

SALE OF MALAWIAN LAND

(1) Background Information

a Land Under Various Categories (hectares)

S	Total land and water	11,832,167
S	Total land area	9,398,721
S	Protected area	1,781,937
S	Forest reserves	768,476
S	Wildlife reserves	389,730
S	National parks	622,377
S	Proposed Forest reserves	238,907

b Land Balance (hectares)

S	Suitable customary land.	4,100,000
S	Unsuitable customary land	2,100,000
S	Public Land	1,800,000
S	Estate land	1,100,000
S	Urban	300,000

c	Population:	About ten million people
	Growth rate:	3.2% per annum
	Protection:	Over 20 million people by 2020
	Age:	About 60% of the population is below 15 years of age.
	Per capita income:	210 USD

(2) Before the take over of Malawi by the British land was acquired by military conquest and occupation by unoccupied or abandoned land. There were no treaties or documented negotiations. Simply put, strong groups acquired the best lands.

From the British take over, Europeans intent on setting up commercial, agriculture and mission stations established themselves through grant of concessions by chiefs. A concession is right given by owner (s) of land, or by government to do something e.g take minerals from land.

The Presidential commission of enquiry on land policy reform makes this observation:

“To indigenous communities these concessions were essentially in the nature of occupation licences not at all conferring property rights to the foreigners. The foreigners clearly understood that communities and their chiefs had ownership and control over their land, and history indicates that coercion was also used in bringing about consensus in respect of these concessions.” (Report p.15)

In other words, regardless of the process used to accomplish European settlement, it did not, at this point, translate into the formulation of legal titles to the land in the sense in which we understand it today.

British protectorate status in Malawi was proclaimed in 1891. A commission of British Central Africa was appointed, who in exercise of the acquisition of lands order 1898, purported to acquire and make grants of lands in the name of the British sovereign. According to the commission report, a number of grants were thus made to white settlers who were unable or unwilling to negotiate with indigenous chiefs for concessions. The effect of that British policy was that indigenous communities lost control and ownership of land and eventually leading to the fiction that the title to the whole of Malawi was now in the British monarch.

In 1951, a land ordinance was passed by the Nyasaland Legislative council. The purpose of this Legislation was to formalise the reality which had been created by treaty, convention, agreement or conquest pursuant to the British Central African Order in council of 1912. The ordinance defined land as either public, private or customary. But the so called “customary land” was in essence a mere species of “public land.” A concession was thus being granted to the natives in that some form of tenure was being defined for them for the public land which they occupied. Such land did not, however, come under the legal control or ownership of the natives; rather, it remained under the control and management of the governor. This position was reenacted in the act (cap.57.01) which came into force in 1965. No body of substantive law was included in that act and instead all it did was to replace the governor and the commissioners who previously exercised power on behalf of the British sovereign, with the minister of the Malawi Government.” (Commission report p23).

An attempt however was made in 1967 to provide Malawi with a comprehensive body of land law, the registered land act (cap.58.01). It provides for land registry practise, the incident of registered ownership, dispositions, transmissions and trusts, restraints on dispositions prescriptions, and rectification and indemnity.

(3) On 18th March, 1996 the appointment of a commission of inquiry into land policy reform was gazetted. The objective of the commission was to recommend the national land policy that would promote equitable access to land, security of title to land and improved land administration.

The commission presented its report to government in 1999. Presently we have the national land policy in draft form, currently being studied by cabinet.

The goal of the new land policy is to ensure tenure security and equitable access to land, and to facilitate the attainment of broad based social and economic development through optimum and ecologically balanced use of land and land based resources.

A fundamental principle of the policy is to codify the tenants of customary land law and to elevate the customary land to full ownership status. Thus with the coming in force of this new land policy, the categories of land recognised in Malawi will be defined as follows: government land, public land, and private land. The policy suggests comprehensive registering and titling of customary land interests.

(4) The government intends to encourage an open market in land that will cause land values to move towards their highest and most desirable uses. In capitalism the rich become rich and the poor become poorer. Per capita income in Malawi is estimated at 210. Chances are that those with money will acquire all the best land as was the case before British takeover when the strongest acquired the best land.

It is not secret to say that not less than 80% of the Malawi population are poor, there are black Malawian citizens, who, if they have any property, it is the land where they have built their hut or have their small garden. Chances of being tempted to sell that piece of land are therefore very high. What ever will be realized from the sell will straight away go to the mouth. What will

be seen later will be 80% of the population being poor and landless, while 20% of the population (foreigners and multinational companies) taking over the land.

(5) Some people have been saying that land issues are very sensitive. I would tend to agree with them looking back at our history. I recall to mind four periods of our history:-

- a. 300-1500 AD during the time of the Akafula or Abatwa when they were either killed or driven into Namibia as we are meant to believe.
- b. 1500 AD - 1891 when land was acquired through military conquest, without negotiations or documentation.
- c. 1891 - 1964 where the British acquired land in the name of the British sovereign through grants and concessions.
- d. 1964 - 1994 when the government embarked on an aggressive process of expansion of large-scale, or estate agriculture through alienation of land under customary land tenure. This period has seen customary land being lost to private land.
- e. This time of ours here today. What lessons do we make from the past? From here where do we go? Let us learn from past mistakes in order to prepare a better future for the young generation. 'Lero lomwe linadetsa nthenga'.