

POLICY BRIEF

MALAWI NATIONAL LAND POLICY



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For more information:

Centre for Environmental Policy and Advocacy (CEPA)

Plot No. 163, WICO Premises, Johnstone Road,
Off Masauko Chipembere Highway

P O Box 1057, Blantyre, Malawi

Tel: (+265) 1 914 554; Fax: (+265) 1 830 587

Email: cepa@cepa.org.mw

Website: www.cepa.org.mw

Background and Introduction

Land is the most basic of all resources available for social and economic development in Malawi. However, landlessness has increased in recent years as population has risen. The landholding size in the country has diminished from 1.53 ha in 1968 to 0.8 ha in 2000. Land in Malawi has traditionally been divided into three tenure categories – customary, private and public. Customary tenure is by far the dominant tenure form in the country, covering 68% of the land. Customary land is held, occupied or used under customary laws but excludes public land. Private land incorporates both freehold and leasehold land. In the past customary land was converted into private through Government leases. On the other hand public land is occupied, used or acquired by the Government and any other land which reverts to Government on termination, surrender or fall-in of freehold or leaseholds.

There are various land problems as provided in the box, below.

Overview of Land Problems in Malawi

- Residual effects of colonial land policy;
- High population to land ration;
- Land scarcity in spite of idle lands;
- Provocative squatting;
- Worsening land pressure;
- Privatizing access to customary land;
- Mismanagement of land development;
- Cross border encroachment by immigrants;
- Encroachment onto conservation and protected areas; and
- Uncontrolled allocation of lakeshore land.

To this end Government of Malawi initiated policy and legislative reforms. In 1996, a Presidential Commission of Inquiry on Land Reform was set up. The Commission produced its final report in 1999 which formed the basis for developing the MNLP. In 2002, Government of Malawi approved the MNLP. The MNLP (2002) identifies and provides a number of guiding principles which were used in preparing the policy. These include: secure land tenure; sustainable land management; productive and efficient and use; land administration; vulnerable groups; institutional framework for land management; land information system; optimum utilization of land; and legal framework for land policy.

Policy Objectives

The policy promulgated by the Ministry of Lands, Physical Planning and Surveys is the product of a seven-year consultative effort. The policy expresses six explicit land policy objectives to:

- *Promote tenure reforms that guarantee security and instill confidence and fairness in all land transactions;*
- *Promote decentralized and transparent land administration;*
- *Extend land use planning strategies to all urban and rural areas;*
- *Establish a modern land registration system for delivering land services to all;*
- *Enhance conservation and community management of local resources; and*
- *Promote research and capacity building in land surveying and management.*

The policy recommends several significant changes to land rights and responsibilities in Malawi, emphasizing public ownership of lands, strengthening legal recognition of customary tenure, promoting gender equality and changes to inheritance schemes, ending private ownership of lands by non-citizens, supporting community based land management, and establishing new administrative approaches to land registration and titling that rely heavily on Traditional Authorities.

Policy Components

Land Tenure Reforms, Acquisitions and Disposition – With the coming into force of the land policy, the categories of land recognized in Malawi will be defined as follows:

- **Government land** – land acquired and privately owned by the Government and dedicated to a specified national use or made available for private uses at the discretion of the Government such as hospitals.
- **Public land** – land held in trust and managed by the Government or Traditional Authorities and openly used or accessible to the public at large. This includes gazette national parks, recreation areas, forest reserves, dambos, dry season communal grazing areas, etc; and
- **Private land** – land held or occupied under freehold tenure and customary land allocated to a specific entity or individual. Such allocation is henceforth known as “customary estate”.

While the policy takes steps to strengthen tenure associated with customary lands, it does reserve a number of functions related to acquisition of land for the Government. To guard against fraudulent sales of family land, the policy restricts the sale of customary estates to persons outside the immediate family for a period of ten years, except in cases of emergency or where all family members are above the age of 18 and have agreed to the sale.

Land Administration and Resettlement – the policy undertakes to establish a new system for land administration. It asserts that the powers of administration for land matters are vested in the Ministry responsible for Lands. The new system for land administration under the policy is vested in formalizing traditional land administration, in recognition of the role traditionally played by family heads, clan leaders, Village Headpersons, Group Village Headpersons and Traditional Authorities in customary land allocation, administration, monitoring, natural resource management and adjudication of land disputes. At the same time the policy seeks to establish a system of

accountability and transparency to prevent discrimination. The system envisaged in the policy would establish Customary Land Committees (CLC) headed by a Headperson with three elected community leaders (at least one being a woman). The CLC are to oversee the formalization of family land grants and the allocation of village lands.

The policy embodies some significant changes in the “authority” of Traditional Authorities. They will no longer have exclusive authority for allocating land and will instead participate in the Land Committee. Traditional Authorities will be required to register all land transactions within their jurisdictions, maintaining a Traditional Lands Record Storage and Management System.

The policy also asserts a government role in resettlement to aid landless and land-short households, puts forward a plan to immediately resettle 3, 500 farming households on 14, 000 hectares.

Land Use Planning and Development – the policy puts forward some very broad mandates for urban and rural land use planning. Drawing on the application of *the Town and County Planning Act*, District and Town Assemblies are required to prepare Township Planning Schemes for all settlements within their jurisdiction. Villages are also to undertake multi-use planning. It asserts rural development principles that support access to lakes for fishing communities, protection of fragile areas and the establishment of fuel wood plantations to meet demand for wood energy. Monitoring and enforcement is to be accomplished by the Ministry working through District Planning Offices and the Area Development Committee at the Traditional Authority level, and Village Development Committee at the Village level.

Surveying, Mapping and Cadastral Plans – the policy provides for the surveying, mapping, and cadastral plans in Malawi. It calls for the Government to undertake the demarcation of Traditional Authority and allows for individuals to commission surveys and prepare deed/cadastral plans of their customary estates to facilitate

the registration of individual titles. It is asserted that communities will protect land areas reserved for communal uses and the policy calls for less stringent survey requirements to allow customary land transactions.

Titling, Registration and Dispute Settlement – establishes the goals and procedures for titling, registration and dispute settlement. The policy sets the goal to extend title registration to all tenure categories and modernize the registration process. It requires that all land interests be registered. Disputes are to be brought in the first instance to Village Land Tribunals comprised of the Village Headpersons and at least four elected members. Appeals are to be taken in parallel structures up the hierarchy to Group Village Tribunals, Traditional Authority Land Tribunals, District Tribunal of Traditional Authorities, with final appeals to the Central Land Settlement Board. These tribunals are to be empowered with the enactment of statute to be cited as the “Customary Land Dispute Settlement Act”.

Environmental Management – the policy lays out ten objectives for environmental management in Malawi governing: i) urban management of solid and liquid wastes; ii) protection of sensitive areas; iii) agricultural resource conservation and land use; iv) community forests and woodlands management; v) over-dependence on fuel wood; vi) forestation programmes; vii) coordination of multiple land uses; viii) water resources and wetlands; ix) lakeshore environment management; and x) mining and minerals.

The policy recognizes the degradation in each of these areas from improper land use and asserts that impacts should be assessed and actions taken to protect valuable resources. It supports the use of buffer zones, the protection of sensitive areas and community management of resources.

Inter-sectoral Coordination – recognizing that land supports many uses and that a wide range of sectors affect land use, the policy calls for intersectoral coordination.

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