

LAND RIGHTS FOR SMALL SCALE FARMERS IN MALAWI

SOUTHERN AFRICA REGIONAL
CONSULTATIVE MEETING

Southern African Confederation of Agricultural
Unions (SACAU)

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About Landnet

- **LANDNET Malawi is a membership based non-profit network of civil society organizations incorporated as a trust under the Trustees Incorporation Act chapter 5:03 of the Laws of Malawi**
- **We exist to advocate for the adoption and implementation of pro-poor and equitable land and natural resources policies, legislation and decision-making processes that enhance sustainable livelihoods and utilization of land and natural resources**

Land for Smallholder Agriculture

- Of the 11.8 million hectares of land in Malawi, 9.4 million ha is Customary land, the rest is private and public land. However, of the 9.4 m.ha, only 5.3 million ha of land (i.e. 52%) is considered suitable for cultivation and is under cultivation. The rest comprises hills, rocky ground and marshes
- Most smallholder agricultural production is carried out on customary land, which accounts for 67% of the total land area of Malawi

- In the Land Act of 1965, traditional authorities are formally recognized as having the right to control the use and allocation of customary land within their respective jurisdictions. The power to allocate unused land is passed on to the village leaders. Under the same Act, Customary land, key for smallholder agriculture as well as household and national food security, was governed by Customary law which is unwritten and therefore uncertain. This resulted in tenure insecurity.
- In an agri-based society like Malawi, secure land rights are important for development, poverty reduction and food security.

RESEARCH

- The University of Western Cape under the project “Poverty, Land and Agrarian Studies” (PLAAS), under the aegis of the Future Agricultures Consortium sub-contracted Landnet in January 2013 to contribute towards a SADC region action research under the title - Commercialisation of Land and ‘Land Grabbing’: Implications for Land Rights and Livelihoods in Southern Africa

- Under the CSO World Bank grant 2009 Landnet conducted an advocacy based research from 2009 to 2010 in eight districts and documented at least 100 case studies of women and men being dispossessed of land due to oppressive cultural practices.
- Another research was on the impact of large-scale commercial land investments on the food security of the smallholder farmer. The extent to which local communities have a voice over the manner in which community land is alienated including for various investments has been a concern over centuries

SECURITY OF TENURE – CURRENT SITUATION

- Malawi has reached a critical juncture in its land reform ambitions. A number of laws have recently been enacted which were first proposed in the National Land Policy of 2002

- Ten Land and Land Related Laws approved by Parliament in 2016 and Assented to by the President are:
 - i. Land Act 2016
 - ii. Physical Planning Act 2016
 - iii. Land Survey Act 2016
 - iv. Customary Land Act 2016
 - v. The Registered Land (Amendment) Act 2016
 - vi. Public Roads (Amendment) Act 2016
 - vii. Forestry (Amendment) Act 2016
 - viii. Land Acquisition (Amendment) Act 2016
 - ix. Local Government (Amendment) Act 2016
 - x. Malawi Housing Corporation (Amendment) Act 2016
- The new land law and the corresponding regulations were operationalised in March 2018.

Opportunities Offered by the New Land Law

1. Security of tenure for both Smallholder agriculture and LSLBI through registration and titling of Customary Estates
2. The new land law recognizes and promotes the right of women to own land in their own right and to hold leadership positions in land matters. It contains specific gender inclusive provisions. Women do the majority of agricultural work yet the out-gone law left their land ownership fate in the hands of culture.
3. The new land law introduces community participation in land administration. The opportunity to participate democratically in land decisions at local level will reduce stealthy land acquisitions (or landgrabs)
4. If strategically positioned, the customary estate may be used as collateral for a loan, e.g. agricultural loan.

5. Under the registered land Act 1967, Customary land needed for investment, e.g. leases for agriculture, had first to be surrendered from customary governance to government (public land) and the investor leases (rents) from government – Customary land expropriation. Under the new land law, a lease or sublease may be granted out of a customary estate and the lease shall be called “a customary estate lease” or “a customary estate sublease”, as the case may be.
6. In the event that smallholder land is expropriated for investments of national interest, the out-gone law only compensated “developments on the land” at nonnegotiable rates determined by government. The new land law introduces “compensation” for any land expropriation assessed by a registered valuer using schedules provided for by the law (re: Land Acquisition Act 2016, Section 10).

Policy processes addressing land rights

- Change of vesting of land from the Head of State (1965 Land Act) to the Republic, that is the people of Malawi (Land Act 2016, Sec 8).
- Mapping and adjudication of ownership of land parcels before registration land grabbed from orphans and widows due to cultural regulations or deliberate victimisation.
- Establishment of Customary land tribunals and participation of local people therein, with opportunities for appeal.
- Establishment of land committees at local level and mandatory participation of women on the committee

Participation by CSOs in policy processes

- Land Reform advocacy was launched by Landnet (then called “Civil Society Taskforce on Land and Natural Resources Policy Reform” in year 2000 when it convened a multi-sectoral national conference on land policy review.
- With support from Joint Oxfam Program in Malawi, Landnet organized, in August 2003, the first National Civil Society workshop on the land policy reform to agree on a strategy to engage government on the participation of civil society organizations in the land policy and law formulation process

- With support from Oxfam GB for a project “Enhancing civil society voice in the land policy reform process in Malawi” Landnet and all its member CSOs embarked on an aggressive advocacy on land policy reform from 2012 to 2013. The initiatives contributed to amendments made to various laws that deal with land administration and management in Malawi. Some Acts were repealed and totally new Acts promulgated culminating in 11 land-related bills drafted, approved by Cabinet and presented to Parliament in June 2013. Parliament approved the principal land bill and the Customary Land Bill but presidential assent restrained by some uncoordinated, divergent Civil Society voices

- When the bills did not receive presidential assent, LandNet worked towards harmonizing the divergent views and encouraging one voice for CSOs by engaging the various groups that presented divergent views, did a critical analysis of their presentations together with them and came up with a common position which was presented to the Ministry of Justice, through the Ministry of Lands on 17th November 2014. The initiative was supported jointly by Oxfam GB and the International Land Coalition (ILC)

- From 2014 to 2016 Landnet with its member CSOs engaged Actionaid and the NGO Gender Coordination Network to come up with a common position on the rights of women in the proposed land reform
- **Result of all the above advocacy.** Ten land related Bills were passed by Parliament in 2016. However, there arose some forces to stop the Head of State from Assenting to the Bills. Landnet, accompanied by a few key CSOs, had an audience with the Head of State on 30th August 2016:
 - a) To clarify on misinterpretations circulating on social media and statements of some sectors of society
 - b) To advocate for Presidential assent to the Bills
- The President assented to the four Bills on 1st September, 2016. and to the remaining six Bills on 6th February 2017.

- Landnet also works in Consortia with other CSOs of similar objectives on land governance, e.g
 - Landnet is in a Consortium with Oxfam and Center for Environmental Policy and Advocacy (CEPA) to pilot the Customary Land registration and local structures under the new land law with support of the EU
 - Landnet is in Consortium with WOLREC and Circle for Integrated Community Development (CICODE) on a project *“Promoting Responsible Land Governance in the context of Smallholder food security”* in two districts of Malawi
 - In partnership with UNFAO and UN Women, Landnet and its member CSOs are implementing a project *“Support of the implementation of the new land laws in Malawi / Promotion of secure land rights for women and other vulnerable groups”*

- At National level, Landnet represented CSOs in the “Special Law Commission on Land Policy Review” from 2003 to 2010”
- Landnet is a member of the Land Policy Reform implementation Steering Committee Chaired by the Ministry of Land
- Landnet represents CSOs on the Technical Working Group (TWG) on Land and Natural Resources. Government established Sector Working Groups (SWG) as a means of implementing the National Development Strategy. The SWG is used as a forum for planning, implementing and reporting on progress of National Development Strategy amongst government, development partners, civil society organisations (CSOs) and private sector.

Policy positions on land rights by CSOs

- Landnet and all its members support **pro-poor and equitable land and natural resources policies, legislation and decision-making processes that enhance sustainable livelihoods and utilization of land and natural resources**
- Landnet and its members also support and promote all policies that align to the VGGT, RtF, RAI and FPIC, especially as regards respecting and protecting legitimate tenure rights as well as rights of women to own and control land.
- Landnet supports policies that promote tenure security for smallholder farmers most of whom are women.