Issues and Options for Improved Land Sector Governance in Malawi

Results of Application of the Land Governance Assessment Framework

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Introduction

• Malawi - small landlocked country (118,484 sq km), bordered by Tanzanian (north), Zambia (West) & Mozambique (south and east)
• Land approx. 78% of country’s area
• High population > 13.1 million, high density - 139 people per square kilometer
• Approx. 80% of population in rural areas – almost 95% in smallholder agriculture
• Land key asset for economic development - >40% GDP from agriculture & natural resources
• high population growth - declining per capita arable land holdings (0.4-0.2ha 1970 to 2007), land degradation, increasing land disputes
• Increasing urbanization - 5% per year (challenges: spread of informal settlements, waste disposal issues, deforestation, air pollution, and strains on infrastructure
Land Policy

• Colonial land policy (British rule 1891-1964)
• 1951 Land Ordinance defined land as customary, private, and public.
• Customary land - a type of “public land,” with “natives” granted occupation rights only
• result - indigenous communities lost ownership and control over their land, and were evicted from areas where settlers had wanted to open their estates – source of conflicts due to land pressure
Land Policy

- Current Land Act (Cap 57:01) came into force in 1965 after independence in 1964,
- Land act maintained 3 land categories of Ordinance
- The president became custodian/trustee of all land
- 1967 - “first serious attempt to provide a comprehensive body of land law” - Registered Land Act (Cap 58:01), Customary Land (Development) Act (Cap 59:01), and Local Land Boards Act (Cap 59:02) passed
- These Acts made provisions for demarcating and registering customary land rights to individual proprietors, but had limited application
- Land governance challenges remained
### Current tenure typology

<table>
<thead>
<tr>
<th>Tenure type</th>
<th>Area</th>
<th>Population</th>
<th>Legal recognition &amp; characteristics</th>
<th>Registration</th>
<th>Transferability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public / Govt land</strong></td>
<td>2 million ha (20% of total land area)</td>
<td></td>
<td>Land Act</td>
<td>Government</td>
<td>To communities or individuals</td>
</tr>
<tr>
<td><strong>Customary</strong></td>
<td>65% of total land area, of which 82% is suitable for farming</td>
<td>11,082,861</td>
<td>Land Act</td>
<td>No recording &amp; registration system</td>
<td>Individuals (men, women) belonging to lineage have rights of access &amp; can transfer to designated heirs</td>
</tr>
<tr>
<td><strong>Private</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Freehold²</td>
<td>Mostly estates, 13% total land, 1,180,000 ha of which 51% is cultivated and 19% unsuitable</td>
<td></td>
<td>Land Act, Registered Land Act</td>
<td>Freehold or leasehold</td>
<td>Mostly held by corporate entities; sale or transfer needs notice of Minister</td>
</tr>
<tr>
<td>- Leasehold³</td>
<td>10-15% total land area</td>
<td>28% of rural population</td>
<td></td>
<td>Designated &amp; registered</td>
<td></td>
</tr>
<tr>
<td>- Urban leasehold by assemblies &amp; government agencies</td>
<td>120,000 ha (1% of total land area)</td>
<td>1,946,637</td>
<td>Records available; annual ground rents payable to Lands Dept</td>
<td>Inheritable &amp; transferable; sale requires prior notification by Minister</td>
<td></td>
</tr>
</tbody>
</table>

²Freehold: Mostly estates, 13% total land, 1,180,000 ha of which 51% is cultivated and 19% unsuitable
³Leasehold: Mostly estates, 13% total land, 1,180,000 ha of which 51% is cultivated and 19% unsuitable
⁴Urban leasehold by assemblies & government agencies: Mostly estates, 13% total land, 1,180,000 ha of which 51% is cultivated and 19% unsuitable
Land policy reforms

- Presidential Commission of Inquiry on land policy reform appointed in 1996
- tasked with developing a national land policy that would promote equitable access to land, security of tenure, and improved land administration
- Following background studies and national consultations, National Land Policy came into effect in January 2002
- Policy goal - ensuring tenure security and equitable access to land and facilitating attainment of social harmony and broad based social and economic development through optimum and ecologically balanced use of land and land-based resources.
Land policy reforms – cont..

• new legal framework was required for full implementation of new policy
• Special Law Commission to Review of Land-Related Laws established in 2003
• After reviews and consultations, new land bill and other related legislation developed by 2009
• New bills still not enacted into law – policy implementation has lagged behind
• government prepared a land reform implementation program – also not implemented fully due to lack of supporting legislation
• One pilot main project funded by WB implemented – land resettlement and development
**Land management institutions**

- Ministry of Lands and Housing responsible for policy formulation and implementation and enforcement of associated legislative instruments – ultimate authority
- Ministry comprises depts such as Policy & Planning, Land Administration, Physical Planning, Surveys, Housing and Urban Development.
- Other government ministries and agencies also play a role in land administration
- Local authorities – city, municipal, town, and district councils – responsible for implementing land policies, planning and land administration
Assessment of Land Governance

• In 2012, Government conducted a land governance assessment using LGAF - support from World Bank and IFPRI
• process helped establish consensus on status of land governance; gaps; priority actions and interventions to improve land governance; and process to systematically track progress in land reforms over time
• Assessment conducted on five broad thematic areas:
  1. Legal and institutional framework
  2. Land use planning, management, and taxation
  3. Management of public land
  4. Public provision of land information
  5. Dispute resolution and conflict management
• Assessment included expert reviews of information, panel discussions and technical validation workshop
Findings: **Legal and institutional framework**

- Most land under customary tenure - rights are recognized in some form but no legal basis for enforcement, implying that vulnerable groups can easily lose rights.
- Evidence of tenure insecurity, particularly for vulnerable groups such as women and children.
- Responsibilities for land management are overlapping and not clearly assigned among different govt agencies.
Findings: **Land use Planning and management**

- Lack of up to date instruments to guide land use planning and control land development leading to unsustainable use of land
- Land use planning regulations and restrictions on urban and rural land not adequately enforced
- Local governments lack capacity and funding to manage land use and collect property taxes
- Procedures for obtaining building permits not up to date, unknown for most users and create space for corruption
Findings: Public land management

• Most public land not fully inventoried or surveyed, making effective management difficult and opening the door to abuse and corruption.

• Multiple agencies managing public land with no clear roles

• Processes to determine and award compensation in case of expropriation are not clear or not enforced
Findings: **Public provision of land information**

- Land information incomplete, not up to date and procedures for accessing not well understood by general public
- Land information not decentralized - available only at three centrally located offices (Lilongwe, Blantyre and Mzuzu)
- Most land information in paper form - records are degraded and missing and retrieval processes inefficient
Findings: Conflict resolution and dispute management

• Parallel avenues of dispute resolution with no systematic system for sharing information
• Land disputes are increasing steadily and processes take too long to be completed
Key recommendations

• *Speedy Enactment of New Land Laws to implement policy reforms*

• *Securing Land Rights of the Poor* - public intervention in large scale demarcation, surveying, titling to assist poor landholders in land individualization

• *Decentralization of Land Administration functions* – to empower and build capacity of district authorities and local communities to manage land rights, enforce land use plans and manage related disputes

• Decentralization of Land information management so that it is more readily available to the public.

• Widely disseminate information on land related policies and laws to educate people on provisions relating to their land rights

• Separate Land Tribunals be established at all levels to deal with land disputes, protect interests and rights

• Facilitate broader stakeholder engagement in land governance
Follow-up actions underway

• Revised land laws taken to parliament and process speeded up through advocacy actions
• Establishment of a multi-stakeholder platform to facilitate improved land governance and stakeholder engagement
• Modernization (digitizing and computerizing land registry information) commenced
• Indicators and system to regularly track progress in land governance being established with creation of linkages with national statistical system
More action is needed!!!!

Thank you for your attention