

Concept Note

# HUMAN RIGHTS-BASED LAND GOVERNANCE MONITORING



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## CONTACT

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## BACKGROUND

The legitimate tenure rights of vulnerable and marginal land users are often violated when an increasing demand for land meets fragile land governance contexts. Secure access to sufficient fertile land is a challenge for many smallholder farmers. In Malawi, smallholders' access to land is placed under further pressure by land scarcity, high population growth rates, urbanisation, and increasing investment in large-scale agriculture. The resulting increasing demand for agricultural land, coupled with the absence of good land governance structures, will likely result in more frequent violations of tenure rights, especially those of marginal land users. These may lead to human rights violations. For example, access to food, and therefore the human right to food (Article 25 of the UDHR), is at risk for those whose livelihoods depend on secure access to land.

Responsible land governance is therefore key if Malawi is to live up to its commitments to sustainable development. Impetus in this direction may be provided by the Malawi National Land Policy of 2002, enacted in 2016, which proposed several laws to ensure tenure security and more equitable access to land. Similarly, the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) promote secure tenure rights and equitable access to land, fisheries, and forests as a means of encouraging sustainable development. The VGGT are a voluntary instrument, but they build on human rights principles and provide clear linkages to international human rights treaties which signatory states, including Malawi, are bound to uphold.

In Malawi, as in many other countries, commitments to promote responsible land governance and strengthen legitimate tenure rights are therefore underpinned by the strong framework provided by human rights obligations. However, commitments are not always followed by actions. This project therefore aims to develop a

land governance monitoring tool which establishes linkages between land rights and human rights. Because of the binding nature of human rights treaties, such a monitoring tool would equip National Human Rights Institutions (NHRIs) and Civil Society Organisations (CSOs) to demand that the state properly enforces land rights and fully implements responsible land governance. Monitoring can therefore be a key instrument to further support the implementation of responsible land governance.

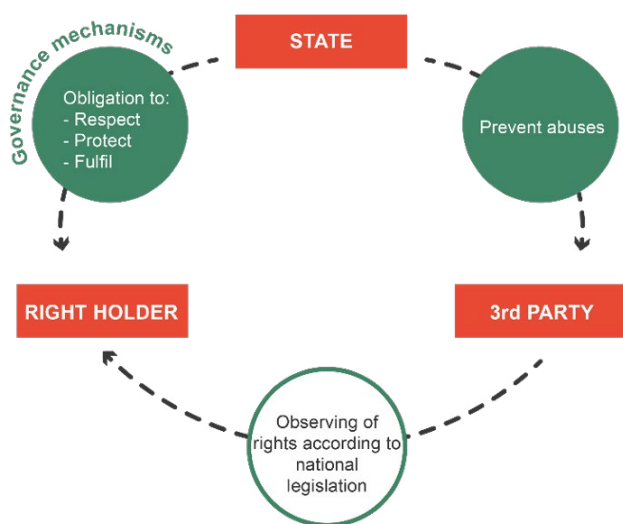
## ABOUT THE PROJECT

The human rights-based land governance monitoring project is financed by the German Federal Ministry for Economic Cooperation and Development (BMZ). It focuses on land conflicts and rights violations experienced by vulnerable and marginalised land users in Malawi. By analysing several land conflicts in detail, TMG Research and its partners aim to identify the underlying processes leading to rights violations.

By doing so, the project will enable NHRIs and CSOs to support marginalised groups in holding their governments accountable to their commitments to responsible land governance. It does so by linking land conflicts to possible human rights violations, and these in turn to binding human rights treaties. Compared to other outcome-oriented monitoring tools in the land governance sector, that usually reflect the general tendencies of land conflicts in a given country, this approach aims specifically to offer a picture of the underlying processes that lead to land conflicts with associated human rights violations.

More specifically, the human rights-based land governance monitoring approach is built around analysing the relationship between the state (both at the national and local level) as the duty bearer, and individuals and communities as right holders.

Within the human rights framework, the state has the duty to respect, protect, and fulfil the rights holders' rights. The monitoring framework further distinguishes between rights holders by looking at the holder of legitimate tenure rights from whose perspective the assessment is being conducted, and at third parties who may infringe upon these rights. This distinction becomes important to understand better the administrative and social processes leading to tenure insecurity on the part of legitimate right holders (see fig. 1 below).



## THE GOAL OF THE PROJECT

The project aims to strengthen responsible land governance to improve the lives of vulnerable and marginalised communities in Malawi. Together with the Danish Institute for Human Rights (DIHR) and the Malawi Human Rights Commission (MHRC), the monitoring methodology is further refined, and tools for case-based assessments are developed. The project aims to support NHRIs and CSOs working in the land and human rights sectors to monitor existing land conflicts and to reveal governance deficits leading to human rights violations.

To achieve its objectives, the project entails the following activities and outputs:

- Developing a methodology for human rights-based monitoring based on existing monitoring methodologies and tools.
- Developing a joint work programme with Malawian partners.
- Conducting human rights-based assessments of land governance for selected cases of land conflicts. Cases will be agreed upon with national partners and may focus on

specific topics such as women's rights to land ownership and control, or evictions due to agricultural investments.

- Feeding the findings into relevant national and international policy processes to strengthen responsible land governance.

## PROJECT PROCESS

TMG Research is partnering with the MHRC and DIHR. Both have long-standing experience in monitoring human rights and are accredited NHRIs.

In partnership, TMG Research, MHRC and DIHR are developing the following outputs:

- A comparative matrix linking the voluntary elements of the VGGT to binding human rights commitments and instruments. The matrix will function as a core guidance document with which responsible land governance can be made more tangible. It should enable NHRIs, researchers, human rights lawyers, and others to back up their land conflict claims with legally binding instruments ratified by the Nation States.
- A human rights-based land governance monitoring tool, which includes an indicator framework and data collection tools (for rights holders and duty bearers). The tool can be applied by NHRIs and CSOs supporting rights-holders to claim their rights and hold governments accountable. It is considered a systematic monitoring tool, providing evidence for advocacy at a national and global scale.

All tools will be developed in a participatory process with partners and discussed and validated by a reference group. The matrix, as well as the monitoring tool, will be available as digital versions by mid-2022.

An exploratory study of a land conflict case in Malawi will contribute to a better understanding of the different perspectives of rights holders and duty bearers involved in the conflict. Preparation of the study will take place in December and data collection in January. In addition, the study will inform the further development of the monitoring tool. Once the monitoring tool is available, MHRC, jointly with TMG Research, will pilot the tool in selected land conflicts in Malawi. These conflicts could include boundary disputes, encroachment, large-scale land acquisition, ownership disputes and land sales disputes. The results of the pilot will feed in to national and global advocacy processes around responsible land governance.