

Safeguarding women land and water rights through establishment of land monitoring and recording systems: Emerging lessons from Malawi

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Abstract

Land and water is central to the social and economic development of Malawi where 85 percent of its population rely on subsistence agriculture. The high population estimated at 16.0 million people coupled with high poverty levels against a total land area of about 9.4 hectares land and water are increasingly becoming scarce resulting into increased levels of conflicts more especially at community levels. Over the past 20 years the country has witnessed increased levels of land conflicts amongst the communities and between communities and large scale land investors. The increased levels of conflicts between the communities themselves and with the large scale investors are all linked to access to land and water which is becoming scarce. This defines the nature and extent of the challenges that face the country as it struggles to address the overarching problems of poverty eradication and deprivation.

Malawi adopted a comprehensive land policy in 2002 however the adoption has not been matched with equally progressive supportive land legislations. The delays in approving the new land laws to support the implementation of the policy has become a recipe for increased landlessness, intergenerational land fragmentation, insecure land and water tenure regime, land concentration, inequalities in land and water access, land grabbing, lack of transparency and corruption in land administration and malpractices.

With support from the International Land Coalition (ILC), Training Support for Partners (TSP) a local organization in Malawi is implementing a project which is aiming at safeguarding the women land rights through the establishment of land monitoring and recording systems in one of the districts in the Central Region of Malawi. This paper shares the emerging experiences and lessons from the project. Experiences from this project reveal a very close linkage between land and water security as they relate to food security at community level.

Key words: Women empowerment, land registers

1.0 Introduction

Training Support for Partners (TSP) is a local NGO which started in 1998 as a capacity building programme focusing on community based natural resource management. The vision of the organization is communities and organisations in the food security, water and sanitation, environment and natural resource management sector have capacity to effectively contribute to the economic development process of the country. Its mission is to strengthen the capacity of organizations and local communities in the food security, water and sanitation, environment, natural resource management and land sector in Malawi through enhancement of strong partnerships, collaboration, and networking. Since establishment the organization has been implementing a number of projects focusing on land, water, sanitation, hygiene and community based natural resource management.

2.0 Context of land and water governance challenges in Malawi

Malawi has a total land area of 9.4 million hectares against a growing population estimated at 16.0 million in 2015 from a population of 4.04 million in 1966. The population density increased from 85 persons per square kilometer in 1987 to 139 persons per square kilometre in 2008 (NSO, 2010). The country is highly populated and depends on agriculture for its socio-economic development and this underlines the nature of land and water governance challenges the country is facing. Though the country is small it is endowed with relatively vast amount of water resources since a third of its land area is water. Despite the abundance in water the country is facing a number of land and water challenges including the following:

Landlessness

Landlessness occurs in both the rural and urban areas which is resulting from the rapid population growth and intergenerational land fragmentation that eventually leave some members of families more especially the rural poor landless or near landless. Due to the nature of the cultural set up in the country this problem is usually shielded by the extended family system arrangement that allow group utilization of land parcels. The situation is more serious in district where there are huge tracks of land that are converted to tea and tobacco estates. It is estimated that over 13% of fertile land is under estates in the country. The situation of landlessness is further aggravated by the unregulated sales of large parcels of land to foreign investors and well to do Malawians for different types of uses. Often times, the areas with smallest average farm sizes have the highest levels of poverty, highest food insecurity and poor households are the most affected since they tend to have smaller land holding sizes. Increased levels of encroachment into protected areas are clear signs of growing levels of landlessness amongst the people in the country.

Land fragmentation

Culturally land is distributed through clan heads that in turn partition the land into families. As the families grow or increase in size land per capita systematically decrease sometimes to the sizes that cannot produce enough food for the family even with improved production methods. In both the matrilineal and patrilineal inheritance arrangements, family land parcels are continually being subdivided to accommodate the growing number of people.

The continued redistribution of land to the growing children further diminishes the landholding sizes from generation to generation. Land fragmentation is further engraved because of the notion that food security at household level entails that everybody must produce in order to run away from the viscous cycle of food insecurity. The continued fragmentation of land leads to family conflicts the most affected being the women and children.

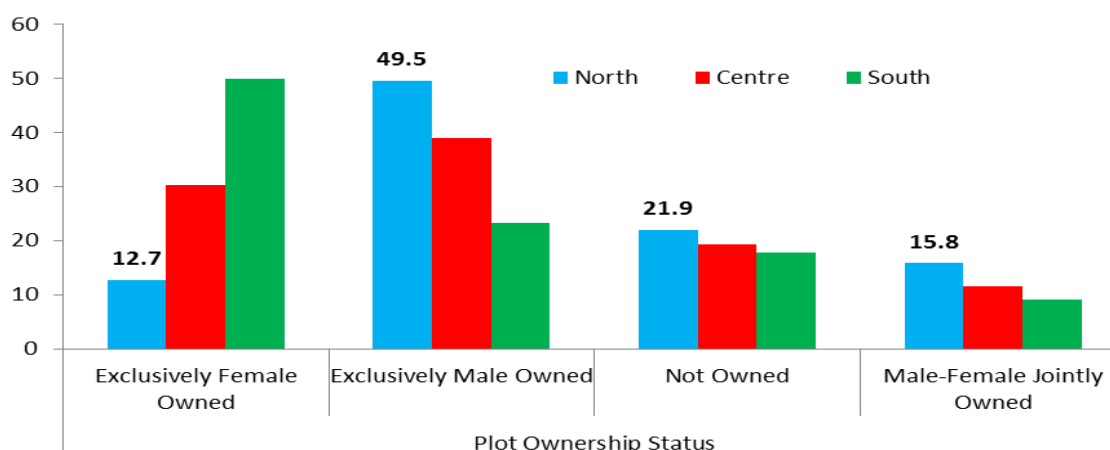
Land concentration

In some parts of the country land is concentrated in few individuals and companies. Of the 9.4 million hectares of land available in Malawi, 1.7 million is gazetted as protected areas, 1.2 million hectares is under private estates leaving 6.5 million hectares available for smallholder agriculture under customary land tenure system. Not all the 6.5 million hectares are suitable for agriculture under the prevailing unimproved level of management as about a third of this land comprise hilly steep slopes and rocky areas. This leaves smallholder farmers who comprise about 85% population with limited land for crop production. Continued converting of this limited land into private ownership further increases the concentration of land into few land owners at the expense of the majority of Malawians.

High inequalities of land access

Despite legislative and policy reforms in water and land inequality of access to land between men and women continue to exist. Women have difficulties in making independent decisions about land use and in accessing the benefits derived from land ownership and utilization. Whether in patrilineal or matrilineal societies, access to land is typically mediated by men (spouses or uncles). The NSO third Integrated Household Survey (2011) concluded that there is an equal distribution of ownership of plots of land between men and women as summarised in Figure 1. The survey concludes that there is no much different between and across sex in terms of acquiring plots through inheritance as it recorded 78% and 81% for males and females respectively. This situation depicts the situation in urban areas where people are allocated plots but in the rural area, the situation is different because women are marginalised when it comes to land ownership, access and control. In most cases the males dominate the females when it comes to inheritance and management of plots of land. Evidence of gender bias against women in terms of inheritance of land is strong in many parts of the country.

Figure 1. Plot ownership status by region, Malawi 2011



Source: NSO, 2012

Insecurity of land tenure

Land tenure insecurity continues to persist amongst people. Land tenure comprises the system of rights and institution governing access to and control of land. It includes the rules and regulations that societies or communities develop to determine how land is accessed, allocated, used and exchanged. Improvement of land tenure security has in the past entailed having titles of land parcels but the process has been expensive and cumbersome. The current National Land Policy adopted in 2002 advocate registering of all land parcels and provides some form of certificates of ownership to all. However 13 years down the line, the legal framework governing the implementation of the National Land Policy has not been approved in Parliament. It is hoped that registration of customary estates and provision of certificates will provide the much need evidence of ownership and therefore improve security of tenure more especially for women and children.

Foreign investments and acquisition of farm land

Serious discussions over land grabs in Malawi has not taken place since over the past 10 years there have been increased pronouncements by government to encourage and promote investments in an effort to attract Foreign Direct Investments (FDI). The country has witnessed an increased level of both international and local investors acquiring land from local people. More land is being acquired for the development of sugar, tobacco estates and mines. More land is being acquired from local people forcing them to resettle in marginal areas. The simple question is whether the investments over land can be met while observing sustainability guidelines and without marginalizing the land rights of poor communities.

Investments and acquisitions of land need not to always be foreign to have negative impacts on the local people. There are many examples in the country that local well to do people are acquiring huge trucks of land at the expense of local people. The high levels of poverty amongst people coupled with low levels of awareness of the existing land and water policies are forcing people to sell off their pieces of land to large scale investors because local people want the money to meet the short term the household needs. Because the entry point for these investors is the local community many of which would want to meet the

immediate finance needs regardless of the future needs, cases of displacement and conflicts are increasing.

Increased level of land and water conflicts

As many people are being pushed to marginal pieces of land, disagreements and disputes over ownership, access and control of limited available land and water are becoming common in Malawi. At local level land and water related conflict are a daily occurrence; in the smallholder setting every year there are land conflicts between families and neighbouring villages. Cases of traditional leaders selling land to well to do Malawians or foreigners are increasing to the disadvantage of the poor households who usually have weaker voices. In May 2014 it was reported in the local newspaper that the High Court ordered fishermen in group village headman Balakwanda in Traditional Authority Maganga in Salima to vacate the area they encroached but people refused to obey the order because they said they land belong to them.

“in May 2012, the High Court in Lilongwe ordered that fishermen in the village should vacate the area because they were encroaching on land belonging to a Nkhata Bay Businessman Sultan Abhullah but the villages have repeatedly disobeyed the court order claiming that they have nowhere else to go. The said that the chief of the area sold that piece of land to the businessman dubiously”

The increased levels of conflicts are further exacerbated by the high level of corruption amongst the traditional leaders who lack transparency in land transactions and administration. There have been cases where investors acquire pieces of land dubiously through traditional leaders and sometimes corrupt government officers who take advantage of the local community’s low levels of literacy and knowledge of land transaction processes.

Encroachment into protected areas

Currently the country is witnessing huge levels of encroachment into protected areas such as forest reserves which are catchment areas for rivers and dams causing massive deforestation, degradation and flooding of rivers, streams and dams. Forest reserves such as Mdzalanyama, Dzonzi-Mvai which are catchment areas for Malingunde 1&2 dams and Mpira dams have been heavily encroached forcing the government to use the Malawi Defence Force to assist in evicting people who have settled in the protected areas. The heavy flooding which the country experienced recently is being attributed to heavy deforestation and degradation in protected area which have resulted from encroachment.

The flooding of the Shire River which is the main source of electric power for Malawi is having a huge negative impact on power generation affecting industrial and domestic power supply in the country. The country’s power and water supply companies are spending a lot of money to dredge the dams due to siltation. On the other side, the supply of water for irrigation and other domestic uses are dwindling rapidly leading to conflicts amongst the people because they are always competing for a diminishing resource.

3.0 Policy and legal process relating to land

In 1999, a Presidential Special Commission was formed to investigate land related challenges the country was facing. The Commission recommended the formulation of a comprehensive national land policy which was approved in 2002. The approval of the National Land Policy was followed up with a review and formulation of land related legislations that have not yet be legislated to date 13 years after the adoption of the policy.

The adoption of the National Land Policy in 2002 was one of the major interventions in addressing the land related challenges after years without a comprehensive land policy. In 2004 the Government developed the Malawi Land Reform Programme Implementation Strategy; it translated the ideas expressed in the recommendations of the National Land Policy into actions.

The strategy focuses on strengthening tenure security, access to land, land governance and administration, sustainable land use, capacity building and training and information, education and communication. The implementation of this strategy has faced a number of challenges including lack of funds and inadequate human resources to the effect that only a few activities and projects have been implemented to date. The other bottleneck has been the delay in finalizing the reviews and legislation of land laws that has denied the legal banking required by some activities.

Apart from capacity building in terms of training, one other project in the area of land tenure security has been implemented; the Community Based Rural Land Development Project (CBRLDP) that targeted relocation of people from the densely populated districts in the Southern region to some relatively low density districts within the same district. In addition to supporting families to obtain land, the program administered a farm development grant, assisted in the procurement of water infrastructure, provided extension services, and made sure that beneficiaries obtain group titles to the land. Individual land titling was also promoted in the project, though this part of the project was not emphasized.

4.0 Experiences from safeguarding women land and water rights

4.1 Description of the project area

In support of the National Land policy implementation process Training Support for partners is implementing projects focusing on safeguarding women land rights. The main aim of the project is to enhance land tenure security amongst community members especially women in one Traditional Authority Ganya in Ntcheu District. The area was selected because of the increased interests by large scale investors to acquire land and also increased conflicts within the communities over the control and access over land. The project purpose is to reduce land grabbing and accord women and orphans their meaningful land and property tenure rights. The project has been implemented for one year but the results and experiences are interesting when it comes to issues of land and water governance.

Over 90% of the land in the project is customary. People in the project area grow various types of food and cash crops such as maize, tobacco, groundnuts, cassava, sugarcane,

vegetables and also keep different types of livestock such as cattle, goats and poultry. About 110,000 people of the 320,000 people in the district live in the project area and their livelihood comprise mainly of subsistence farming. The area has a gentle slope, comprise the Bwanje and Rivulezi River valleys which are fertile and well watered areas of the district. The area is described as the breadbasket of the district since it produces different types of crops which feed the district and various urban centre of the country. It is bordered by the Kirkrange on the western side which is hilly and mountainous and Lake Malawi to the North Eastern and the Shire River to the Eastern part. Most of its streams and rivers flow and meander slowly into Lake Malawi making the area one of the most fertile areas of the district. However, it is also where the increasing interests by the investors who have opened and intend to open sugar and tobacco estates are increasingly high.

The project area has a matrilineal system of marriage. Some patrilineal types of marriages are also practiced but the predominant system marriage is matrilineal. Land is passed on through the female lineage even though the uncles are the one in control. Even though the man leaves his home to marry elsewhere he has control over land where he is coming from by virtue of being the head of the family and any land transactions can never be handled without the authority of the man who usually stays elsewhere where has married.

4.2 Activities the project is implementing

Training of local leaders and women empowerment

Training of traditional leaders and the already existing traditional land committees on how to administer land in line with the land policy. In Malawi a district is divided into traditional authorities and each traditional authority has a group of village headpersons and under each village headperson, there are clan leaders and households or families. Customary land in each district is held on trust for the communities by the traditional authorities. The traditional authority is therefore the custodian of land at district level. Any land transactions cannot take place without the consent of the traditional authority. The traditional authority is the highest authority at local level who deals with land transactions and conflicts. The project therefore trains these traditional leaders on their roles and responsibilities in dealing with land administration and transaction issues.

The project train local leaders to record land related conflicts and disputes in registers. A simple recording system was introduced at group village headperson level where all land related disputes and transactions are recorded. The project also procured a computer which is placed at the Traditional Authority office where all group village head persons report and record the land related transactions that have taken place in their area. In addition the project trains women groups on their land and water rights.

Civic education on land and water related policies

The project organizes village level awareness and civic education activities on the national land policy and other land and water related laws and policies. The whole idea is to make the community understand and know what the policies and laws are articulating on issues of water and land.

Facilitating interface meetings

Facilitating interface meetings between the local communities and their local leaders on land and water related governance issues. The project organizes interface meetings between local communities and the district personnel to discuss issues relating to land and water. The interface meetings are also used as forums where each of the village headpersons report the land and water related conflicts and disputes and transactions that have taken place in their area.

4.3 Emerging lessons from these interventions

There is marked decrease in land and water related disputes amongst the communities in the area. The introduction of the land transaction registers at village head person level has instilled a sense of fear amongst people more especially men who and other traditional leaders sell land without following properly traditional channels. Land disputes amongst local people have drastically reduced and women who were the most disadvantaged now feel secure. For example one village head said that before the project, he used to record at least 5-8 land cases every month in his area involving women but now no land disputes are being recorded in his area.

The increased level of awareness of the land and water related policies amongst the local people makes it difficult for the “local and international investors” to cheat the local people when dealing with land related issues.

Women are now questioning and demanding their meaningful involvement in all land related decision making processes. They are now participating and involved in traditional land committees. Women are able to challenge any malpractices that impinge their access and control rights of land and water because they are enlightened about the land and water related policies.

5.0 Challenges that still need to be dealt with

The project has mainly focused on strengthening the women land rights, issues relating to access to and control of water are not as pronounced and not given much attention.

The project is being implemented at as small scale but it can make a big impact if it can be scaled up to include many areas in the district and also extend to other districts. There are still low levels of awareness about land and water related policies amongst local people. More awareness and civic education is important to ensure that the majority of the people are informed and aware of the water and land related policies.

Though the conflicts over land have reduced as a result of the local level registers, water related conflicts are rarely recorded and discussed given the attention they deserve. Hence need to train the local leaders to also record the water governance disputes that arise from the area.

The planned project was important for creating public awareness and providing lessons and critical success factors for some of the provisions in the National Land Policy. It is vital that

such projects are up-scaled to provide the required experience necessary for wide implementation of the policy. The decentralized land administration will need increased impetus on training and capacity building including establishment of the required institutional framework and spatial data infrastructure.

As observed in this project, the focus has mainly been on the land and the water element is subsumed to be inclusive as people consider fertile land as land that has adequate water for growing crops and grazing their livestock. As we consider up scaling this project, there is need to seriously mainstream water governance issues

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