

**Report on the Malawi National Civil Society Conference on Land Reform Policy
and Land Law Formulation Process
(March 20 – 22nd, 2002)**

Background

Two years ago, the Malawi Civil Society Land Reform Task Force (now called the Community based Natural Resource Management and Land Reform Task Force), was formed to coordinate the contribution of civil society with respect to the land reform process. The immediate task for the Task Force, and for civil society in general in Malawi, was the response to the government-drafted National Land Policy (NLP). Since then, the NLP has gone through successive drafts and has now been approved by the country's cabinet. The Ministry of Lands, Physical Planning and Surveys is now making preparations to take the NLP through a legislative process aimed at producing and over-arching Land Law.

The Land Rights Network of Southern Africa (LRNSA) attended the said conference, represented by the Interim Coordinator, Sue Mbaya.¹

Rationale for the Conference

It is the opinion of the Task Force that due to limitations in the extent of consultation during the making of the NLP, there are still some issues that the NLP does not address to the satisfaction of civil society. Some of these issues included:

- the proposal to introduce market based land reform and the implications of this
- the role of chiefs
- the criteria for rehabilitation
- security of tenure issues in relation to the land market
- gender issues
- the impact of HIV/AIDS

In view of these concerns, the Conference was organised with the view to:

- raise awareness among the civil society on land issues;
- engage the civil society in the discussions of the recommendations made in the NLP and the subsequent Land Law and their implications on sustainable socioeconomic development of the country;
- make suggestions and/or alternative strategies for those recommendations whose implications are deemed to be counter-productive;
- develop a civil society action plan to engage the government on matters of land policy and the development of the land law.

¹ The lead organization for advocacy in the Network, NLC, was originally meant to represent the Network, but, on the day before the Conference indicated its inability to do so due to unavoidable circumstances.

Attendance

The Conference was attended by members of civil society, government representatives and members of the donor community. It was noteworthy, however, that several key representatives of NGOs working on land issues were not present as a result of other activities. This visibly affected the depth of some of the discussions.

Key Issues Emerging for Discussions

On the first day of the Conference several papers aimed at improving the participants' understanding of recently approved National Land Policy. The presentations provoked relatively lively debate, particularly the discussions on the place of customary law in relation to the proposed Land Act; inheritance practices and land; and gender land relations. After the first day, the emerging issues were identified and these became the basis for group work. These were:

1. The integration of the Land Law with the Wills and Inheritance Act and other related laws.
2. Statutory versus customary law – whether customary land should be treated as a separate Land Act?
3. How to ensure gender equity in land issues? How does the Land Act ensure effective participation by women in the land market?
4. How does the Land Act protect rights of foreigners?
5. How does the Land Act safeguard alienation of land from the vulnerable groups through market forces?
6. How do we advocate and create awareness about land policy and act?
7. How do we ensure effective implementation and enforcement of the law?
8. Land ownership and incentives and disincentives.

One of the main concerns that emerged from group discussion was that of the security of rights in land under an open market in land, particularly those of the poor. There was uncertainty over the manner of registration, a lawyer present indicated that the registration form made provision for the name of one person to appear, but as a representative of an identified unit – say a family. However the Controller of Lands was unable to confirm this of joint registration of spouses was discussed but consensus was that joint title would be incompatible with prevailing marriage systems.

Related to this concern was the over-riding concern that the incorporation of customary land administration matters under the Land Law would result in local culture being destroyed. The suggestion that customary practices other than those that disadvantaged certain people would continue to operate, was not accepted. Judging from the intensity of the debate, it is likely that the issue of the place of customary law in relation to statutory land law is likely to continue to represent a huge challenge to the Malawian legislators.

On the first day, the Chairman of the parliamentary Committee on the National Land Policy had expressed the view that women on customary lands were not marginalised and that gender land concerns were unfounded. This had been received as an indication of the

seriousness of the gender/land problem. Hence the discussions had since become more aggressive. The traditional marginalisation of women with respect to customary issues, coupled with Malawi's complex inheritance systems – these factors together have the potential to make the issue of gender land relations particularly difficult. It was noteworthy that there were no groups that were proactive in offering possible solutions. To the contrary, on several occasions those working in the area of gender and land were asked specifically what recommendations they had to make. None were forthcoming.

Major Outcomes of the Conference

In my view one of the most significant outcomes of the Conference was the depth of interaction that CSO was able to engage in with the Controller of Lands, Yasini. The Controller was fully available to the Conference, open to most questions – took criticisms well and to some extent, acknowledged the weaknesses of the policy process. The conference appeared to represent an important point in the relationship of CSO and the Controller. Yasini himself noted that the spirit of the meeting was different from the previous confrontation which characterized the interaction between members of civil society and his office. Perhaps as a result of the improved relationship, Yasini invited CSOs to participate and contribute to the experimental land resettlement process to be embarked upon by government. This process is intended to target the landless. Other groups would be encouraged to make better and more sustainable use of their existing land resources.

Perhaps not so positive but equally important was the fact that the Controller acknowledged that while it was possible that the National Land Policy could be improved upon, no further amendments to the NLP would be entertained by the Ministry. Yasini pointed out the fact that the priority of the Ministry at this point is the Land Act. He did promise though that his office would seriously consider all written submissions during the process of formulating the Law. This left CSO with the choice between accepting the NLP as it was and then hoping to influence the upcoming Land Bill, or to begin to lobby parliamentarians into amending the NLP when it is presented to Parliament. From the action plan developed at the end of the Conference, it appeared that CSO was considering pursuing the former option.

Opportunities for LRNSA

On several occasions representatives of civil society lamented the fact that Malawi civil society was still very weak, particularly in relation to the task at hand. I indicated to the Conference that the capacity required was available in a collective sense, in Southern Africa and that through LRNSA capacities available elsewhere in the region could be made available to civil society in Malawi. This proposal was well received by those present and particularly by the members of the Task Force. At a glance, assistance will be required in the following areas over the coming 12-month period:

- provision of relevant networking contacts
- identification of relevant best practices that can be adopted
- policy analysis

- gender mainstreaming
- land law development and analysis
- policy advocacy strategy making

Malawi civil society (represented by the Task Force) will also require appreciable funding in order to implement the projects listed in the agreed activity plan. It is likely that for the most part, the Task Force will be able to canvass the financial support required. However, LRNSA may be called upon to assist in the preparation of suitable proposals or in the identification of applicable funds.

Way Forward

The decision was taken for CSOs to design a draft Law for submission to Government in accordance with the Plan of Action below.

Plan of Action for CSOs

	ACTIVITY	RESPONSIBILITY	TIME FRAME
1.	Drafting of Law		12 months
2.	Review of Laws		12 months
3.	Civic Education	NICE CCJP CSC	Continuous
	Advocacy	Nkhomano MEJN CARER	Continuous
	Capacity Building	CIWC	
4.	In connection with poverty reduction, CSOs are to engage Government on the following issues: <ul style="list-style-type: none"> • inflation and interest rates; • tax laws; • governance issues; • infrastructure. 	Private Sector, e.g. Chamber of Commerce	
5.	Evaluate and determine NLP mechanisms meant to prevent the alienation of land from vulnerable groups.		
6.	Production of conference proceedings report.	Task Force	1 st April

In all cases the Task Force is to take the lead while working together with these volunteer organizations.

On the part of government the drafting process of the Bill is at the stage of funding negotiations with the donor. It is expected to be complete by June. Thereafter drafting will begin. This is expected to last one year. The process of drafting will involve increasing consultation at grassroots, NGO and ministerial level, etc. so that the first draft will already incorporate CSO views and will just need confirmation.

End of Document

Sue Mbaya

April, 2002