

LAND GOVERNANCE IN MALAWI: LESSONS FROM LARGE-SCALE ACQUISITIONS



KEY POLICY ISSUES

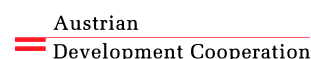
- The expansion of sugarcane out-grower schemes in areas under customary tenure have seen controversial land deals concluded between foreign and local investors, traditional authorities and state agencies.
- The existing weak legal and institutional framework on the governance of land provides loopholes for land transactions without the consent of affected populations and remains a source of land-based conflicts in the country.
- Government initiatives and international agreements to promote large-scale commercial farming in a context of land scarcity can undermine the gains of the Farm Input Subsidy Programme in stimulating increased production by smallholders.

SUMMARY

Over the past decade rural Malawians have witnessed a surge in large-scale land acquisitions for commercial agriculture that threaten their access, control and ownership of customary land. This policy brief presents cases of such 'land grabs' related to the expansion of out-grower schemes in Nkhotakota and Chikwawa districts.

The main reason why these processes have been controversial is the weak legislation governing land resources in Malawi, which has allowed foreign investors and their local partners to acquire customary land without the consent of local people, who claim the land as theirs. The research on which this policy brief is based shows that the government's Green Belt Initiative (GBI) to promote large-scale irrigated farming and its commitments to the G8's New Alliance for Food Security and Nutrition further accelerate land concentration among local elites and expose many to landlessness and food insecurity.

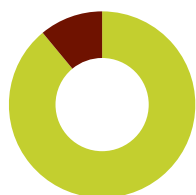
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1. INTRODUCTION

Commercialisation of land in Malawi has aggravated pressures on land in a context of land scarcity, and has negatively affected the livelihoods of smallholder farmers. More than 89% of Malawians depend on agriculture as their main means of earning a livelihood (Republic of Malawi, 2012). Access to land is critical for poor Malawians, with poverty levels estimated at 50.2% in Malawi (Republic of Malawi, 2012). However, the current Malawian land legislation still reflects its origins in English Law, which fails to recognise customary land rights as constituting property. This weak land legislation has left many poor people vulnerable to 'land grabbing', where agricultural commercialisation has been pursued

in the interests of elites in the country. For the past 18 years, efforts to enact new land laws have stagnated. Even the Land Bill passed by Parliament in 2013 failed to secure presidential assent after civil society organisations and the traditional chiefs opposed them. This policy brief examines the current situation in Malawi, with reference to specific large-scale land acquisitions for the expansion of the sugar industry, and recommends appropriate remedies.



89% Malawians depend on agriculture as main means of earning a livelihood

2. THE LEGAL FRAMEWORK GOVERNING LAND IN MALAWI

The current problems facing poor Malawian farmers who are losing land to investors are the result of weak land legislation which Malawi uses for land administration. The existing legal framework reflects the precepts of colonial English property law, which fails to recognise or protect the customary tenure system of land ownership in Malawi. For instance, the current land law states that customary land is held in trust by chiefs for the President of Malawi. Customary land administered by chiefs does not belong to the people, but offers them only user rights. However, there is a widespread view among rural dwellers that the land is their own property inherited from their forefathers. In addition, although it is illegal to sell customary land, such practices exist, often with poor rural landholders selling to elite buyers, a practice tolerated by the government.

In an attempt to address land-related conflicts, in 1995 the government established a policy planning unit in the Ministry of Lands. The unit carried out a number of studies on how to reform the land legislation. This was followed by a Presidential Commission assigned to review land-related laws, which submitted its report in 1999. The result was the adoption of the Malawi National Land Policy (MNLP) by the Cabinet in February 2002. The main goal of the MNLP is to ensure tenure security and equitable access to land, and to facilitate the attainment of social harmony and broad-based social and economic development through optimum and ecologically-balanced use of land and land-based resources (Republic of Malawi, 2002). Despite these provisions that aim to democratise land management and protect land tenure

rights, the policy remains ineffective due to the lack of a legal framework to give effect to it, even 13 years after it was adopted.

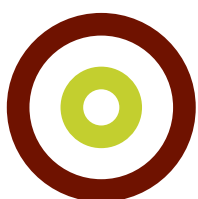
An attempt to reform land law was made in 2013 when Parliament passed the Land Bill and the Customary Land Bill. These bills provided security of tenure of land for existing occupiers and smallholder farmers. But the President has since withheld his assent to pass these into law because of petitions launched by the traditional chiefs and civil society organisations. The chiefs objected that the new laws would weaken their administrative powers over customary land, while civil society organisations objected to the omission of provisions to enhance women's rights to land. In the context of this prolonged law reform process and ongoing debates about Malawi's land governance frameworks, large-scale acquisition of land in customary areas has proceeded in violation of the MNLP but without legal impediment.

3. THE GREEN BELT INITIATIVE AND THE 'NEW ALLIANCE': THREATS OR DEVELOPMENT OPPORTUNITIES?

The government of Malawi has made significant attempts to reduce poverty and hunger. While some of these initiatives, such as the Farm Input Subsidy Programme (FISP), assisted by good rains, have yielded some positive results, others have facilitated controversial land deals on customary land. Research shows that, since the launch of Green Belt Initiative (GBI) in 2009, there has been a rising incidence of 'land grabs' fostered by local elites through lease arrangements with multinationals (Chinsinga and Chasukwa, 2012). The aim of the GBI is 'to utilise water from lakes and perennial rivers to enhance the country's production of a variety of crops, livestock and fisheries', and the initiative seeks to open up large-scale irrigated farms within 20–30km of the country's lakes and large rivers. Large tracts of land in these areas are to be made available to large-scale investors. The GBI target is to increase irrigated land from 78,000 hectares in 2009 to 1 million hectares by 2020. This entails private acquisition of customary land within these areas, most of which is held by smallholder farmers who have hitherto produced the bulk of the country's food. The government has advertised to both local and international investors the availability of land for large-scale agricultural investment within the GBI priority zones.

In June 2013, Malawi subscribed to the G8's New Alliance for Food Security and Nutrition in Africa (New Alliance) and the initiative was launched in Malawi on 10 December 2013. Due to its commitment to the New Alliance, the government pledged to improve large-scale investors' access to land, water and

basic infrastructure, and promised to release 200,000ha for large-scale commercial agriculture by 2015. The government has explained that such allocations of land will be made after a survey to identify 'idle land' (both private and customary). Yet, what is usually termed as 'idle land' is often the land that the indigenous people use for grazing their animals or for shifting cultivation. How will the government find 200,000ha of land in a context of existing land scarcity and growing fragmentation of landholdings without alienating customary land users for these initiatives? With the experiences of the GBI to date, civil society is sceptical whether the fruits of the G8 Alliance will trickle down to the poor people. Rather, implementation thus far has seen the alienation of customary land and the dispossession of villagers and smallholder farmers.



2020 target

78,000 hectares to
1 million hectares

While Malawi is in desperate need of agricultural investment, the prevailing legal framework does not adequately protect the smallholders' land rights or safeguard the interests of customary land users in the face of growing pressures towards agricultural commercialisation. The processes involved in land-use changes have often been coercive, non-transparent and non-participatory. 'Land transfer' negotiations with local communities have often been unbalanced, with superficial consultation and an absence of compensation for loss of land and related resources. The investments' effects on the future livelihoods of the customary land users need to be addressed, with the unclear structure of acceptable compensation due to affected land users. The existing process to determine and award compensation in cases of expropriation does not provide substantive remedies for the affected people or communities; where payment is made to those displaced, this amounts to 'consolation' and does not take into consideration the economic value of the lost land.

4. CASE STUDIES OF LARGE-SCALE LAND ACQUISITIONS IN MALAWI

The expansion of sugarcane out-grower schemes in Chikwawa and Nkhotakota districts have become a great concern for the local people in these areas. Here, sugarcane fields have

been established on customary land which was already used by local communities. The non-consultative and non-participatory processes used to acquire this land denied these communities access to their ancestral land which they used for the production of food and cash crops. Information that LandNet collected from communities in the two districts reveals that, in some cases, chiefs provided 'chief's consent' for land use changes without any consultation with or participation of the customary land users. In other cases, consultations were held but, without consent from local communities, deals went ahead, raising suspicion of collusion and corrupt deals between the investors and chiefs. While in both districts, there are cases where communities have been able to defend their rights to land, some vulnerable groups have lost their land rights to sugarcane-growing programmes. Chiefs have used the out-grower scheme as a reason to coerce landholders to grow sugarcane or face losing their land as chiefs re-allocate land to those willing to sign up as out-growers.

4.1 Illovo's shift to individual out-growers in Chikwawa and Nkhotakota districts

Illovo Sugar Company Limited, a South African sugar company, owns Illovo Sugar (Malawi) Limited, which operates estates in Malawi. The corporate office is based at Limbe with two operations at Nchalo in the south of Malawi and Dwangwa in the mid-central region, producing sugarcane and raw and refined sugar, together with speciality sugars at Nchalo. Illovo Malawi is the country's sole sugar producer with more than 60% of total sugar sales sold to domestic consumer and industrial markets, and the balance exported to preferential markets in the EU and the USA, and the surrounding region (<http://www.illovosugar.co.za/about-us/malawi>). In 1995 it opened up to sourcing sugarcane for its mills from private growers, prompting interest among Malawians to enter into this industry. This led to the birth of organisations like Kasinthula Cane Growers Limited in Chikwawa and Dwangwa Cane Growers Limited in Nkhotakota. However, there is limited private land for commercial farming operations in Malawi, leading private farmers and farmer organisations to seek land in customary areas.

4.2 Coercive expansion of out-growers scheme in Chikwawa District

In Chikwawa District, a case of a Malawian individual acquiring customary land has provoked protracted land conflicts. This dispute is between 2,000 villagers in the Ngowe area of Chikwawa District and a former politician and Minister in the Government of Malawi, in an area that the Malawian government has earmarked for the implementation of the GBI.

In 2011, the former politician reportedly colluded with Chief Ngowe to acquire 10,000ha of village land to develop a private sugarcane plantation. The community only came to know of the deal when the illegal owner started to survey the area. This prompted local church leaders and villagers to protest against the attempt to annex their land. With the assistance of academics from Chancellor College and from civil society groups like the Centre for Human Rights and Rehabilitation and the Centre for the Development of People, the Chikwawa community won a court case in 2012 against the former politician who had illegally acquired their land.

Some traditional leaders adhere to their role as custodians of land, in service of their communities. For example, despite the efforts of the area chief to sell this piece of land, a senior group village headman in the Ngowe area had adamantly opposed any allocation of land without community consent. He insisted that, since former chiefs fought for land and protected it for generations, chiefs should not seek to sell communities' lands (Sulle, 2013). As he said: 'The area allocated to the investor (the former politician) is the most fertile land. Villagers use to grow food and cash crops, and graze livestock there, [and it was] a source of water and housing materials. This is the lifeline of my people.'

4.3 Coercive expansion of out-growers scheme in Nkhotakota District

In Nkhotakota District, out-grower schemes established by Dwangwa Cane Growers Limited (DCGL) forced many farmers to abandon their food crops and cultivate sugarcane on their land. Some lost their land and their field crops were destroyed. In the process of their land being redistributed to others, police threatened people's lives as they enforced the conversion to sugarcane farming. About 537 farmers in the communities of Nkhunga and Kazilila dambo lost their land to Dwangwa Cane Growers Trust (DCGT) during the period 2006–2008. Among them, 137 families lost their crops and houses as they were destroyed by tractors hired by DCGL from Illovo. To date, nobody in the affected communities has received compensation, despite the court ruling that came out in December 2007 at the Blantyre High Court and another ruling on the same from Mzuzu High Court October in 2014 which ruled that the affected people must be compensated for the loss of their land during the period 2006–2008.

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RECOMMENDATIONS

1. The government should expedite the process of enacting new land laws to give effect to the Malawi National Land Policy of 2002, and to provide the legal and institutional framework of Malawi's Constitution which vests all land in Malawi in the Republic (the people) and not the president, as in the Land Act. The vesting of land in the president has been the subject of exploitation by government to make certain decisions on land that affect the welfare of the people without regard for their rights in the name of the government development agenda.
2. To ensure that customary land is safeguarded from arbitrary conversion for commercial interests to the detriment of local communities, the new land laws must provide mechanisms for formal recognition of group and individual rights under customary tenure of land, with clear definition of traditional leaders' roles and responsibilities. These must be enforceable laws backed up by binding national regulations, which recognise and strengthen legitimate customary tenure rights that are defensible within a court of law.
3. In specific cases of conflicts over the expansion of sugarcane out-grower schemes, relevant government authorities need to conduct mediation meetings with chiefs, cane-grower associations and smallholder farmers threatened by land grabs, to ensure such threats are addressed and farmers' rights are protected.
4. Government and civil society need to work together to empower communities threatened by the large-scale land acquisitions with knowledge of their land rights under the Malawi National Land Policy, the FAO's Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), the African Union's Guiding Principles on Large Scale Land Based Investment, and with the skills to engage with investors, chiefs and state institutions to protect and defend their rights to customary land.
5. The government of Malawi and domestic and international investors need to ensure ongoing compliance with both the African Union's Framework and Guidelines on Land Policy in Africa and the FAO's VGGT.

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