

**REPORT ON THE MALAWIAN
DRAFT NATIONAL LAND POLICY WORKSHOP
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1. The background

I was invited to Malawi to attend the Ministry of Lands' national workshop on land policy, whose dates, after many changes, were finally fixed for 19-20 October 2000. Prior to the Thursday/Friday workshop, I attended meetings of the CCJP/ECM (Episcopal Conference of Malawi) on Tuesday 17 and of some NGOs on Wednesday 18 October. On the days before the workshop, I also met Frederick Kandodo of CCJP, Patrick Yasini, Controller of Land Services, and Geoffrey Nkhata, Commissioner for Lands, and Harry Potter, DFID's Natural Resources Adviser. On Saturday 21 October I met the TV journalist Rodrick Mulonya.

I came to Malawi asking two basic questions:

- 1. is the government serious about the land issue?**
- 2. is it serious about listening to others?**

I felt reasonably confident by the end of the week from what I saw and heard that the answer to both was yes.

The purpose of the workshop was for the government to consult on its draft *National Land Policy*. The Policy had been trailed in 3 regional workshops in July and August and itself followed a long period of enquiry, including the 1999 Presidential *Report of the Presidential Commission of Inquiry on Land Policy Reform* and earlier studies of the customary and estates sectors. When the final Policy is agreed by Cabinet, it is intended that a comprehensive land bill be drafted. This is a process comparable to that undertaken in other countries in Eastern and Southern Africa.

The context in Malawi, as elsewhere, is of intensifying conflicts over land, much urban speculation, and land grabbing by the rich. There is acute land pressure in the south, where there is a tea estate sector. There are many smaller, under-utilised tobacco estates in the Central Region which were handed out as political rewards by the Banda regime (a process which has continued under the new government). Malawi is dirt poor, one of the poorest countries in the world, with little urbanisation and few off farm opportunities. The safety valve of labour migration to other countries has long been closed. It is also a highly unequal society. Its land problems rate in seriousness and difficulty of resolution in Africa along with those of Rwanda and Ethiopia.

2. The workshop

I thought it was a very good workshop. Leaving aside the - admittedly major - issues of the constantly slipping dates and not getting the draft policy out long enough in advance to be read, I thought it was very well planned and organised. It was also extremely well attended, somewhere in the region of 250 I would guess - and a pretty good cross-section of national and local government, chiefs, the private sector, academics, donors, churches and NGOs - though no members of the *Land Policy Reform Commission*. The attendees were overwhelmingly male and over 35; I was told this was quite normal for Malawi.

There were plenaries at the start and at the end, but for most of the two days we were divided into 4 working groups to go through different sections of the Policy clause by clause. They were:

- I: Land tenure and administration
- II: Demarcation, titling and registration;
- III: Land use planning and environmental management
- IV: Acquisition, disposition and resettlement.

We had 50 or so in the group I attended (Group I) and there were very few absentees on the second day. People in my group and - from what I was told - in the others too, took their work very seriously and conscientiously.

The government people at the start, during and at the conclusion did appear serious in wanting to hear what people had to say - and be open to change the draft as a result. In fact, Henry Juwa (the Permanent Secretary) floated the possibility of another workshop to consider a redrafted Policy. He also used the words 'a brainstorming', but might have made it clearer at the start what the precise function of the workshop was; some clearly thought that they had the power to mandate government to make changes.

It was very good that we had prior meetings with CCJP/ECM (c.30 people from across the country) and the NGOs. It meant that those who then attended the workshop went far better prepared than the majority and (by prior agreement) were able to spread themselves across the 4 working groups.

We produced a short (4 page) *Initial Comments by Civil Society* paper, part summary, part critique, based on something I had produced for CCJP/ECM, itself an edited down version of my earlier report to Oxfam after first reading the Policy. This idea was suggested by Robert Kafakoma of CURE (Coordination Unit for the Rehabilitation of the Environment) and was written up by myself by Max Lawson (independent consultant working for Oxfam) in the light of the various comments made at the NGO and church meetings. Robert and others distributed some 200 copies of these *Initial Comments* on the first day of the workshop; what impact this had I'm not able to say.

3 key issues emerged during the workshop, in the groups and then in the final plenary.

- 1. The role of chiefs.**
- 2. The sale of customary land.**
- 3. The sale of land to foreigners.**

All provoked various kinds of debate. Juwa seemed to give a promise in the final plenary that **customary land will not be sold**, which got a great cheer - and I took to be a formal commitment. (But see the Postscript below). The other two will run and run, I'm sure.

I think the Ministry people were taken aback at **the chiefs'** protests that proposals in the Policy would undermine their powers - and beyond that, the more astute among them recognising that any Land Act would offer them less scope for corruption than the present laissez faire situation. It reminded me of debates in South Africa (where the Mbeki Government has recently moved closer to the chiefs. **The Muluzi Government in Malawi will need to address this very carefully and sensitively - as will the advocacy NGOs.** People at all 3 meetings affirmed that rural people still held the chiefs in great respect, so attempts to 'democratise' governance at that level will clearly prove difficult to bring about - though absolutely necessary, many would argue.

Land for foreigners is a genuine and serious issue everywhere, compounded in Malawi by land scarcity and, no doubt, by the fact that, post-Banda, the local Asian community has been able to acquire both citizenship and land, peri-urban and rural. There was strong feeling on this, and discussion about whether you could say one thing in law and do another in practice. Henry Juwa seemed to entertain this possibility. The Ministry would do better to look at how this issue has been approached in legislation elsewhere.

3. What next?

Robert Kafakoma of CURE spoke of the need for an NGO meeting soon to strategize, which is clearly necessary. I tried to find out what next? What Rex Ahene, the Ghana-born consultant, told me on the first day was that if there were no major changes proposed they would go straight to a final version which would turn into a confidential White Paper to be put before Cabinet before the end of this year. They would then do a summary, get it translated, and run an awareness campaign. It would take 'at least a year' to draft and pass a bill. This would give NGOs and churches virtually no time to intervene. And it would probably have been the Ministry's first option.

It seemed that was likely to happen until the final plenary and Juwa's mention of a possible follow up workshop to consider an amended draft. If this is followed, the timetable slips, and the NGOs get a chance to intervene further. Which is no doubt good in principle, but they need to ask themselves do they want a longer process, or is further delaying a Land Act in the interests of the poor? Also, as mentioned above, how are they going to come out on the issues of the chiefs? We left it as a question in our *Initial Comments* paper because there were clearly conflicting views.

Either way, **the important thing will be to find out whether the Ministry**, when it has had time to digest and reflect on the workshop, **is going to be open to more consultation** or whether we have reached the end of that chapter.

4. Other issues

- The MPs said they would need adequate time to discuss the proposals when a Land Bill was finally drafted. It is important that they said this. I would urge civil society (or the Ministry) to follow the Ugandan precedent of running **an awareness-raising workshop on the Bill for MPs** at the appropriate time. In Uganda, this was supported by DFID and they brought in Liz Wily as a resource person.
- The ruling UDF party is clearly committed to this Policy and to legislation. It does seem to want to build a broad consensus around it and, having won a second term last year, feels in a strong position to do this. Civil society should try to ensure though that, as far as possible, the land issue does not become embroiled in party politics. For example, it will be important to be politically even-handed when it comes to repossessing under-utilised estates.
- DFID should be encouraged to get involved in the next stage(s). The British have the obvious advantage that they screwed the place up in the first place!
- Oxfam in Malawi should also get involved, probably in some of the public awareness work.

- Finally, 2 rumours - that Muluzi is worried that Mugabe might try to return some 2 million farmworkers (originally of Malawian origin) to Malawi, and that displaced white Zimbabwean farmers were coming looking for land in northern Malawi. Neither would be helpful.

5. Postscript - a month later

A month after the workshop, Oxfam colleagues met Patrick Yasini, Controller of Land Services, and a key player in the whole process, to sound out the Ministry's reactions to the workshop.

He believed the workshop had gone very well and that there were far fewer problems with the chiefs than he had feared. He said that the Policy would remain unchanged regarding the sale of customary land, and that participants had simply not understood the need to put a value on land. This could well prove tendentious, as most of the Traditional Authorities had left the meeting believing that customary land would not be bought or sold.

Oxfam pressured him to put an explicit gender quota into the Policy for the various committees and land boards. This pressure will continue.

He said he hoped to finalise the document by the end of November, at which point it would go to the Cabinet committee on the economy. After that it would become a policy and could then go for legal drafting. The Government's aim remained to put a new land law in place by the end of 2001. He was adamant that there was no time for further discussion, and that people wanted action and a solution.

He said there might be some scope for civil society input during this drafting period, otherwise he saw it as being principally involved in civic education and dissemination, in some of the pilot implementation projects, and in the formation of committees at the community level.

He was quite open in saying that very few changes have been made to the document following the workshop.

No report is to be made on the outcomes of the workshop.

Oxfam made it clear that we saw our role as encouraging civil society to speak with one constructive voice on the land issue.

The end of one long road may be approaching.