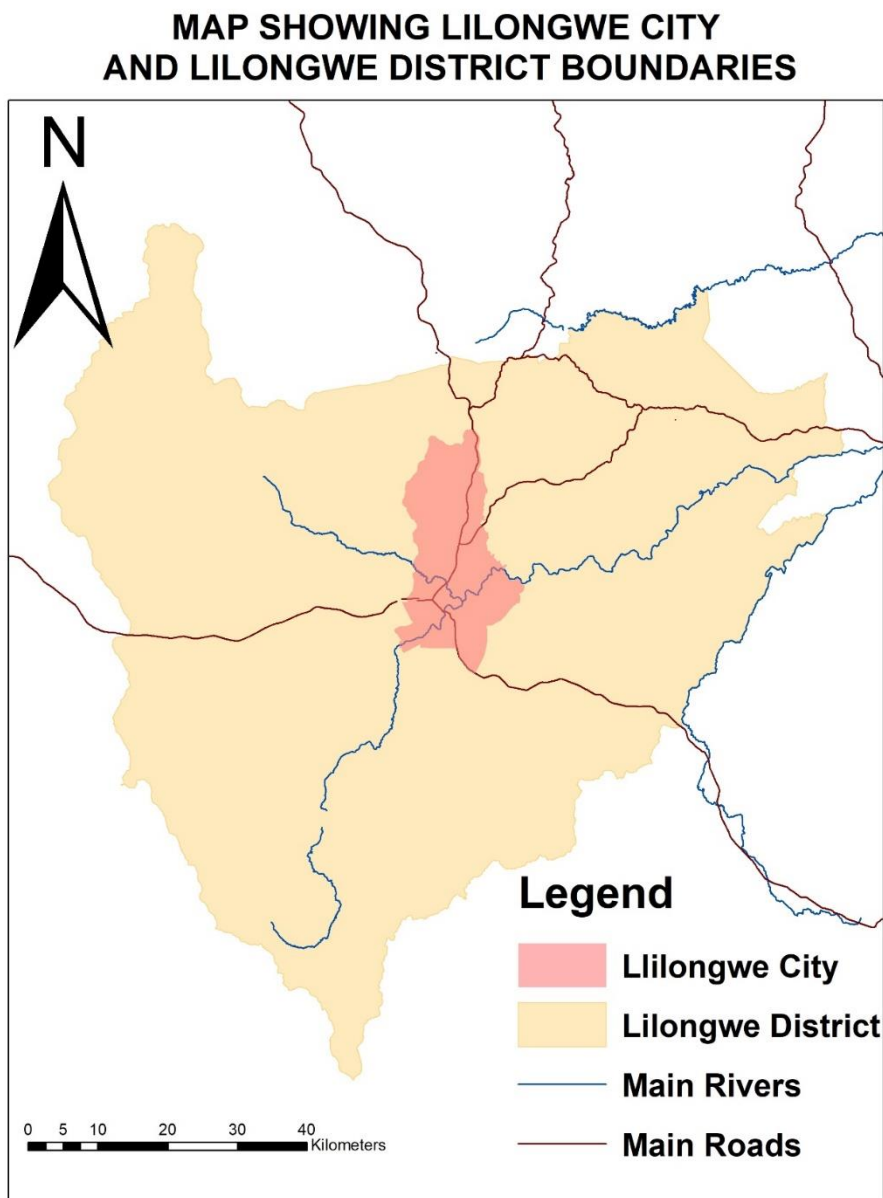


Figure 4.1: Showing Lilongwe Rural (Lilongwe District) and Lilongwe City Boundaries

4.2.3 Informal Access

From the foregoing, it is not surprising that as many people saw land diminishing at the dawn of multiparty democracy, they encroached on land around the capital city, especially in Area 23, Area 49's Bagdad, Shire and Dubai, and sectors 7, 8 and 25c in Area 25. Described in Chichewa as “*ku ndatola*” or “*anthu amatola malo*” these encroachments connote an abundant *near-abandoned*-vacant land. The connotation, however, is misleading as the undertaking turned militant with community members who had been using the land for farming and grazing their animals, claiming ownership. For example, Mr. Yona Wiseman (interview, 3 July 2023) recounts:

Cha m'ma 2000, zinachitikanso chimondzimodzi monga zija zidachitika ku Area 25 sector 8 pamene tidaona chigulu cha anthu, ambiri mwa iwo, opanga ma biziness, kuzayamba kugawana minda ya makolo anthu. Nthawi iyi tidagwirizana ndipo tidakwanitsa kuathetsa kulandidwa kwa malo wa. Mafumu anthu ndi ena otizungulira mu Lilongwe adagwirizana ndipo kudatuluka gule amene adapanga camp mu manda a m'derali kuyang'anira kuti asapitilize kutilowelera. Camp yi inakhala kwa ma week akulondera ndipo tidakwanitsa kuletsa kulandidwa kwa mindayi. Zitachitika izi, tidaumirizika kugulitsa malo otsalawo.

In [the] 2000s, we had a similar experience [to that of sector 7] in Area 25 Sector 8 when a group of mostly middle-income businessmen encroached and started subdividing our customary land. This time, we leveraged and managed to salvage some land. The traditional leaders of the area and neighbouring villages in the rural areas of Lilongwe mobilized an army of armed dancing troops, 'Gulewamkulu' which camped in a graveyard in the area to watch against any further encroachments. The camp remained for weeks and we successfully managed to stop further encroachments. This occurrence forced us to sell the remaining land.



Figure 4.2: Encroachments, traces of autoconstruction and agriculture activities in Area 26 facing the densely populated Area 25c

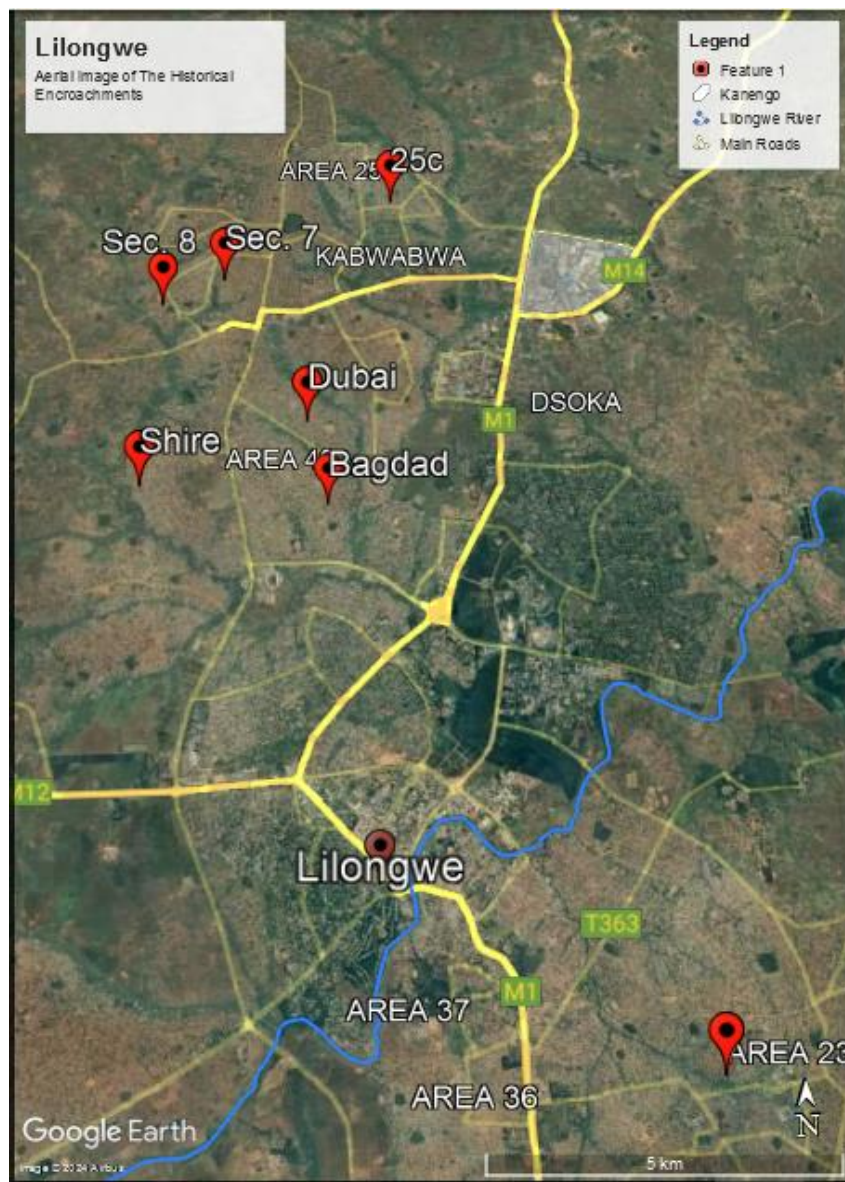


Figure 4.3: Showing an aerial image of Areas 23, 49 (Bagdad, Shire and Dubai), and 25 (sectors 7, 8 and 25c)

In such militant instances, the Lilongwe City Council, the MHC, the Ministry of Lands and the Lilongwe District Council intervene to reconcile the conflicting parties but also to ensure that land acquisition follows some form of formal process. Essentially, the land was regularized (see section 2.3.3) and amongst the solutions deployed was that the ‘landless encroachers’ should be organised into committees with leadership duly elected (Area 55 Resident, interview, 3 August 2023). Additionally, the HfH²³ was identified to construct low-cost housing units, which would be allocated to the landless people using an interest-free revolving fund. At this stage, the interventions did not benefit the customary land holders. Coupled with limited funding, such interventions are not sufficient (Ministry of Lands Official, Interview, 18 July 2023). However, the Ministry of Lands and MHC plans to engage investors (corporate mechanism, see section 2.3.3) and construct over 1, 000 housing units (on a 30 hectares of land) in Area 49 and Area 43 (Ministry of Lands official, interview, 31 July 2023). With the rising cases of informal land access, the field observations (see figures 4.6 and 4.7) reveal autoconstruction (Caldeira, 2017; see section 1.1.1) is the main practice with which the city develops.

²³ HfH is the first local NGO established in 1986 to directly provide housing to poor and middle-income Malawians in urban, peri-urban and rural areas through revolving funds (Manda, 2007). Concerned with land and housing insufficiency as well as the temporariness of building materials, HfH constructs houses, and provides interest-free building materials such as cement and corrugated iron sheets. Despite successfully managing to contribute to the land and housing development, the organisation is among other things let down by loan defaulting, rising cost of building materials due to inflation and bureaucratic acquisition of land from the local governments who in turn acquire land from the central government (Manda, 2007). For example, in Lilongwe, HfH acquired land (in 2005) after eleven years despite the availability of funding and offering to meet the costs of surveying the land (Manda, 2007).



Figure 4.4: Traces of land speculation and high demand for land in Area 55



Figure 4.5: Traces of non-planning and land speculation in the study Areas



Figure 4.6: Beacon placement (general boundary) to signify land ownership and land speculation in Area 55

Such occurrences, as the findings of the *Malawi National Land Policy* (2002, p. 34) note, give rise to “[u]ncertainty in the tenure and use of rural land, ... enclosed within the urban boundaries as well as [imminent] administrative conflicts between the [statutory and customary mechanisms of accessing land]”. This is also a proof of “unplanned or unregulated urban and peri-urban settlements ... occurring in the context of all land tenure categories and land uses” (Malawi Government, 1999b, p. 43). Thirdly, the findings reaffirm Manda’s (2005) argument that the planning system continues to be dictatorial, not helpful to the poor and weak even in the democratic era. Fourthly, the findings are in line with documented evidence of unregulated development in Malawi’s major cities where many communities continue to treat land in the peri-urban areas as customary (Malawi Government, 1999; see chapter 4.3). Although several formal processes are followed, the estate agents, NGOs, investors and residents’ practice of purchasing customary land for private use, comprises an informal land access mechanism (see section 2.3.2). This is in line with Olapade and Aluko’s (2021) framing. Ideally, this practice seems to divorce from the formal-informal and legal-illegal dichotomy (see section 2.3.3). By including non-legal, extra-legal and illegal mechanisms of obtaining different bundles of land rights as legitimate; guided by empirically mapped resource distribution patterns of the local context in which the legal statutes operate (Myers and Hansen, 2018; Sen, 1981; Peluso and Ribot, 2020), this approach not only embraces a nuanced understanding of property rights as “ability to benefit from things” (Ribot and Peluso, 2003, p. 153), but also embraces the property

definition as a bundle of powers’ (Peluso and Ribot, 2020, p. 300) that this research adopts. Further, this research confirms Sikor and Lund’s (2009, p. 2) view that legal recognition of property rights is “part of a larger picture of” resource access mechanisms.



Figure 4.7: The self-styled estate agents

Locally, especially in Areas 26 and 55, it is common to see signposts, notices (which simply read ‘plot 4 sale’ and phone a number) (see figure 4.4, above). Usually, these posts include the phone numbers of the middlemen, and the self-styled estate agents who, in addition to charging a non-refundable viewing fee of between K5, 000 to K20, 000, obtain a commission of 10 percent of every successful land sale. The viewing fee enables the prospective customer to inspect the land being offered for sale (Mtambo, Interview, 3 August 2023). The screening procedure laid out in section 4.3 is commonly followed to avoid being tricked, incidents which are also common. As Mtambo (Interview, 3 August 2023) states:

Sometimes, the due diligence for selling and buying plots is questionable especially when the same plot is sold to two or more customers... there have been court cases of similar nature.

A case at hand is when the 400-hectare Northgate housing project along the M1 road in Lilongwe’s Area 26 (see figure 4.3), was abandoned primarily due to conflicts between the company and the customary landholders. Recently, it has been described as a classic case of land grab with the company being accused of using fake ownership documents in courts as a basis to displace the villagers taken for encroachers. However, questions arose about the validity of the title documents acquired a year before the ultimate failure to compensate the

people in 2006 which led the company to backtrack (Nyasa Times, 2021: online). This entails that public private partnerships (PPP), also understood as private developer schemes (Olapade and Aluko, 2021) or a corporate mechanism (Mwathunga and Donaldson, 2018; see chapter 2.3.3) are), is marred in dubious processes which in turn confirms the claims by the *Presidential Commission of Inquiry on Land Policy Reform in Malawi Report* (1999b) that corruption and bribery exist at all levels of lease application and approval processes.

The Abandoned Northgate Housing Project in Area 26

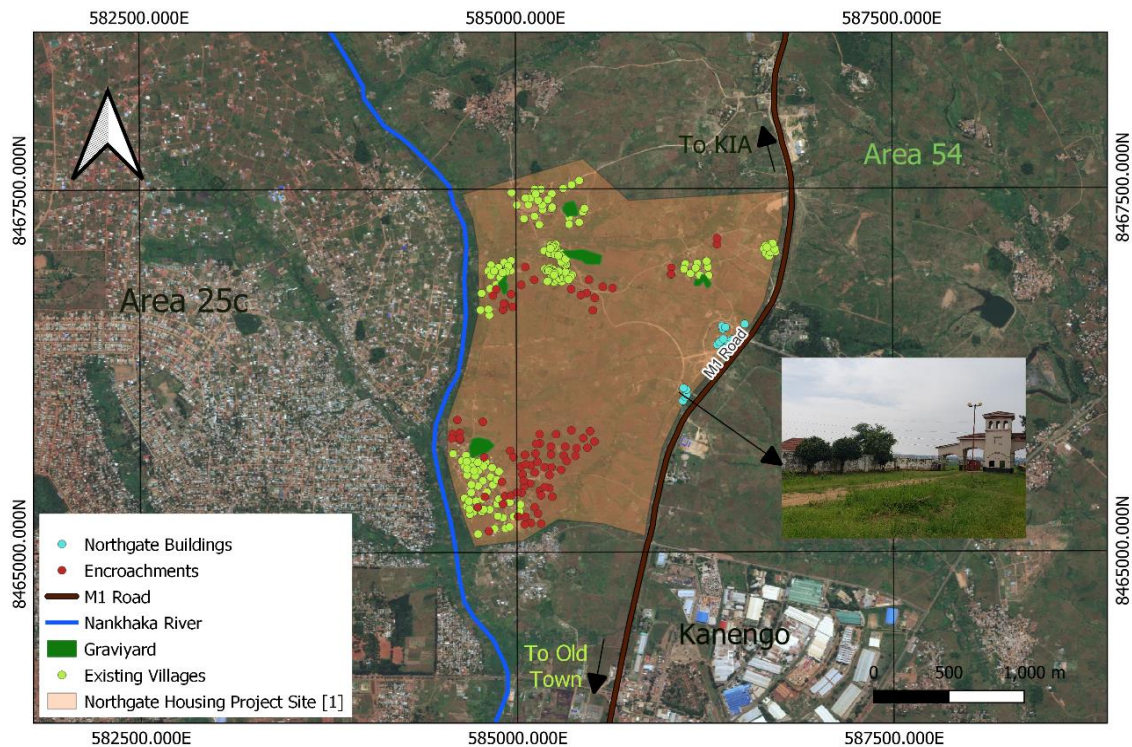


Figure 4.8: Aerial Image of the abandoned Northgate housing project (abandoned site) in Area 26, Lilongwe

More cases of a similar nature frequently happen around the city with some of them being fought in court (Zodiak Broadcasting Station - ZBS, news bulletin, 31 October 2017). The more recent incident has happened in an eastern peri-urban part of the city in Area 44 where an investor claims to have compensated indigenes to privately acquire their land. The community disagrees, which is causing violent conflicts in defence of their land (ZBS, news bulletin, 27 November 2023). With the observation that formal land administration mechanisms exist to enforce de jure rights (Schlager and Ostrom, 1992), the allegations of the forgery of lease documents and missing compensation records (Nyasa Times, 2021: online), the Ministry of

Lands holds a critical task of resolving the conflicts by among others making available the compensation records.

4.3 L’aissez Faire Implementation of planning Law

In Malawi, physical planning has been purposefully used as a development tool for the promotion of public health, poverty alleviation, settlement planning, land use management, infrastructure development, and development control among others (Manda, 2004; Malawi Government, 2002). Experiences from Kenya, South Africa and Malawi indicate that colonial governments applied planning to give them an edge over blacks for social, economic and political considerations by legitimising the unfounded exclusion, racism and class models of living (Home, 2014; Kimari, 2020; Manda, 2005). Planning was essentially used as a demonstration of hegemony over people. In Malawi, planning restricted rural-urban migration, which ultimately affected the labour market and the economy due to a massive ‘brain drain’ to Zimbabwe and South Africa (Manda, 2005). Strong connections with colonial urban planning continue to exist in the post-colony’s new concern with developing the ‘smart city’ to promote ‘city-ness’ (Datta, 2015). Diversity in the definition and application of the concept of physical planning²⁴ attests to the reason why the planning profession has taken centre stage in the development agenda and political science.

After independence in July 1964, political patronage, nepotism and interference have weakened planning and development control with the government itself contradicting its own policies. Manda (2005, p. 15) argues that political regimes in Malawi have “been characterised by a concerted attack on the planning profession, ad hoc (if not non-planning), corruption and allocation of land through political dictates” as the president and his political appointees often invade the system to directly allocate land to fellow politicians, famous companies, Indians and the connected-few (see figures 4.5 – 4.7). A concern amplified by the Malawi Government (2019, p.19), these occurrences are made worse with the observation of limited Civil Society

²⁴ The term 'physical planning' refers to:

[The] dynamic process of arranging, in advance, the effective deployment of ... physical structures ... in terms of land use, utilities, communications, [and settlements among others] to reconcile social, economic [and environmental] interests and hence promoting orderly development” crucial for preventing and solving the associated problems
(Manda, 2005, p. 1; 2004, p. 110).

Organisation (CSO) platform to “[a]dvocate for urban development programmes” claiming disjointed advocacy initiatives are limiting (CSO Official, Interview, 13 July 2023).

With government ministers agonisingly pushing the reversal of decisions of Lilongwe City Council Town Planning Committees to stop an illegally developed metal factory development in Area 54’s commercial area (Lilongwe City Council Official, interview, 31 July 2023), both politics and operational challenges (see section 4.2.1), interfere with the land administration system and development control. Sometimes designs are not fit enough for the proposed use and building codes. Such are deferred on technical grounds. Field observations confirmed that the metal recycling factory, the management of which shunned the interviews, was ‘illegally’ operating. All the City’s efforts to stop the company from being established and operating have not worked. Their efforts include planning law enforcement notices and writing to ESCOM advising the corporation not to connect the company to electricity (Lilongwe City Council Official, interview, 31 July 2023). Regardless, the development progressed and was born of contention between the central government and the city when the former claimed the investment was good for the country while the latter argued that the investors must follow planning procedures regardless (Lilongwe City Council Official, interview, 31 July 2023). These cases have left some to conclude that *“there is too much lawlessness in Malawi. Planning needs people who are law-abiding. If there is too much lawlessness, you cannot plan”* (Lilongwe City Council Official, interview, 31 July 2023). This case reveals that, in addition to residential purposes, developers access land for industrial development.

Coupled with the proliferation of poorly coordinated registered and unregistered estate agents operating in many urban centres across the country, the progress and gains in planning processes are observed to be hampered by such random interpretation and enforcement mechanisms (Allen, 2003). As a Lilongwe City Council official (interview, 31 July 2023) states:

The proliferation of Estate Agents who are buying customary land in the peri-urban areas has encouraged urban sprawl and there is no law that governs their work. Now the government is formulating an Estate Agents law.

Essentially, these estate agencies purchase huge chunks of prime peri-urban customary land which is consolidated, planned, surveyed and subdivided into plots, usually of 15m x 30m sizes before selling them to clients, mostly, for residential purposes (Banda, Interview, 18 July

2023). The agencies check the tenure category of the land with either the City Council or the Ministry of Lands. The family and clan leaders are also consulted to confirm ownership. This is done to avoid being entangled in dubious land transactions. If the land is within the city boundaries, the Sustainable Urban Land and Shelter Development Consultants (SULSDEC)²⁵ submits detailed layout plans to the responsible Town Planning Committee for scrutiny. Online sources, mostly social media posts (see figures 4.10 – 4.14) show that these companies offer different services including selling plots, property sales, land surveying, title deed processing and property management.

From designating capital city status which triggered rapid urbanisation, implementation of the colonial planning law, and encroachments to the experiences of the ad-hoc planning that continue to characterise the city (LCC, 2020; Manda, 2005), Lilongwe has experienced untold land administration related challenges. These challenges illustrate that, as a development tool, land use planning is a delicate tool that tends to be affected by the ever-changing social, political, and economic environments. Understanding that “[g]ood urbanisation creates opportunities for countries, allowing them to improve their economic performance, foster social inclusiveness, and encourage environmentally sustainable growth patterns”, the poorly generated urbanisation entails Malawi’s performance against such international instruments as the Sustainable Development Goals (SDGs, 2015), is poor (UNHABITAT and OECD, 2018, p. vi). The urbanisation-focussed SDG 11 “Make cities and human settlements inclusive, safe, resilient and sustainable” among other things measures the “[p]roportion of urban [and peri-urban] population living in ... informal settlements” (UNHabitat, 2020, p.7).

National level implementation of SDG 11 has led to the formulation of National Urban Policies (NUPs) (Malawi Government, 2019; UNHABITAT and OECD, 2018). The UN-Habitat (2014b cited in UNHABITAT and OECD, 2018, p. 18) defines NUP as:

[A] coherent set of decisions derived through a deliberate, government-led process of coordinating and rallying various actors for a common vision and goal that will promote more transformative, productive, inclusive and resilient urban development for the long term”

²⁵ SULSDEC is a local private company established in April of 2013 to support the Malawi government in providing adequate, affordable and equitable access to land and housing. Inspired by the high rate of urbanisation, high demand for housing and prevalence of unplanned settlements in urban and peri-urban areas of cities and major towns across the country, SULSCDEC seeks to promote easy, safe, secure and decent urban communities (<http://www.sulsdec-mw.com>).

UNHABITAT and OECD (2018, p. 18-19) find Malawi's NUP as 'extensive' with indicators that "represent a strong policy commitment on the part of the national government that is also integrated into a NUP and efforts such as objectives, rationales and specific policies." Regardless, the empirical evidence and the historicised trends observed in Lilongwe entails 2030 may come too quickly for Malawi to comprehensively achieve SDG 11.

Figure 4.9 – 4.14: Flyers and a signpost of different estate agencies describing services offered and sites worked



Figure 4.9: SULSDEC Green Village (Website, <http://www.sulsdec-mw.com/>)



Figure 4.10: Elite Real Estate Ltd (Facebook Page, <https://rb.gy/k7gkcz>)



Figure 4.11: Powerhouse Real Estate Limited (Facebook Page, <https://rb.gy/d2isih>)



Figure 4.12: Infinity Firms Malawi (Facebook Page, <https://rb.gy/3ac34l>)



Figure 4.13: Urban Realtors (Facebook Page, <https://rb.gy/c8y4k1>)



Figure 4.13: Heric Estate Agents in Area 55 (Photo Taken by Researcher, July 2023)

4.4 Conclusion

Drawing on the literature presented in chapter two, this chapter has presented an analysis and discussion of the research findings. The chapter is outlined as follows: Malawi's historical land dispensation, post-colonial land policies and reforms, statutory access to land, gendered process of customary land access, informal access and l'aissez faire implementation of planning law. Occurrence of the land access challenges and trends has given rise to dissensus and conflicts at national, local and grassroots levels, manifesting through the ever-increasing uncharted ways and means of land acquisition. These include militant and quiet encroachments of public land and generally, the informal land administration mechanisms. Lastly, challenges facing the land sector have justified the reforms agenda which has however been resisted and protracted, putting to question policymakers' commitment to addressing the challenges in the sector.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This study is premised on the argument that, despite being a prerequisite to the realisation of other human rights such as the right to shelter and development, access to land is challenged by many factors causing unsustainable and precarious living conditions. Furthermore, the fight against discrimination of persons living in precarious conditions such as the informal settlements and rural areas is conditioned on equitable access to land and natural resources. The overlapping institutional and geographic boundaries of peri-urban areas make the implementation of land policy and reform efforts, difficult which inevitably widens inequality by increasing land tenure insecurity, vulnerability and poverty. Thus, this study contributes to a nuanced understanding of the concept - peri-urban area. For instance, a diagnosis of challenges and the underlying conditions the nation is historically and currently dealing with reflects an array of poorly guided urbanisation. Therefore, the study further illuminates the understanding of peri-urban as land use transitioning areas with overlapping institutional and geographic boundaries. As such, the presence of traditional leaders understood in the local language as *mafumu amagazi* within the city's administrative boundaries entails these are peripheral areas and using Caldeira's (2017) understanding, the distance from the inner city or built-up area matters less. The practice of unrestricted seasonal maize production on customary land (by unrelinquished customary rights), otherwise enclosed within the city boundaries qualifies such to be peri-urban areas.

Complemented by the extensive literature review, this research used a case study method to collect qualitative data. Despite being criticised for failing to contribute to scientific development through generalisation of findings of a single case, a critique that Flyvbjerg (2006) refutes, this methodology was used because of its ability to enable the researcher to closely explore complex interventions or relationships as the mechanisms of accessing land in the study areas. This helps contribute to a nuanced understanding of the phenomena. A purposive sampling technique was used to identify research participants to participate in the in-depth individual interviews on the intricacies of access to land in Lilongwe's peri-urban areas. This data collection technique was complemented by the non-participant observations and desktop research. The insights gathered are summarised below.

5.2 Summary of Findings

The study illuminates the understanding of peri-urban as land use transitioning areas with overlapping institutional and geographic boundaries. A diagnosis of the challenges and the underlying conditions the nation has historically and is currently dealing with, reflect poorly guided urbanisation. The presence of traditional leaders, understood in Chichewa as *mafumu amagazi*, within the city's administrative boundaries entails these are peripheral areas and using Caldeira's (2017) understanding, the distance from the inner city or built-up area matters less. The practice of unrestricted seasonal maize production on customary land (by virtue of unrelinquished customary rights), otherwise enclosed within the city boundaries qualifies the areas to be peri-urban areas.

The study findings have revealed, however, numerous challenges that continue to disrupt land access in Lilongwe, Malawi. This research finds that the land challenges in the country are historical, spanning from the implementation of the colonial land policy, the residual effects of which have endured into the post-colonial era. To address this, several reforms have been undertaken. However, the reforms of land and related laws have run into criticism for, among other things, being protracted. Furthermore, the policymakers' and the politico-legal institutions' commitment to making the reforms work is questioned due to systemic bureaucratic shortcomings, namely insufficient financial and technical capacity, political interference, poor coordination, inconsistent application, and the reorientation of the elites from agriculture to commerce as a principal means of accumulating and maintaining political power. Coupled with a high urbanisation rate, these challenges have overwhelmed the formal logic of accessing land leading to *l'aissez faire* implementation of planning law and insufficient levels of plot creation and allocation to residents and developers.

Militant and quiet encroachments on (public and) customary land are two indicators of the disrupted land administration system. The tendency of the politico-legal authorities to relegate customary land access to temporary holding appears to be delineating extent to which the customary land access mechanisms may be perceived to be formal or informal which complicates the situation. Thereby, land regularisation programmes are perceived as a remedial mechanism. However, given the sluggish formal land administration system, to fulfill its mandates, land

regularisation programmes and haphazard land acquisition promote l'aissez faire planning, romanticisation of which is criticised for not only promoting poor planning but also incarnating exclusionary powers in favour of the formal land administration system. Still, this ideological positioning does not apply in a real-world institutional set ups. The understanding further widens the incoherence between the systems thereby promoting conflicts between customary and formal land tenure systems. Through examination of these phenomena, thus the research reveals the linkages between different land access mechanisms in the urban and peri-urban areas of Lilongwe city. With customary and informal mechanisms of land access being widely conceived as counter-developmental to the underpinnings of the formal land access mechanisms, incoherence, conflicts and inconsistency generally embody the linkages between the mechanisms causing precarious living conditions.

Although this research finds neolocal inheritance rules and gendered land reforms as promoting equitable access to land in the peri-urban areas of Lilongwe city, the same instruments adversely affect men's and women's land rights differently. For instance, promoting joint registration in matrilineal-auxorilocal societies improves land rights for men while weakening women. Lastly, the study argues that non-legal and non-gender considerations should be considered in the discourses about promoting equitable land access. Therefore, mindful of the shortcomings, adopting a wide range of practices in the conundrum of access mechanisms has the potential to improve equity and equality in the land. This is understood as the cornerstone in overcoming discrimination against persons living in precarious conditions in the peri-urban areas.

5.3 Answer to the main research question

The findings indicate that various national laws, policies and customs determine and facilitate access to, use, control and transfer of land: First, is the Malawi National Land Policy (MNLP, 2002). Massively informed by findings of the Presidential Commission of Inquiry on Land Policy Reform (1999), the policy guarantees social harmony by adopting “complex ... socio-economic and legal prescriptions [of] land tenure systems [to] influence [land access and benefits distribution thereof] (Malawi Government, 2002, p. 16). Second, the Land Act of 2016 harmonises the existing legal framework with the aspirations of the MNLP (2002). Importantly, the Act abolishes the granting of freehold land tenure and restricts land ownership to Malawian nationals unless for a lease of 50 years or less. Again, seeking to harmonise the existing legal framework (in physical

planning) with the aspirations of the MNLP (2002) and translating the policy's findings and recommendations into law, Physical Planning Act (2016c) is another critical law facilitating land access in Malawi. Other key pieces of legislation governing access to land are the Local Government (Amendment) Act (LGA) of 2017, Customary Land Act (2016b) and National Urban Policy (NUP, 2019). Though not fully functional (see chapter 4.1), these laws and policies recognise customary land tenure as legitimate which requires a statutory acquisition process laid out in the Land Acquisition (Amendment) Act (2017).

The research finds that primarily, access to land in Lilongwe's peri-urban areas is through customary mechanisms. Contrary to the expectation of politico-legal authorities allocating plots to the applicants and developers, the delays of the ritualised planning processes related to the creation and relinquishing of the customary land rights and high demand of the same have historically promulgated informal land access occurring through encroachments and customary land purchases. Thus, using statutory mechanisms the research observes developable land parcels are delivered through direct allocation of plots to applicants in government sites and services schemes; private developer schemes or corporate mechanism such as the Northgate Housing Project; and secondary allocation from government agencies and NGOs such as the Lilongwe city council and the Habitat for Humanity. Coupled with the poorly coordinated estate agent phenomenon, the informal land access mechanisms are observed to be promoting poor planning.

5.4 Recommendations and areas for further research

This section outlines several recommendations based on the research findings, including avenues for further research.

5.4.1 Recommendations

Based on the literature review and the findings, this study makes some recommendations. Together these recommendations can contribute to a holistic approach to addressing the challenges of accessing land in the peri-urban areas of Lilongwe, Malawi, fostering sustainable and inclusive urban development. First, the government should awaken its responsibility by being proactive and ensuring that bureaucracy-related land access challenges are removed from the system. Further, the study makes the following recommendations:

i. Policy Advocacy

The CSOs' realisation that disjointed land governance advocacy initiatives are limiting calls for well-coordinated policy advocacy platform(s). Concerted efforts for evidence-based advocacy will among others encourage knowledge-sharing of best practices of such divergent cases as one reported by the Lilongwe District Council that elected and non-elected members of their land allocation committee perform without any squabbles. Therefore:

- Responsible ministries should encourage a multistakeholder approaches to comprehensive urban land governance to steer evidence-based advocacy.
- Non-state actors should advocate for the formulation and monitor implementation of comprehensive urban land policies in peri-urban areas across Malawi.
- Local Governments must develop policies that balance the interests of various stakeholders, ensuring equitable access to land for both urban and peri-urban communities.

ii. Community Engagement

This is based on the finding that some land expropriation programmes are poorly coordinated with little or no prior engagement with the customary landholders. This, as the research reveals, contributes to the delayed processes related to plot creation and issuance to the developers. As such, given the dissensus and grassroots rebellion, any plans to review the detailed layout plans should, at all land use planning levels, consider such empirical evidence and ensure that:

- Policy-holders mainstream community participation in the planning and decision-making processes related to land access in peri-urban areas. This can involve town hall meetings, community forums, and other inclusive platforms to gather input and feedback.
- Fast-track implementation of the 2016 Customary Land Act which includes the formulation of Customary Land Committees that should be empowered to work with local residents in negotiating and managing land resources collectively.

iii. Land Use Planning

The finding that increasingly estate agents, private customary land purchases and encroachments encourage unregulated urbanisation and urban sprawl calls for an integrated planning approach which policyholders should seek to mainstream so that urban development balances the needs of all sectors including open spaces.

- Mainstream integrated land-use planning and regulation to manage urban sprawl and accommodate the diverse needs of peri-urban communities, considering residential, industrial and agricultural land use to balance urbanisation with the preservation of natural resources.

iv. *Infrastructure Development*

Conditioning funding access to the development of land use plans, the development of which continues to be hampered, the new forms of land regularisation approaches observed in Areas 25 and 55 for the residents to among other things observe road reserves when selling land suggest grassroots-led infrastructure development is commendable yet, not enough. Therefore:

- Recommend the improvement of infrastructure in peri-urban areas, such as roads, water supply, and sanitation facilities, to enhance accessibility and livability.
- Advocate for the provision of basic services in peri-urban areas to attract investment and improve the quality of life for residents.

v. *Environmental Conservation*

The observation that some industries continue to illegally operate despite the City's efforts to stop them raises an environmental concern requiring monitoring efforts beyond formal establishments. This will ensure that land access is sustainable. It is recommended that:

- State and local governments should encourage and mainstream implementation of sustainable land management practices to mitigate the environmental impact at all levels of the peri-urban development.
- *Capacity Building*

Based on the observation that, coupled with low literacy levels, autocratic government and elite capture of formal land administration stifle grassroots voices on equitable land policy, capacitating different stakeholders will encourage checks and balances, and accountability in the land access agenda. It is recommended that:

- Capacity-building programs for local authorities, planners, and community leaders be developed to enhance their skills in sustainable urban development and land management.

- Educational initiatives to raise awareness among peri-urban residents about their rights, responsibilities, and opportunities in land access and use should also be implemented.

5.5.2 Areas for further research

Based on the literature review, research findings and the recommendations above, this study identifies gaps requiring further investigation to deepen the conceptual and geographic understanding of the peri-urban areas and mechanisms for accessing land therein. Importantly, each suggested avenue of research encourages collaboration between academic and research institutions, government agencies and non-governmental organisations to monitor changes. Therefore, this study recommends:

- i. To investigate alternative tenure systems that can ensure the security for peri-urban residents, particularly focusing on, among other things, community-driven and inclusive approaches. This is in view of the impending customary land registration programme and the requirement to relinquish customary landholding to pave the way for the statutory land allocations.
- ii. Comparative studies to assess the implications of accessing land through identified mechanisms on the Ndunda land registration system.
 - a. Although the system conferred security of tenure, the land is not planned. Enclosure of such land into city boundaries interestingly brings into debate planning and tenure security. A study of the two phenomena will inform a comprehensive approach to land reforms in peri-urban areas.
- iii. Comprehensive land regularisation studies to inform the government's tenure formalisation programmes.
 - a. This recommendation is based on the finding that the current land regularisation programmes are informed by legal statutes characterised by residual effects of colonial planning policy. Implementation of this recommendation will contribute to the call to decolonise land access mechanisms.
- iv. Critical gender assessments to establish the extent to which non-legal social construction such as modernisation impact access to land in urban and peri-urban areas.
 - a. Based on the finding that heterogeneity and a neolocal system of marriage are crucial factors to consider in the debates about land equity and equality,

assessing the contribution of such dynamics to equitable access to land will help maximise land reform efforts.

- v. A study on the effects of incorporating peri-urban areas into municipal boundaries on property values.
 - a. This is based on the revelation that peri-urban areas are often characterised by a strong influence of urban activities.

Without proactively engaging the residents, developers and the increasing number of estate agents to provide workable alternatives the prevailing land development trends will only promote conflicts between planning and customary land tenures, causing informality, land speculation and non-planning. Though not exhaustive, implementing these recommendations and areas for further research will increase preparedness by land users and policyholders so that land access mechanisms are responsive. For instance, such underlying conditions as limited funding, corruption, politics, land speculation, land markets and multiple landlordisms are not spelled out. However, the researcher understands that addressing the recommended areas has the potential of providing the required understanding, harnessing the required discourse and exciting partnerships to address both the challenges and the underlying conditions that continue to disrupt sustainable management of the urban and peri-urban areas of the global South cities such as Lilongwe.

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ANNEXURES

Annexure 1: UCT EBE ethics clearance certificate



UNIVERSITY OF CAPE TOWN
IFUNYISIYO YASEKAPA · UNIVERSITEIT VAN KAAPSTAD

2023/05/11

EBE/00109/2023

RE: Research Ethics Committee Project Approved with Condition(s) Letter

Dear Mcdonald Galimoto,

Your application for ethics review of your project titled

Accessing Land in the City's Peri-Urban Areas: Case of Lilongwe, Malawi

has been reviewed and evaluated by the

EGS:Dept of Environ & Geographic Science Research Ethics Committee (REC).

Based on the information supplied your application has been conditionally approved.

Please note the following additional conditions associated with this approval:

- (i)
 1. The data management plan should be provided, indicating that storage of data will be password protected and destroyed after submission of the dissertation. This plan should also be communicated on the consent form.
 2. In relation to the schedule that indicates 1st March start date for field work:
 - a. if the field work has not yet commenced this date should be adjusted on the application to reflect a date after ethics approval
 - b. if the field work has commenced the data collected should be destroyed and the process repeated once approval has been obtained
 - c. if the applicant does not wish to repeat the field work already undertaken, an application of non-compliance may be made to the Dean with a motivation.

Proof that you have met these conditions, in the form of letters of permission or other relevant documentation, should be supplied to the REC, via the eRA system.

Once you have met with the above condition(s), you may proceed with your research project titled:

Accessing Land in the City's Peri-Urban Areas: Case of Lilongwe, Malawi

Please note that should:

- (i) any serious or adverse effects to participants occur and/or,
- (ii) aspect(s) of your current project change and/or
- (iii) any unforeseen events that might affect continued ethical acceptability of the project occur then you should immediately report this to the approving REC. You may be required to submit an amendment to this application, in order to determine whether the changed aspects increase the ethical risks of your project.

Regards,

EGS:Dept of Environ & Geographic Science

Research Ethics Committee

Annexure 2: Interview consent form-English

Hello, my name is McDonald Galimoto, a Master of Philosophy in Southern Urbanism student at the University of Cape Town. I am conducting research titled: *Accessing Land in City's Peri-Urban Areas: The Case of Lilongwe, Malawi*. I am researching mechanisms through which residents of Lilongwe access land in the city's peri-urban areas, examine the linkages between different mechanisms and determine their implications on development.

I would like to invite you to participate in the project.

Participation is voluntary- Please understand that I value your participation and that it is voluntary. The choice to participate is yours alone. If you choose not to participate, there will be no negative consequence. If you choose to participate, but wish to withdraw at any time, you will be free to do so without negative consequences. As a participant in this research study, you will be asked to discuss information related to land administration in Lilongwe based on your experience. The interviews will last approximately one (1) hour. To keep a record of the interviews for transcription and reporting, I request that the interview be audio recorded.

Data management plan (DMP) – I have developed project DMP to guide data handling and storage. The project data including the recordings will be securely stored on a password protected hard drive, which only the researcher and supervisor have access to. The data will be destroyed after the dissertation has been submitted and assessed.

Anonymity and Confidentiality–Your privacy and confidentiality will be respected and where necessary, such as in the case of documenting personal experiences related to gaining access to land. Please indicate whether or not you would like your real name to be used in the research and any subsequent publications. If you do not want your real name to be used, a pseudonym will be used instead.

- Yes, I consent to the use of my name in this research.
- No, I do not consent to the use of my name in this research. A pseudonym should be used instead.

Name of participant Date

Participant's signature.....

Researcher: McDonald Galimoto Date:

Researcher's signature

Annexure 3: Translated Consent Forms (Chichewa)

KAFUKUFUKU WA ANTHU AM'DERA (COMMUNITY INTERVIEWS)

Kapezedwe ka malo mu m'zinda wa Lilongwe (Accessing Land in City's Peri-Urban Areas: The Case of Lilongwe, Malawi)

Helo, dzina langa ndi McDonald Galimoto, wophunzira ku yunivesite ya Cape Town (*University of Cape Town*). Ndikuphunzira ukatswiri wa kayendetsedwe ka mizinda ndi matawuni (*Master of Philosophy in Urban Studies*). Pakadali pano, ndikupanga kafukufuku wa njira zimene anthu amagwiritsa ntchito popeza malo mu mzinda wa Lilongwe, ndi kuti zimenezi zimakhudza bwanji chitukukoko cha mumzindawu.

Ndikukukuyitanirani kutenga nawo mbali pa kafukufukuyi.

Kutenganga mbali nkosakamiza- Nkoyenera kuzindikira kuti kutenga mbali kwanu pa kafukufukuyi nkofunika kwambiri ndipo nkosakamiza. Simuli okakamizika kutenga mbali ndipo ngati mungasankhe osatengapo mbali palibe chotsatira chili chonse chomwe chichitike. Ngati mungasankhe kutengapo mbali kenako nkusinthira chiganizo mukhala oloedwa kutero popanda vuto lirilonse.

Ngati otengapo mbali pa kafukufukuyi, mufunsidwa pakukambirana za m'mene mukudziwira za kayendetsedwe ka malo mu mzinda wa Lilongwe. Kukambiranaku kutha kutenga pafupifupi ola limodzi (1hr). Pofuna kusunga malekodi a zokambiranazi, ndikupempha kujambula mawu (*audio record*).

Kasungidwe ka mfundo zopezeka mu Kafukufukuyi – Mfundo zomwe zikambidwe ndikupangidwa *record* pa kafukufukuyi zidasungidwa mwachinsisi ndipo ma lekodi wa adzawonongedwa lipoti la kafukufukuyi likadzachongedwa.

Chinsinsi pa Zokambirana- Chinsinsi chanu pa zokambiranazi chilemekezedwa.. Zokambirana monga njira zimene munatsata popeza malo zikhala za chinsinsi ngati kuli koyenera kutero. Mukufunsidwa kusankha ngati muli olola kuti malipoti a zokambiranazi komansonso kafukufukuyi angagwiritse ntchito dzina lanu la pamsonkho kapena ayi. Ngati si koyenera kugwiritsa ntchito dzina lanu leni-leni, dzina lozimbayitsa ligwiritsidwa ntchito m'malo mwa dzina lanu.

Inde, ndikuvomereza kuti ndina langa litha kugwiritsidwa ntchito mu kafukufukuyi.

Ayi, sindikuvomereza kuti dzina langa ligwiritsidwe ntchito mu kafukufukuyi ndipo dzina lozimbayitsa likuyenera kugwiritsidwa ntchito m'malomwa dzina langa.

Dzina la otenga mbali Tsiku

Kusayinira/kupanga *audio record*

Dzina la wopanga kafukufuku: McDonald Galimoto Tsiku

Annexure 4: Letters from the Ministry of Lands and the Lilongwe City Council

Requesting for permission to collect data on land governance in Lilongwe

I am writing you in your official capacity as the Principal Secretary (PS) for the Ministry of Lands in Malawi. As you may recall, I am studying towards a Master of Philosophy (MPhil) in Southern Urbanism at the University of Cape Town (UCT). The programme is being anchored at the African Centre for Cities (ACC) which sits in the faculty of Engineering and the Built Environment (EBE). As a partial fulfillment for the award of this postgraduate degree, am writing my thesis entitled "Accessing Land in the city's peri-urban areas: the case of Lilongwe."

The overall aim of the research is to determine the mechanisms through which residents of Lilongwe access land in the city's peri-urban areas. With this aim in mind, the research also seeks:

1. To examine the linkages between different mechanisms of accessing land in peri-urban areas.
2. To determine the implications of different mechanisms of accessing land in the peri-urban areas.

Therefore, I am requesting your permission to interview various officials within the departments of Land, Physical Planning, and Urban Development about their role to ensure that physical developments take place in an orderly and sustainable manner. The interviews will specifically be focused on their roles to provide land, housing and urban development services to the general public, stakeholders and other parties seeking these services. I also intend to interview residents, built environment professionals – registered planners and surveyors to mention a few - developers, local and traditional leaders in Areas 26, 44, 54 and 55 as well as the Lilongwe City Council (LCC), the Lilongwe District Council (LDC), Airport Development Limited (ADL), the Centre for Community Organisation and Development (CCODE), Habitat for Humanity, the Lilongwe Water Board or Central Region Water Board and ESCOM.

I intend to conduct the interviews from mid-July to mid-September of this year, with the possibility of follow-up interviews being conducted between mid-November and mid-January 2024.

The study has been duly cleared by the Ethics Clearance Committee in the EBE department. Should you need further information about this study, please feel free to contact my supervisor, Dr. Nobukhosi Ngunwenya via email on nobukhosi.ngwenya@uct.ac.za.

Kind regards,
McDonald

DC Davie Chilonga <daviechilonga@gmail.com>
To: Mcdonald Galimoto
Cc: Mcdonald Galimoto <macdongalimoto@gmail.com>
Tue 6/27/2023 4:14 PM

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Okay thanks
All the best.

From Macloud Kadam'manja

Requesting for permission to collect data on land governance in Lilongwe

Mcdonald Galimoto
Dear Dr. Macloud Kadammanja I am writing to you in your official capacity as the Chief Executive Officer (CEO) for the Lilongwe City Council...

MK Macloud Kadam'manja <macloud.kadammanja@lcc.mw>
To: Mcdonald Galimoto
Fri 6/30/2023 7:53 PM

CAUTION: This email originated outside the UCT network. Do not click any links or open attachments unless you know and trust the source.

Request received. We have no objection. Will respond in a separate letter

Regards

Disclaimer - University of Cape Town This email is subject to UCT policies and email disclaimer published on our website at <http://www.uct.ac.za/main/email-disclaimer> or obtainable from +27 21 650 9111. If this email is not related to the business of UCT, it is sent by the sender in an individual capacity. Please report security incidents or abuse via <https://csirt.uct.ac.za/report-incident>

Annexure 5: Professionals Interviews

1. How do people access land in Lilongwe?
 - 1.1 What are some of the repercussions of different mechanisms of accessing land in Lilongwe on land use planning?
2. What is the current state of land governance in Lilongwe?
3. How have land governance policies been implemented in Lilongwe?
 - 2.1 Which actors do these policies task as primarily responsible for land governance in the city?
 - 2.2 Who are the other actors in land governance in Lilongwe city you know?
 - 2.3 Do you think these policies, and related legislation, respond adequately to the demand for land?
 - 2.3.1 What land governance instruments do these policies enable?
 - 2.3.2 What are some of the challenges to the use of these instruments?
 - 2.4 Are there any gaps that these policies fail to address? Is there something that has been overlooked?
 - 2.5 Are there synergies/contradictions between these or other instruments that you know of?
4. Are you involved in the production of land use plans (allocation of plots in Areas 26/44/54/55) in Lilongwe city?
 - 3.1 If so, can you reflect on this process? What has been the biggest challenge you have encountered so far?
5. What are some of the specific challenges your institution faces in relation to facilitating access to land for citizens?
6. Do you form part of the team that is allocating plots in Lilongwe?
 - 6.1 If yes, what is your role?
7. Which Ministry/Department do you work for?
8. In your opinion, is your institution effective in facilitating access to land in the city?
9. What do you think can be done better to improve access to land for citizens in Lilongwe?

Final question: Do you have any additional reflections you would like to share with me?

Annexure 6: Community Interviews

Access to land

- When did you move to Area 26/44/54/55?
- Where did you live before you came here, and how long did you stay there?
- Why did you decide to move to this area?
 - o Once you decided to move here, how easy was it to find a piece of land or house?
 - o Who did you speak to, to gain permission to occupy/rent/own the land?
- Do you own this land?
- How did it feel to start a new life in Area 26/44/54/55
- What are your future plans for this house/land?

Policies and Actors

1. What do you think can be done better to help people gain access to land in the city?
2. Do you know of anyone else who facilitates access to land in Lilongwe?
 - 6.1 Do you think they are effective in facilitating access to land in the city?
3. How useful has the Ministry of Lands been in helping you access this land/house?
4. How useful has the Lilongwe City Council been in helping you access this land/house?
5. How useful has the Lilongwe District Council been in helping you access this land/house?
6. Do you think these organisations have been helpful to other people trying to access land?
7. Do you have any additional reflections that you would like to share with me?

Demographic information

- How old are you?

How many people live in your household?

Annexure 7: Non-participant/Field Observations

- Field notes and sketches (for the transcripts) yet to be verified through formal and informal interviews with different participants.
- land uses, planning processes and the materiality of infrastructure development in the target areas

AREA	DATE: ... / ... /2023_____ TIME: _____