

LAND REFORM IN MALAWI

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**by
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1.0 BACKGROUND

Malawi is a landlocked country situated in the South East of Africa. She covers a total area of about 11.8 million hectares. Of this, 9.8 million hectares are covered by land and the rest by water surface.

There are very few manufacturing industries and mining activities in the country. The economy of the country is mostly agriculture based. Proper Management of land in Malawi is therefore a must.

Agricultural Estates cover about 1.2 million hectares, small holder farming land is about 4.5 million hectares. The rest of the land is covered by public land, hills, steep slopes, wetland and protected areas.

Malawi's population is about 10 million people with a growth of about 1.9% per annum. Over 90% of the population live in rural areas and subsist on smallholder farming.

Malawi, then called Nyasaland, had been colonised by the British in 1891 and she remained a British Colony until 1964 when she became independent. Most of the laws governing land administration and management in the country had been formulated by the British and have remained the same (apart from minor amendments) to date.

2.0 LAND REFORM PROCESS

Considering high levels of poverty, population growth, Malawian Cultures, and democratisation among others, government had to reconsider the management and administration of land. This led to the idea of having a proper policy for the management and administration of land in Malawi.

In 1995, three consultancies for utilisation of land in Malawi were sourced by government. These covered:

(i) **Estate Land Utilisation Study (ELUS)**

Major issues looked at were:-

- Size and utilisation of Estate land
- Method of Survey resulting in paper overlaps

(ii) **Public Land Utilisation Study (PLUS)**

Major issues were to look at information on:-

- Availability of public land and its usage
- Rural area government infrastructure and their utilisation
- Expired term of leaseholds and their utilisation
- Encroachment on to reserves (Forest, National Parks) by people.

(iii) **Customary Land Utilisation Study (CLUS)**

Major issues included:-

- Fragmentation due to population and use of available land.
- Use of marginal lands.

Various lessons were learnt from the findings of these studies.

Further to these studies, a Presidential Commission on Land Reform was appointed comprising of various stakeholders in Land Management and Utilisation. These included Professionals, Traditional and Community Leaders and Politicians.

The Commission accessed the results of the utilisation studies, conducted countrywide meetings to get views of local people and other stakeholders for inclusion into the policy. It also went on International tours to appreciate the formulation and implementation of other countries' land policies.

The findings and recommendations of the commission were further reviewed by government. The review was taken back to all stakeholders countrywide through workshops so that the stakeholders should have an input on the final review of the policy.

This resulted in the formulation of the Malawi Land Policy document which was approved by government in January, 2002. The policy issues addressed are as follows:-

(i) Land Tenure Reforms, Acquisition and Disposition

(a) Land Tenure Categories

The policy has put in place the following Tenure categories:-

- Public Land (Reserves, Communal Land for Local Communities)
- Government land
- Private Land (Freehold, Customary, Leasehold)

(b) Acquisition

- Size ceilings
- Protect against speculation and fragmentation

(c) Disposition

- Revocation and repossession by Government for public use with full compensation at market price.
- Expiry of lease term.
- Dispositions of Customary Land requiring a signature of a Chief and Independent Member of Customary Land Committee.
- Prevent speculative holding of land (development controls)

(ii) Land Administration and Resettlement

(a) Principal authority is Minister for Lands Physical Planning and Surveys but delegates the authority to

- Chiefs on customary land
- Local Assemblies on urban land
- Ministry of Lands Physical Planning and Surveys on Government and Public Land.

(b) Provide security of tenure to smallholder farmers for increased food security (90% of food crops grown by them)

(c) Smallholder Agriculture Sector to be assisted in acquiring Land-augmenting factors for improved production and technologies to sustain efficient utilisation of land.

(d) Undertake land redistribution and resettlement programme to reduce land pressure.

(iii) Land Use Planning And Development

(a) National Physical Development plan to be reviewed

(b) District and Planning areas to be reviewed

(c) Rural land use planning, guidelines and monitoring methods to be produced.

- (d) Urban Traditional settlements and Urban Sprawl to be monitored and reviewed.

(iv) Surveying, Mapping and Cadastral Plans

Policy Addresses issues Concerning:-

- (a) Capacity building
 - Human resource (Training and Licensing)
 - Infrastructure
 - Equipment
 - Development of the Private Sector
- (b) Method of surveying, Commissioning and carrying out of Surveys
 - Use of Modern Equipment
 - What type of work should Public/Government Surveyors concentrate on
 - Commissioning of surveys on Private Land
- (c) Delays in Examination and Approval of Surveys
 - Methods of examination (Technical & Technology)
 - Capacity (Human Resource)
 - Who examines and approves Surveys
- (d) International Boundaries to be determined and perpetuated
- (e) Methods of Mapping, Types of maps and Management of Map Data
 - Digital Spatial Data Production
 - Spatial Data Management and development of GIS

(v) Titling, Registration and Dispute Settlement

The policy addresses the following issues

- (a) Extend Title Registration to landowners in all tenure categories.
- (b) Title registration will be systematic
- (c) A systematic formalisation of property rights in customary land will be Undertaken by Ministry of Lands, Physical Planning and Surveys
- (d) Disputes settlement will have the following structures:-
 - Village Land Tribunal
 - Group village Land Tribunal
 - District Tribunal of Traditional Authorities
 - Central Land Settlement Board
 - High Court

(vi) Environmental Management

Policy addresses the following:-

- (a) Urban Management of solid and liquid wastes by local assemblies
- (b) Protection of sensitive areas
- (c) Inventory and Management of Community Forests and woodlots
- (d) Development of GIS and co-ordination of multiple uses

(vii) Intersectoral Co-ordination

The policy will complement other sectoral policies and plans which include

- (a) Agricultural Land use policy
- (b) Environmental Policy and Action Plan
- (c) National Forestry Policy
- (d) National Irrigation Policy and Strategic Plan
- (e) National Physical Development Plan

3.0 IMPLEMENTATION STRATEGY

Following the approval of the policy, the Ministry of Lands, Physical Planning and Surveys, through consultancy and in co-ordination with other stakeholders is currently working on the implementation strategy. Issues under consideration include:-

3.1 Institutional Framework

The strategic plan aims at creating the following co-ordinating and Operational Institutions.

(i) National Land Reform steering Committee

This will be chaired by the office of the President and Cabinet, the Secretary for Lands, Physical Planning & Surveys will be Secretary. Members shall include relevant stakeholder Ministries, Chief Executives, Non Governmental Organisations, Civil Society Organisations and the Private Sector.

The major assignment is to co-ordinate the whole implementation strategy so as to achieve the major goal of poverty alleviation for the whole nation.

(ii) Land Reform Implementation Co-ordination Unit

This will be chaired by the Secretary for Lands, Physical Planning and Surveys, the Secretary will be the Director of the Policy Planning Unit of the Ministry of Lands, Physical Planning and Surveys. Members will include all Heads of Departments in the Ministry of Lands, Physical Planning and Surveys and other coopted stakeholder Ministries and Chief Executives.

The major task is to administer the implementation of each project component.

(iii) The Technical Land Services Secretariat

This will be chaired by the Director of Policy Planning Unit in the Ministry of Lands, Physical Planning and Surveys. Members are the Professionals within all Departments of the Ministry of Lands, Physical Planning and Surveys and other stakeholder Ministries coopted depending on which programme component is being tackled.

The major task is to provide supervisory services is the implementation of the programme components. Also act as the co-ordinating machinery between the Local Assemblies and the Land Reform Implementation Co-ordination Unit in terms of programme component implementation.

3.2 Programme Components

To achieve the Land Reform Programme effectively, a number of programme components have been designed which would address the issues in the policy. The Programme Components are:-

(i) Land Policy Promulgation and Publicity Campaign

The public needs to know what the policy is spelling out and how it will affect them.

(ii) Development of Legal Framework

It is obvious that with the new Land Policy in place, there is need for a new land related legal framework. The existing laws should be reviewed in order to complement the new Land Policy.

(iii) Land Use Planning Review, Development Control, Monitoring and Enforcement Authority capacity Development.

While it partly relates to (ii) above, it will further provide specific guidelines to Local Assemblies on development control.

(iv) Training and Capacity Development in Land Surveying and Land Management.

The Professionals available in the country to cover land administration (Surveying, Planning, Valuation) are very inadequate. There is need for training of more personnel in order to achieve the reform programme.

In the case of surveying there is need to also improve in the number, and technological updating of the surveying and Map Production equipment.

(v) Customary Land Restitution, Tenure Reform and Sustainable Rural Livelihood.

Review the available tenure holdings and usage and revert all unused or under-utilised land to customary land and register all customary rights available. Provide the necessary incentives for the local people to develop the land under customary tenure.

(vi) Community Based Rural Land Resettlements

Identify under-utilised land and resettle communities after provision of social infrastructure and incentives to develop the land the local people have settled on.

(vii) Customary Land Rights Formalisation and District Land Registration.

There is need to establish District Land Registries in all the local assemblies and register all land rights inclusive of the formalised customary land rights.

(viii) Land Rights and Peri-Urban Land Rights Consolidation

This will consolidate property rights and provide social infrastructure for squatters and Peri-Urban dwellers depending on the land use pattern and find ways of empowering them.

(ix) National Spatial Data Infrastructure Management

It will consolidate spatial data acquisition methods, production standards and methods, and its Management by various producer and user groups.

A GIS will be established and should bring about improved Environment Management, Planning, Valuation, Agricultural development among other sectors.

3.3 Monitoring and Evaluation

Pilot studies have been planned to evaluate the success of the various programme components prior to countrywide implementation.

Apart from the institutions proposed to implement the Land Reform Programme, at grass-root level Civil Society, Non-Governmental Organisations and Community Organisations will all be involved to ensure among other things, fairness in provision of advice, disputes resolution, and gender and vulnerable groups sensitivity in achieving the major goals.

Some land marks for measuring the success of the programme include:-

(i) Malawi's Land Resource used Productively and sustainably to enhance Income and Rural Livelihood

This will be observed through:-

- (a) Improved tenure security and Land Management
- (b) Increased Investment in Agriculture
- (c) Compliance for land use and Environmental Laws

(ii) Improved participation for all stakeholders in Effective use and Management of Malawis' Land Resources.

This will be observed through:-

- (a) Peoples knowledge of the National Land Policy
- (b) The enforcement of the new legal framework
- (c) Land administration services brought close to the communities (Local Assemblies).

(iii) Livelihoods of Poor Malawians and Vulnerable groups improved through a more equitable distribution of land, access and Ownership.

This will be observed through:-

- (a) The Policy and Legal Framework protecting poor and vulnerable groups
- (b) Improved Land Administration Capacity
- (c) Tribunal set-ups functioning properly

(iv) Transparent, Accountable and easily Accessible Institutions and Systems for Decentralised delivery of Land Services Established.

This will be observed through

- (a) Land tribunals functioning properly
- (b) Capacity built for decentralised land administration functions.
- (c) Land Sector expenditure decentralised
- (d) Efficient usage of land sector revenue

(v) Improved Availability, Accessibility, Affordability and Use Of Land Information For Planning and Implementation Of Development Programmes

This will be observed through:-

- (a) Properly standardised spatial data made available
- (b) GIS development

3.4 Financing of the Land Reform Programme

It is hoped that the strategic plan will be financed from a variety of resources including, Central Government provisions, Donor Development Partners support, Local Government revenues, Private and Beneficiary contributions.

It is obvious that a big financial contribution is needed from Central Government and the Donor Development Partners at the start of the programme, however, it is anticipated that once any programme is fully operational, it should be self sustaining through the creation of revolving funds, Local Government revenues generated through the programme component, and Private sector and Beneficiary contributions.

4. CHALLENGESS FOR THE LAND REFORM PROGRAMME IMPLEMENTATION

There are a number of challenges which will have to be reviewed critically if the implementation of the Land Reform Programme is to be successful. These include:-

(i) Land Reform Programme Financing

On a number of the programme components, some Donor Development Partners have expressed a wish to support the pilot phases. It is hoped that such support would come in good time without too many conditions which are at times difficult to achieve technically. If the support is delayed, then the implementation would be put on hold rendering the Refor Programme a white Elephant.

(ii) Capacity Building for Land Reform Administration Structures.

For the proper implementation of the Reform Programme Land Administration structures must be decentralised to the Local Assemblies. It is in this area where there is a big capacity gap in terms of human resources, infrastructure (Land Registries and Officials), and equipment (mostly surveying).

Even if other programme components can be finalised, it will be difficult to effectively implement them without covering capacity building for land administration structures.

(iii) Sequencing of Land Reform Programme Components and Implementation Time.

It would be important if the first programme components to be tackled was the Land Policy Promulgation and Publicity Campaign, followed by the Development of Legal Framework. These two can easily be done concurrently with Training and Capacity Development in Land Surveying and Land Management. Thereafter, any component can be covered easily.

However, since the project components will be co-finalised by the Donor Development Partners, it may be difficult to follow such a sequency because the time a particular Donor Development partner is ready to finance the particular programme component may not necessarily follow the sequence.

The end result may be that some of the pilot programme components may be done prior to the development of a new Legal Framework.

Once the land Policy Promulgation and Publicity Campaign is started, the expectation for results for the nation will be very high. There will be need to immediately start implementing the programme components, if this is delayed, it may create anxiety amongst people which may have a negative impact on the Reform Programme.

(iv) Political Will and Intervention

Even though the commission agreed not to discuss politics, it could however have both a negative or positive influence on the implementation of the programme. It may hence be important to have a positive publicity campaign for all politicians that matter in the implementation process.

