

7. Grabbing land in Malawi

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The distribution of land in Malawi is highly unequal and frequently inefficient. Large areas of land are underutilized in a context where many Malawian farmers would be able to put such land to productive use. In this context, the Malawian government has been slow and ineffective in undertaking land reforms, despite large demand for change both from investors and the local population. This chapter explores the role that *grabbing* of land in Malawi plays in contributing to this situation. We focus on various forms of malpractice, corruption or opportunistic behaviours associated with land transfers. We begin by briefly setting out the history and context of land in Malawi, and then discuss various types of land grabbing that occur currently. We highlight the problems that this form of corruption leads to, before moving to consider policy suggestions for both the government and donors. Finally, we conclude by attempting to draw out any lessons that this example may teach us about corruption more generally.

7.1 BACKGROUND AND CONTEXT

The grabbing of land is not a new phenomenon in Malawi. Much of the current context around land is a result of previous land transfers that took place under colonial rule. The expropriation of land by white settlers was not as large as in Zimbabwe or South Africa, but, by the time Malawi had acquired independence in 1964, Europeans had acquired 'some of the most fertile and well-watered lands' (PCILPR, 1998: 29). These lands had typically been acquired through some form of agreement with local chiefs, but, in parallel with present day land grabs, it was contentious as to whether these traditional authorities had the right to alienate the land in this way (Holden et al., 2006). A set of land reforms was implemented in 1967, but these did not represent any significant break from the past, instead reflecting almost wholesale continuity with the colonial framework governing land tenure patterns and ownership that resulted in

massive alienation of customary land to the estate sector owned largely by the local elites (Ng'ong'ola, 1986; Kanyongolo, 2004).

The coming of multiparty democracy in 1994 was closely linked to a rise in land up the policy agenda. Advocates of the new political system argued that embracing the political transition offered opportunities to address a whole range of inequities and injustices, including inequitable land redistribution patterns (Kanyongolo, 2004; Chinsinga, 2011). The question of land reform was generally flagged as an immediate course of action to address the problem of poverty should Malawians choose to embrace a democratic political dispensation. However, despite this promise, little has been achieved with regard to land reform to date. A land policy concluded in July 2002 still remains largely unimplemented, with parts of the supportive legislative framework for the policy yet to be approved by cabinet or parliament.

The current land framework in Malawi therefore strongly resembles that which existed under colonial rule. Land in Malawi is divided into three types: public, private and customary. Public land is owned and managed by the government, while owners of private land have similar rights to those in other countries. The vast majority of land is customary land, which falls under the jurisdiction of traditional authorities and is administered under customary law – powers for the distribution and control of this land rests in the hands of traditional leaders. While there is pressure to move to a market system of privatized land, this is somewhat at odds with traditional cultures, and Malawi's institutions are not necessarily set up to deal with such a system (Mkandawire, 1983). Under the current legislative framework, customary land can be converted to private land (though not vice versa), but the exact process for doing so is somewhat unclear except when it is for development purposes (the existing law allows the government through the Minister of Lands and Physical Planning to appropriate customary land if it is intended for development such as roads and public buildings).

7.2 LAND GRABBING IN MALAWI

Within this land policy context, there are a range of malpractices that occur that could be described as land grabbing. Perhaps the form of land grabbing closest to traditional forms of bureaucratic petty corruption occurs in the allocation of publicly owned land. In some urban centres, for example, land is supposed to be allocated by the government based on need and the date of applications. However, in practice, corruption occurs such that public officials will allocate the land based on other

criteria. For example, the Lilongwe Land Allocation Committee is supposed to allocate land within the city, but in practice the committee is bypassed and its efficiency suppressed by the actions of ministers, principal secretaries, business magnates and other influential persons in society who pressurize government officials to favour particular applications (Mwakasungula, 2009). Having purchased Makande Tea Estate in 2001 from one of the European settler farmers, the government decided to donate it to Thyolo District Council for distribution to the people in the district. The beneficiaries were supposed to be land-poor and landless households with property value of less than MK 20 000, but it later turned out that many richer persons acquired land on the estates (Holden et al., 2006).

More commonly, allegations of land grabbing originate from customary land. The root of such malpractice normally centres on traditional chiefs and other authorities mishandling their duties in exchange for private gain. At the smallest level, this can include petty bribes given to leaders by members of the community to settle inter-communal land conflicts (Peters and Kambewa, 2007). Here, however, it may be difficult to draw the line as to what is labelled corruption and what is instead part of an established system of tribute giving. A clearer case comes in a recent World Bank sponsored pilot of land reform, where local authorities gave land to family, friends and those who bribed at the expense of households genuinely in need of land (Chinsinga, 2011). Moreover, the government is empowered to convert customary land into public land for development purposes, but only after a due process that includes proper compensation to the dispossessed communities.

At a larger scale, much controversy also revolves around traditional authorities 'selling' customary land to those from outside the community, typically allowing it to become private land in the process. Frequently it is felt that chiefs do not reflect the will of the community in such transactions, and indeed residents of the land in question typically do not receive compensation for loss of land (since technically the land was never owned by them). At times, this may be relatively informal and without the consent of higher authorities. At other times, however, government has been demarcating areas of customary land for development purposes, and may be involved in incentivizing the traditional authorities to consent to its transfer (Mwakasungula, 2009).

Several recent examples of this type of land transfer involve the development of land for growing sugarcane. Since sugarcane growth is most profitable when done over a large scale with capital investment, it is difficult for smallholder farmers to take advantage of growing the crop. The government is therefore encouraging the development of land by

private companies willing to invest in sugarcane. Recent cases include land near Dwangwa in Nkhotakhota district, and Nchalo in Chikawa district (Chingaïpe et al., 2013). In both cases, private companies have acquired land to grow sugar despite opposition from local smallholders.

Recent studies have shown that the land deals pertaining to the sugar plantations have been concluded by traditional authorities despite resistance by communities because they have been offered some inducements by the investors. This has led to traditional authorities sealing land deals with prospective investors without the knowledge of the owners or users of the land (Chingaïpe et al., 2013; Chinsinga et al., 2013). The communities have only discovered that their land has been sold when they see the new owners working on it. While on paper these transactions are supposed to be transparent and accountable, and concluded only after communities' consent and acceptable forms of compensation have been worked out, communities have been completely sidelined in these deals. The resistance by communities has been countered by force using the police and, where communities have taken the disputes to the courts, lawyers that have represented them have often dropped out of the cases on rather dubious grounds after initial rounds of success. Allegedly, they are induced to do so by favours from both the investors and the government. The involvement of the government in these land grabs suggests that they view customary land as an 'unlimited reservoir that can be targeted for conversion for privatization' (Chingaïpe et al., 2013: 7).

In other instances, land transfers have taken place in ways that completely bypass the local authorities. In the southern district of Mulanje, Mulli Brothers, a local conglomerate with links to the previous president, demanded land belonging to an orphanage that bordered a plantation they owned. Despite a decision by the High Court that the land belonged to the orphanage, Mulli put armed guards on the site while waiting for appeal, and the lawyer representing the orphanage suffered from two petrol bomb attacks. When the Supreme Court of Appeal upheld the earlier decision, the then Minister of Lands declared that the land should be given to a businessman close to Mulli Brothers. The land has only now been returned to the former owners due to a change in regime that is less favourable to the Mulli Brothers conglomerate.¹

Overall, a lack of transparency and efficacy in the formal land management process leave the system ripe for a range of abuses. The existing law requires that traditional leaders consult community members for their consent to proposed land transfers before the deals can be effectively concluded. However, reports circulate of local chiefs selling the same piece of land to more than one buyer.² Meanwhile, details of a

potential lease of land to the government of Djibouti remain unclear.³ Indeed, a reflection of the lack of transparency and potential for corruption can be seen in the banning of land transactions for 2 weeks in 2012. This occurred just after the death of President Binguwa Mutharika, when the lack of an effective minister meant there was considered to be a power vacuum in the Ministry of Lands. The banning of transfers was apparently put in place for the situation ‘not to be taken advantage of’. This can be seen as an implicit admission of the potential for corruption within the transfer of land.

7.3 CONSEQUENCES AND DISTORTIONS CAUSED BY LAND GRABBING

The most immediate impact of land grabs is a worsening inequality in the ownership of land as it is mostly the better off and foreigners who are able to get land at the time when per capita land ownership in Malawi has greatly diminished. The combined effects of the postcolonial development strategy and the rapid increase in population growth have led to the dramatic decline in per capita landholding sizes to as low as 0.8 ha in the 2000s from 1.53 ha in the late 1960s (Chirwa, 2004). Within this context, the distribution of land is highly unequal – it is estimated that between 1.8 and 2 million smallholder farmers cultivate on average 1 ha, whereas 30 000 estates cultivate 10–500 ha (Kanyongolo, 2004).

This inequality, combined with the non-consensual nature of many land grabs, has led to a rising resentment of the redistribution of land, particularly focused on foreigners. A recent report by Mwakasungula (2009) states: ‘many people have observed that only foreigners can manage to purchase land because of their economic muscles while ordinary Malawians cannot. The general feeling is that the current policy or existing laws favour foreigners in accessing and distribution of land’ (Mwakasungula, 2009). While such anti-foreigner feeling may be justified on occasion, it may make it even more difficult for foreign investors to acquire and invest in land in a legitimate and transparent fashion.

At times, resentment over land transfers has spilled over into damaging conflict. In the case of the Makande Estate distribution described above, neighbouring villages were not satisfied with the resettlement plan and started encroaching into the area. This led to the involvement of police, several violent clashes and two persons being killed. Settlers’ houses were demolished, crops destroyed and women harassed. There were also accusations that neighbouring villages attempted to contaminate the water sources of the settlers and stole building materials. This conflict

arose partly due to 'the perception that there were many rich civil servants, politicians and business people that had obtained land through corruption' (Holden et al., 2006).

The indirect effects of corruption in land are also highly damaging. In addition to the resulting distribution being inequitable, corruption has also resulted in an inefficient allocation of land. Since corruption may enable purchasers to obtain land quickly and with greater ease than usual, there is an incentive to gain as much as possible, even if this is more than one could use. Indeed, there is widespread feeling that many of the large estates are underutilized (Longley et al., 2003). Moreover, corruption means that land is allocated to those who might be best politically connected at the moment, rather than those that make best use of it, and land under contention due to suspected corruption may lie fallow for many years while matters are concluded in court (Mwakasungula, 2009). Corruption in land transfers also creates severe problems for the environment. Since corruption prevents land regulations from being effectively enforced, areas may become overpopulated, leading to deforestation.

Finally, one major result of corruption in land transfers is that it leads to a reduced political appetite to carry out appropriate land reform. This reduction in desire for reform comes from three main sources.

First, since elites who would like to obtain land can do so corruptly, they do not need to change the system in order to purchase land. Indeed, a more transparent and well-understood system may actually worsen the terms on which they obtain land. Corruption in the obtaining of land therefore separates the elite away from other members of society, and shields them from the inefficiencies and problems of the current land framework.

The second reason that corruption in land transfers reduces the desire for reform is that it creates resistance amongst those that benefit from this corruption. For example, a number of traditional authorities were opposing the recent Land Bill even though they – or their representatives – had earlier commented on the report and considered its proposals at least positively through a Special Commission's consultative process. Their resistance was, however, based on the conception that this Bill would eventually undermine their traditional and legitimate power over land at the local community level because it suggested that the role that traditional authorities currently play should be performed by a committee of four people with traditional authorities as *ex-officio* members. This would enhance transparency and accountability in land transaction matters but more critically take away the opportunity space for traditional leaders to extract personal benefits from the processes as is currently the case (Mwakasungula, 2009).

A third reason why corruption reduces elites' desire to reform land is that land reform potentially opens up the possibility of previous corrupt gains being reversed. For example, a commission appointed to consider land reform in the 1990s stated that it was persuaded that 'the acceptance of Certificates of Claim and the consequent legitimisation of title to land to which they relate, was a serious historical wrong to indigenous communities especially in the Southern Region of Malawi' (PCILPR, 1998: 53). The severe land pressure in the southern districts of Mulanje, Thyolo and Chiradzulu was thus, in part, seen as a result of this 'historical wrong', and the Commission stated that 'it is not unreasonable that demands for some form of land readjustment are being asserted in those areas'. While in theory it would be possible to separate redistribution of land from reform of the current regime, in practice the two aspects come as a bundle. For instance, implementation of the new land policy is likely to involve a clearer demarcation as to the ownership of current landholdings, and hence intensify conflicts where they exist.

7.4 POLICY SUGGESTIONS

7.4.1 For Government

At one level, recommendations for government fit within a more general anti-corruption agenda. Greater detection and prosecution of public officials involved in corruption should reduce the propensity of bureaucrats to take bribes in exchange for approving land transfers. Equally, increasing the transparency of land ownership and transfers is likely to make it harder for corrupt purchases to be hidden. Greater resources channelled towards institutions that play roles within the sector, such as the judiciary involved in land disputes, may also facilitate the processing of legal transfers and the resolution of land conflicts.

At a higher level, however, the previous sections have underlined that corruption in land transfers is fundamentally linked to a poorly enforced and inadequate land policy. Thus a key priority for the government in tackling land grabs should be to move towards enforcing a clear and consistent land policy. In order for corruption to be minimized, such a land policy will have to take into account the interest of both government and private actors to transfer some land into private ownership. However, for it to be enforced, it must also build upon and be strongly compatible with the ways in which land has been managed historically. By facilitating legal and consensual transfers, this should reduce some of the pressure that results in corrupt land transfers. At the same time, land

reform should ensure that previous corrupt transfers are rectified in some way. Not only would such a policy partially compensate those who previously suffered from land grabs, but it may also discourage future land grabbing.

Pursuing land reform is likely to be rife with controversies that cannot be shied away from. For example, foreign investment in land can clearly bring economic benefits to the country, but it also carries risks of expropriation and people losing their traditional way of life. Currently, the government is attempting to have the best of both worlds through advocating an anti-foreign ownership policy while encouraging certain purchases when they perceive there to be large economic gains. In order for land transfers to be legitimate, there is a need for public debate on which transfers should and should not be allowed. A key component of this debate will be the role of traditional authorities. While these authorities have clearly traditionally been the arbiter of land rights, it is not clear they are so suitable to manage wholesale alienation of land rights.

7.4.2 For Civil Society and International Donors

One of the major problems caused by land grabbing is that it dulls the incentives of elites to undertake land reform and reduce corruption. There is therefore an important role for civil society and international donors to push forward this agenda. An obvious aspect of this role is to push for the kinds of reforms outlined above. In doing so, there may, however, be a conflict between pushing for the types of reform that would be optimal, and encouraging the enforcement of a set of policies that improves upon the existing regime.

In addition to this advocacy role, both civil society and international donors may have a role to play in increasing the transparency of potential land grabs. The use of land is generally visible on the ground, and therefore local NGOs can play an important role in transmitting information on land use as well as telling the stories of those dispossessed. International donors, on the other hand, may have a comparative advantage at investigating large-scale international deals, particularly if they involve international companies. At the extreme, it should be possible for organizations to regulate international companies to ensure that land obtained is acquired in a clean manner, in a similar way to the Extractive Industries Transparencies Initiative. By providing further information about corrupt land transfers, there may be increased pressure on government to carry out the type of corruption-reducing reforms described above.

7.5 CONCLUSION

Overall, the grabbing of land described in this chapter has brought out a number of points that are likely to be true of corruption across different sectors and countries. In particular, one stark element is the connection between corrupt acts and reform of the sector. Corruption in land transfers is partly a result of gaps within the implementation of an effective land policy. Moreover, we see a vicious circle, whereby greater corruption reduces the incentive of the government to carry out exactly the type of reform that would reduce corruption. In this way, it aids our understanding of why corruption persists and may be so difficult to fight, despite the obvious inefficiency it causes.

The description of land grabbing above also brings out points that are more particular to land in Malawi. Some of the cases above have illustrated the difficulty of defining acts as corruption when there is a clash between Western-style laws and historical practices. This comes out particularly strongly when we examine the role of traditional authorities in land transfers. Can giving benefits to chiefs in exchange for land be described as corruption when it is a traditional part of the way societies have been organized? Similarly, to what extent are traditional authorities unaccountable in their decisions to transfer land when accountability mechanisms have not been formally defined? These questions force us to think beyond standard legal definitions of corruption.

NOTES

1. <http://www.nyasatimes.com/malawi/2012/07/17/mulanje-orphans-get-their-land-back-from-mulli/>.
2. <http://www.nyasatimes.com/malawi/2012/08/25/chiefs-aiding-land-laundering-crime-in-lilongwe/>.
3. <http://farmlandgrab.org/2908>.

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