

## FANRPAN POLICY BRIEF No. 3 REVIEW OF LAND POLICY IN MALAWI

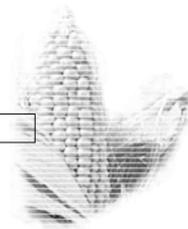
### Overview

Previous land reform experiments in Malawi failed to attain the economic and social legitimacy necessary to unleash the land market responses expected to spur national development. On the assumption that customary land was inherently insecure, the government decided, after independence to pursue a policy that would privatise customary land through the introduction of some form of freehold tenure, as a means of promoting agricultural development. The Customary Land Development Act and the Local Land Boards Act were enacted and are still in force for that purpose. The Government of Malawi operated without a comprehensive land policy since independence. The Malawi National Land Policy epitomises the government desire to address the constraints to Malawi's social and economic development caused by the absence of a comprehensive land policy. In January 2002, the Government of Malawi published its National Land Policy following a countrywide consultation process. The government is preparing a Sector Wide Approach (SWAP) to the implementation of the policy to which the World Bank, EU, DFID and USAID are contributing. Component projects under design include land acquisition and resettlement on under-utilised land to relieve landlessness.

### The Nature and Dimensions of the Land Problems in Malawi

Land problems in Malawi emanate from:

1. *Residual effects of colonial land policy.* Malawi inherited a rural settlement structure in which some of the most fertile lands were reserved for white farmers leading to a very skewed distribution of land in the country.
2. *High population to land ratio.* Malawi's population is not evenly distributed. With more than 170 inhabitants per square km of arable land, Malawi has one of the highest population densities in Africa and this has contributed to land degradation and accelerated deterioration of natural resources. It is expected that by 2020 the population may rise to 20.8 million given the present population of about 11 million and growth rate of about 3.2% per annum. Overall national population density may exceed 220 persons per square kilometre.
3. *Fragmented and uneconomic family holdings.* The 1992/93 national sample survey of agriculture indicated that 78% of households in the smallholder sub sector owned or controlled less than 1 hectare of land. This is clearly inadequate to meet the annual food requirements of an average household of five members using existing technologies.
4. *Poor utilization of leasehold estates.* Since independence most of customary land was converted to leasehold for agricultural purposes. Many holders obtained grants that were far in excess of what they were capable of developing, besides some leasehold grants were made without verification as to the suitability of the purposes for which they were sought. Inefficient and poor utilisation of land have had the consequence of increasing poverty for the majority of the citizens, low estate sector returns, poor agricultural wages and increased income inequality.
5. *Land scarcity exists in spite of idle lands.* On the basis of estimates made in 1994, 2.6 million hectares of suitable agricultural land remains uncultivated in the rural areas. Land is left idle for extended periods of time due to poor soil fertility, overlap between agriculture, human settlement and infrastructure. In the absence of dramatic changes in technology and shifts in population, land pressure is likely to increase and with it, competition for and conflicts over land resources.
6. *Provocative trespassing.* Leasehold and freehold lands are often deliberate targets for encroachment by land hungry small scale operators. Encroachment onto private land, forest reserves and national parks has become frequent and sometimes violent in the belief that estates have far too much land for their needs, or the belief that the government cares more for wild animals than humans.
7. *Corrupt administrative practices.* Fraudulent disposal of customary land by traditional chiefs and government officials often deny critically needed access to people most desperate for land.
8. *Insecurity over land rights.* Increases in land pressure have substantially increased tenure insecurity and uncertainty over land rights despite attempts by communities to consolidate access rights both physically and legally.
9. *Privatizing access to customary land.* Land users not related to the core lineage members in a community referred to as "akudza or obwera" becoming increasingly targets for eviction or compelled to share land legitimately allocated to them with newer immigrants or members of the core lineage.
10. *Denying access to community resources.* Forest products and natural resources are perceived as God given, or ancestral and questions arise as to whether any person or institution should have any right to constrain villager's access to such resources?



11. *Cross border encroachment by immigrants.* The effect of international boundaries and territoriality is often blurred or simply ignored. The commission of inquiry received evidence of encroachment by nationals from Tanzania, Zambia and Mocambique into the districts of Rumphu, Mzimba, Kasungu, Mchinji and Ntcheu.
12. *Monitoring of conservation and protected areas.* Encroachment onto national parks and wild life reserves are common in many areas. The environmental as well as the economic importance of national parks is generally not appreciated, probably because the creation of some of these parks involved the displacement of entire villages being forced to move into valleys of uncultivable gradients.
13. *Land degradation.* There is evidence of destruction of soil cover in watersheds and catchment areas, erosion of agricultural soils and destruction of indigenous forests in all tenure categories.
14. *Ignorance and insensitivity.* Communities are not sensitized to the need for proper land management practices especially in situations where continuous damage to land resources is sinking them deeper into poverty.
15. *Mismanagement of land development.* Underutilization of land, obstruction of water courses, illegal development and unplanned buildings in urban settlements indicates a failure of development controls occurring in the context of all land tenure categories and land uses.
16. *Reckless allocation of lakeshore lands.* Traditional authorities continue to allocate land along the lakeshore, individuals and companies erect private leisure cottages and hotels. There is inadequate monitoring of development along the lakeshore from Karonga to Mangochi.
17. *Lakeshore Development Control.* Cottage/hotel development along the water front and associated fencing has resulted into obstruction of public access and use of beaches by local communities. The displacement of local communities to make way for private land developers, some located below the safe flood risk zone of 480m contour line and uncontrolled waste disposal has heightened water pollution and environmental damage.

### Important Aspects of the New Land Policy

Important aspects of the land policy are:

- the clarification and strengthening of customary land rights and formalizing the role of traditional authorities in the administration of customary land which covers some 80% of the country;
- providing for all customary land to be registered and protected against arbitrary conversion to public land; encouraging all customary landholders (entire communities, families or individuals) to register their holdings as private customary estates in ways that preserve the advantages of customary ownership but also ensure security of tenure;
- allowing private leases to be created as subsidiary interests out of any private land, including registered customary estates, without relinquishing the underlying ownership of the customary landholder; the strengthening of the land rights of women and orphans; and the regulation of land access by non-citizens.

Among the major impediments to implementation are the high incidences of natural disaster (floods and drought), the HIV/AIDS pandemic, the very weak state of the economy and the long running political uncertainties, which have caused the withdrawal of some donor funds. Civil society pressure for and in support of sustainable land reform is weak. The new treatment of foreign owned land is worrying some people. Existing landholders have to convert their freeholds into 50 year State leaseholds, and future investors are subject to a series of restrictions. The 50 year period is considered by many to be too short for investment, and there are concerns that the new policy will undermine investor confidence and impact badly on rural development in general. A land code incorporating these and other measures is under preparation. In the process, it is hoped that various policy ambiguities will be clarified, especially those relating to the conditions for the alienation of customary land. A major programme to train land clerks (e.g. for land registration) is also underway.

### Lessons Learnt

Without a basic or referential policy framework on land, it is not possible to mobilise an internally coherent and coordinated scheme for the implementation and supervision of plans designed on the basis of discrete sector requirements. Many land conflicts can be resolved or managed through a comprehensive land policy development. Increasing land holding alone through redistribution without a corresponding increase in technology and other inputs such as labour and capital, an improvement in the marketing system, support services and infrastructure would not guarantee efficiency in resource use.

### Source (s):

Kandondo, F.; (2001) *Land Reform in a Regional Context: Malawi Experiences*, Paper presented at the SARPAN Conference on Land Reform and Poverty Alleviation in Southern Africa (4-5 June, 2001)

Madola, S.; (2003) *Review of Land Policy Reforms in Malawi*, FANRPAN Discussion Paper, February, 2003

SARPAN; (2003) *Seeking Ways out of the Impasse on Land Reform in Southern Africa*, Notes from an informal 'think tank' meeting, Manhattan Hotel Pretoria, South Africa. 1-2 March, 2001

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