



## Land Governance in Malawi

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### Abstract

Malawi is a landlocked country that lies in the Great Rift Valley. It is flanked by mountain ranges and high plateau areas. Early human inhabitants of Malawi date to 8000–2000 B.C. and were nomadic. Land use was characterised by conquest. The boundaries of Nyasaland (now Malawi) were decided at the Berlin Conference of 1884. During the colonial rule land was categorised as Crown, Private under Certificate of Claim and Native Trust Land. At independence in 1964, Malawi's land was designated as public, private, or customary land. In 2016 a new classification was introduced namely; Public Land and Private Land. Customary Land as a classification of land was abolished. Private land in this case include freehold land, leasehold land and customary estate.

The declaration of Nyasaland (now Malawi) by the British as a British Protectorate in 1891 marked the beginning of the introduction of the British legal system including land management and administration.

Land question in Malawi has been one of the major challenges for the colonial administration as well as the current administration. Over the years, several commissions of inquiry on land tenure have been established to solve the conflicts that have been fuelled by the existence of customary land tenure alongside the western statutory laws. The latest commission of enquiry has culminated into the approval and gazetting of the Customary Land Act of 2016 whose aim is to formalise customary land rights in customary estates.

The Ministry of Lands, Housing and Urban Development is the custodian of land governance issues in Malawi. Currently, Malawi uses private conveyancing system, a deeds registration system and a title registration system. Previously, the title registration system was decentralized to the district level but only operated in very limited areas.

In Malawi the major causes of land disputes are disagreements over ownership, boundaries and access to and use of land and water. The current Customary Land Act of 2016 provides for land dispute resolution to be handled by the judiciary in matters of law, while matters of fact are handled by tribunals. The Act does not give traditional leaders any role in dispute resolution. Land proceedings and disputes are generally on the rise and it is desirable that suitable mechanisms for the whole country are established and maintained

The property taxes are assessed based on valuation of property which is supposed to be updated every five years through Quinquennial Valuation Roll (QVR) and annually through Supplementary Valuation Roll (SVR). The taxes include property taxes (e.g. city rates) and income tax on property which are rented out. The assessment of land tax is based on market prices. However there is a difference in values between recorded values and market prices across different users and types of users. Most people have no access to the valuation roll because it is centrally kept by the local authorities. There is low compliance by property holders in paying taxes resulting in high cost in tax collection.

All information in the public land inventory is only available for very few public properties. Land information including that of public land is not publicly accessible and most public land is not properly surveyed and surrounding communities do not know boundaries of public land except when there is a dispute. Key information for concessions such as the locality and area of the concession, the parties involved and the financial terms of the concession, is recorded or partially recorded but is not publicly accessible. The land services that are provided are land administration and land management. Land registry is not financially viable and cannot sustain itself. Currently there are low levels of investment in the registry in terms of capital, human and equipment.

The government of Malawi has taken about 31 years to effect changes in the physical planning system in order to make it responsive to emerging issues in the sector, following the need for decentralisation and good land governance. Some notable aspects of the planning system which have been revised are as follows; land use planning process, land use control and development permitting regimes and service delivery. However, these changes will not achieve the intended objectives if the structural issues, such as inadequate capacity and lack of political will which have dominated the planning profession over the years are not addressed. For example the unwanted land use outcomes such as informal settlements and the development of environmental sensitive areas, particularly by the urban poor, will persist.

Over the years, Malawi has developed a comprehensive Legal and institutional framework aimed at regulating and providing sound land governance in the land sector. New land related Acts of parliament have just been approved, gazetted and assented by the President. Despite the new and old regulatory framework, there is limited or lack of enforcement of these laws, which impact negatively on the administration and management of land. The major challenges in Malawi include the construction of infrastructure on road reserves and encroachment on public land. In addition there are several illegal developments on road reserves such as cultivation which promote siltation of water storm drainage.

Land governance in Malawi is still centralised despite adopting the decentralisation policy. This results in delayed delivery of land services. The Decentralisation Policy in Malawi proposes the devolution of administrative and political authority to the district level to ensure faster and easier access to services. The new Customary Land Act of 2016 is wholly designed on decentralised land administration system.

The centralised system of land registration currently in force is associated with a number of administrative steps, costs and time that is required to register public land in cities and districts and customary land in districts. This discourages many people from conforming to official norms and is a source of corruption. Although the Customary Land Act of 2016 has proposed a new structure of land administration, it has not clarified the exact procedures and processes of land registration. Corrupt practices in Malawi have been fuelled by the complexities of the land registration. The applicants end up bribing the land officers to speed up the process. Additionally,

communities may encroach on public and customary land due the delays in the land registration process.

Section 28 of the Malawi Constitution of 1994 has provided for rights to property, ensuring that any person can acquire property independently or in association with others. Although the Constitution has provisions for the need to incorporate access to land for all, there has not been much attention to specific provisions for promoting gender in the new land legislation. What is new in the new Acts is the introduction of the Land Committees, Customary Land Tribunals and District Land Tribunals. The Customary Land Act 2016 has given the responsibility for customary land governance to an elected body based on western democratic principles without following customary norms. The Act does not require this land committee to administer customary land in accordance with customary law.

Political interference in land delivery has negatively affected land governance in Malawi. Land sector institutions have failed to perform their duties due to political interference. Legally instituted organs from these institutions have been overridden by political imposition through influential positions in the political machinery. During land allocation, political interference plays a part where deliberate conditions are set to benefit individuals in the ruling government.

In Malawi, lack of transparency and efficiency in the land management and administration processes is increasing corruption practices. Corruption is occurring in land allocating offices such that public officials (civil servants) will allocate the land based on other criteria's like how much money the officers will get if they allocate the land to that particular person. Corruption has serious effects, including denying community benefits from the sustainable management of land resources and mismanagement of land.

Lack of land information in Malawi negatively impacts proper land management. The poor majority in urban areas cannot afford to follow the formal land acquisition process and develop land through a legally accepted means. Informal settlements arise when people build on land they have no legal tenure to or by not conforming to planning, registration and or the building regulations of the respective in which they are located. These informal settlements are generally located in peri-urban environments and are characterized by very poor infrastructure.

Information on land is a very important asset as it helps in land governance issues. A complete database on land is essential as it provides a basis for making land governance decisions based on what exists on the ground, which depends on existence of a comprehensive land information management system. Currently, Malawi lacks this comprehensive land information management system in which information on various themes such as soil type, weather, crop and animal husbandry, geology and demography are deposited at one point for public access. Ministry of Lands stalled. Availability of skilled workforce to digitize the land information is also another challenge.