

Capacity Building in Land Management – Implementing land policy reforms in Malawi

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ABSTRACT

There is a significant need for capacity building in the interdisciplinary area of land management, especially in developing countries and countries in transition, to deal with the complex issues of building efficient land information systems and sustainable institutional infrastructures.

Capacity building in land management is not only a question of establishing a sufficient technological level or sufficient economic resources. It is mainly a question of understanding the interdisciplinary and cross-sectoral nature of land administration systems, and understanding the need for human resource development in this area. Furthermore, capacity building should ensure, that the focus is on building sound institutions and good governance rather than just high-level IT-infrastructures.

This overall approach to capacity building in land management is used for implementing a new land policy reform in Malawi. The paper presents the new decentralized land policy developed as a respond to the current land related problems in Malawi. The deficit in terms of qualified personnel is remarkable and calls for immediate action. An integrated curriculum is developed to provide the necessary skilled technicians and professionals for implementing the new land policy. The curriculum combines the diploma and the bachelor level and it combines the key areas of land surveying, land management and physical planning.

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1. INTRODUCTION

Capacity building is about development of human resources for the purpose of developing and managing certain areas in society. Capacity Building may be defined as “the development of knowledge, skills and attitudes in individuals and groups of people relevant in the design, development and maintenance of institutional and operational infrastructures and processes that are locally meaningful”(Groot and Molen, 2001). This issue is crucial in most developing countries with regard to management of land as a resource both from an environmental and from an economic perspective.

Land policy reform requires a long-term vision and commitment for implementation. In the case of Malawi the process is estimated to take fifteen to twenty years to complete. The process was initiated in 1995 when the World Bank took a leading role in providing support for a Policy Planning Unit in the Ministry of Lands and Valuation to guide the land policy reform process and strategic action plan. It represents an important milestone in the history of Malawi’s post independence development: to create a modern environment for protection of property rights, to facilitate equitable access to land for all, and to encourage land based investment.

Implementation of this Land Policy includes institutional reform and capacity building as key components. The multi-donor support for Land Policy Reform in Malawi includes the World Bank, USAID, and DANIDA (the Danish Aid Agency under the Danish Ministry of Foreign Affairs). The total grant support is around 34 million USD and includes a number of projects such as capacity building, drafting a new land law and formalization of customary land law, pilot district land registration including mapping and demarcation, Rural/urban land use planning and development controls, and land resettlement project including integrated rural development. The implementation was initiated in 2001 by putting the issue of capacity building right up front.

Malawi is a land locked country with an agriculture economy that accounts for over 40% of the gross domestic product (in total 200 USD per capita in 1998). The country is wedged between Zambia to the west, Tanzania to the east and Mozambique to the southeast and for 584 kilometers on its eastern border runs Lake Malawi. The country population, which now stands at approximately 9.8 million people, is growing at an alarming rate of 1.9% per annum.. The land occupies 118,000 square kilometers of land of which around 53,000 is considered suitable for cultivation.

2. LAND RIGHTS AND LAND PROBLEMS IN MALAWI

The arrival of European settlers in Malawi (formerly known as Nyasaland) from the 1890's led to the passage of the Nyasaland Order in Council, 1902 which enabled the general application of western concepts of land ownership supplemented by specific enactments based on English property law. The colonial Land Ordinance introduced in 1951 disregarded existing land rights by defining "customary" land, in essence, as a mere species of "public land" (or crown) land. By virtue of the 1951 Ordinance, Malawians became tenants on their own land. This position was re-enacted after independence by the passage of the Land Act (Cap 57:01) in 1965. Thus, further prolonging the insecurity and statutory marginalization of customary land rights.

A careful review of land legislation in Malawi from colonial to post-colonial times concludes, as indeed many others have done, that not enough policy direction or antecedent property law was received to provide Malawi with a robust legal basis for unambiguous interpretation of land rights. As a result, the ability to resolve land problems or to determine claims arising from the existing body of land laws in Malawi remains rudimentary and undeveloped.

The first serious attempt to provide a comprehensive body of land law was made in 1967 with the passage of the Registered Land Act (Cap 58:01) and the Customary Land Development Act (Cap 59:01). However, both legal instruments had limited application to Lilongwe West. This made efforts to secure customary rights by invoking the Registered Land Act an incomplete and costly experiment not replicated anywhere else in Malawi. Because of these previous policy failures, a potpourri of land problems have continued to undermine all attempts to develop Malawi's agriculture driven economy.

2.1 Overview of Land Problems

The problems associated with land in Malawi are many and varied and are, in many ways, a symptom of a much deeper social discontent and economic hardship. Specific problems arising from the simultaneous operation of customary land tenure and private ownership regimes create institutional obstacles with crosscutting effects.

Strategies to relieve land pressure: Due to the concentration of freeholds in the Southern Region and subsequent expansion of commercial estate agriculture after independence, there is an urgent need for strategies to relieve land pressure in the severely affected parts of the country.

High Population to Land Ratio: The 1998 national average population density of approximately 105 persons per square kilometers is not evenly distributed throughout the country. The Southern Region (146 persons/sq. km) has some of the highest population densities in the country and is urgently in need of population relief and land redistribution solutions. However, on the basis of estimates made in 1994, 2.6 million hectares of suitable agricultural land remains uncultivated in the rural areas. This means that approximately 28% of the country's total land area is lying idle.

Speculative holding of urban plots and lack of infrastructure causes artificial shortages of urban development land.

Provocative Squatting in gazetted forests, national parks, on private land and other protected areas in land pressure districts have become frequent and sometimes violent.

Worsening Land Degradation: Land pressure has substantially increased land tenure insecurity and land use uncertainty. Difficulties created by land scarcity manifest themselves through increased land degradation particularly in customary land areas.

Privatizing Access to Customary Land: As the economy becomes more commercialized and less dependent on subsistence agriculture, access rights defined by customary rules have also become more private and restrictive than before.

Mismanagement Of Land Development: Growing evidence of under utilization of land, obstruction of watercourses, illegal development, and unplanned or unregulated buildings in urban settlements indicate a failure of development controls.

Cross Border Encroachment by Immigrants: Due to the fact that many border communities (Tanzania, Zambia, Mozambique) share linguistic and blood ties with one another and hence claim reciprocal rights of access to land and their kinsmen, the existence of “international” boundaries and territoriality is often ignored.

Encroachment onto Conservation and Protected Areas: Some parks and protected areas remain vulnerable to encroachment because entire villages were displaced, some of which were forced to move into valleys and uncultivable areas when the parks were created.

Uncontrolled Allocation of Lakeshore Land: In the recent rush by individuals and corporations to erect private leisure cottages and hotels, environmental and physical development management problems have gone unchecked.

Some of the main effects of operating without a comprehensive policy on land can be summarized as follows:

- Failure to deal with the land policy concerns from the 1960's and 1970's have indirectly contributed to today's problems of poverty, food insecurity, and perceived inequities in access to arable land.
- In most areas the void created by the absence of clear policy direction heightened tenure insecurity, environmental degradation and the cultivation of marginal land areas. Soil loss due to erosion and deforestation is currently estimated to average 20 tons per hectare per annum.
- Besides the loss of soil fertility and agricultural productivity, the frequency of land tenure encroachments has increased in recent years. This trend has also been attributed to increasing poverty and poor enforcement capabilities of government agencies.
- Increasing environmental degradation, loss of biodiversity, diminishing surface and ground water aquifers is a manifestation of land pressure. Since 1972, total forest cover

has declined by more than 41% mainly due to the demand for wood fuel and clearing to expand cultivation.

- The legal structure inherited from the colonial era has been used to weaken the customary sector and to make the estate sector bias feasible rather than reformed. This heavy bias in favor of the estate production mode appears to contribute to the shortages of arable land in some regions.
- Fraudulent disposal of customary land by traditional leaders and government officials often deny critically needed access to people most desperate for land.

By 1994, it had become obvious to policy makers and development professionals that, food security, increased rural incomes and effective utilization of land can only be assured in Malawi by a careful examination of (i) the existing tenure tenets and enabling customs, (ii) the current land policy and enabling land legislation, and (iii) by implementing the requirements for encouraging land policy reforms that will stimulate economic growth through private initiatives and decentralized land administration.

3. THE OVERALL LAND POLICY FRAMEWORK

The principles and guidelines set out in Malawi's National Land Policy are intended to give substance to Malawi's quest for a comprehensive land law with immense economic and social significance. The land policy also provides a sound institutional framework for democratizing the management of land and introduces procedures for protecting land tenure rights, land-based investments and management of development at all levels.

Policy planning is a conscious effort on the part of policy-makers to achieve, via appropriate policy instruments, both national goals and specific targets for resource allocation. The fundamental principle is to ensure equal opportunities for the acquisition, use and enjoyment of land for all citizens. As such, land-related social welfare problems should be dealt with fundamentally and comprehensively in a way that will not compromise the expectation of the market or ignore the realities of resource constraints.

The right to own land must be respected, but land problems extend beyond individual tenure rights. They involve issues on rural and urban land management, community development, the advancement of agriculture and protection of the environment. The development process in Malawi is empowering individual citizens and communities to take active interest in their own affairs. Land policy serves as a powerful symbol and focus for that local development effort. It provides a mechanism for reconciling widely differing attitudes towards Malawi's development challenges.

The complexities of managing land resources and the linkages between land-use and the effort to create a socially and economically rewarding life is an imperative that Malawi's national policy will help to promote. Consequently, the steps that have to be taken to achieve these land reform objectives gives broad support to poverty alleviation. It also offers the best opportunity to bring about a land dispensation that is economically sound and compatible with the basic values and ideals of the nation. Accordingly, Malawi believes, these objectives can best be achieved by fostering desirable principles of land use management, effective civic education

and broad public appreciation of the constraints and trade-offs that need to be made.

4. DECENTRALIZED ADMINISTRATIVE FRAMEWORK

The goal of the Malawi National Land Policy is to ensure tenure security and equitable access to land, and to facilitate the attainment of social harmony and broad based economic development through optimum and ecologically balanced use of land and land based resources. A number specific objectives need to be satisfied for the aims of the policy to be achieved. Three of the objectives focus directly on decentralization, community empowerment and democratization of land resources management decisions.

4.1 Enabling Decentralization

The land policy promotes a decentralized administrative framework by providing a formal and orderly arrangement for the establishment of localized Land Registry Offices in each of Malawi's 37 local government areas. Devolving the central government's administrative authority for granting titles and delivering land services in modern and decentralized registration system is intended to support local government planning and development functions throughout Malawi. This will be accomplished by guaranteeing that existing rights in land, especially customary rights of the small holders, are recognized, clarified, and ultimately protected in law.

Another priority issue for effective local administration of land is the registration and titling of customary land interests in Malawi. The goal is to, once and for all, provide the security of tenure that has so long eluded the majority of Malawians and accurate cadastral information for planning and development. From the experience of titling programs elsewhere, the design and execution of such a comprehensive registration project will rely on the application of GPS techniques to minimize the cost and time required in the front end of the process.

4.2 Empowering Local Communities

Empowering the community to directly negotiate their own demarcation and registration can happen only through direct appointment of local bodies with the authority to monitor traditional land transactions. This is accomplished by the establishment of Village Land Committees (VLC) to review allocations and to verify the conditions of transfer to ensure equity and fairness before giving approval to customary land transactions. Any violations of community land resource management principles and/or national land policy can be grounds for denial by the VLC. The policy will also empower local communities to actively participate in local policy development, policy implementation, monitoring and evaluation to ensure adherence to environmentally sustainable land use practices, and good land stewardship.

4.3 Institutionalizing the Role of Traditional Authorities

The Government recognizes that, to be effective in modulating transactions among individuals, communal-property regimes must be encourage to change. To accommodate the principles necessary for effective formalization of property rights, cadastral boundaries must be clear, and the specification of ownership of interest must effectively lower transaction cost. Accordingly, land administration has to devolve to the lowest level of government to allow records of land transactions and market responses made by the public to be maintained to ensure the success of land market reforms.

The Malawian customary tenure system generally tends to provide for individual and family land use, and usually gives good security of tenure. But, in addition, they have a range of additional functions in insuring against survival risk, protecting against sharp practices, and more broadly, in structuring and mobilizing society. Consequently, all transactions involving customary land will be required by law to be recorded and registered at the District Land Registry to establish full ownership.

It is also the intention of Malawi to preserve and institutionalize the land management and policy monitoring responsibilities of Traditional Authorities. The goal is to nurture the human factors it commands – alliance relations, clientship linkages, rights in relation to people and leadership in civic and community development – to encourage production and ecological objectives of the policy.

Four principal functions categorize the structure of traditional administration and land resource management responsibilities to preserve.

1. The Traditional Land Management Area for each Traditional Authority will be demarcated, surveyed and registered as statutory areas of administration and to help establish the legitimacy of land records derived from customary land rights. This will also allow traditional leaders the authority to advise the Government on community land resources management needs.
2. Existing clans, families and individuals whose land rights can be recognized as legitimate under customary rules, or by legal claims supported by documentation, will have their customary allocations registered as private “customary estates” with property rights in perpetuity. What is also unique in the Malawi case is, granting customary tenure statutory recognition does not sever the traditional right of reversion to the community in the event of abandonment or death without a successor.
3. The land allocation and administration role of traditional leaders will be standardized and retained. Their land management responsibilities will be formalized through training and regulations that allows chiefs and traditional leaders to serve as agents for monitoring and enforcing land policy regulations.
4. Finally, traditional chiefs and headpersons will formally serve as adjudication officers, witnesses to and notaries for legal verification of the authenticity of customary land transactions.

In order to protect the integrity of customary land administration and the concomitant private

and community interest, a civic education program for the general public on the principles of trusteeship, the principles of ownership, and concepts of private property law and contracts will be provided. Furthermore, A carefully structured training program on Village Land Administration and Village Land Records Management will be developed for training Chiefs and Village Headpersons, and for certifying Traditional Land Clerks.

Summary of Functional and Administrative Role of Traditional Authorities

1. Land Administrative Role:

- The new land policy affirms the role of a Chief as the administrative head of a Traditional Authority, and by law authorized to allocate vacant traditional land, and to support land administration functions delegated by customary law to Headpersons and family heads.
- Traditional authorities will be required to register all land transactions occurring within their jurisdiction maintaining a Traditional Land Records Storage and Management system.
- Chiefs and Village Headpersons are expected to monitor land transactions by granting Consent to Transfer. They are required to assist the community in their land dealings.

2. Land Management Functions

- Land has value and transaction values sometimes approximate market value. Traditional authorities will be required to establish estate management offices to collect and account for land revenue due to the community from leases and royalties paid for the use of communal land.
- To improve the welfare of the community, traditional authorities will be expected to consult with the communities on needs and priorities, and mobilizing community resources to provide community infrastructure and services to improve the welfare of the community.
- Chiefs and headpersons will serve as agents of the government for enforcing conservation and environmental regulations throughout the Traditional Management Area.

3. Adjudication and Dispute Settlement

- Preside over Traditional Land Tribunal to adjudicate and settle disputes involving land, property and inheritance.
- Perform the duties of a Public Notary with regards to land transactions, wills and inheritance; administer oath and civil justice in accordance with the customs and traditions of the area.
- Create and maintain a Traditional Archive of historical and cultural artifacts to protect cultural values, a sense of community and a communal social frame of reference.

5. LAND ADMINISTRATION CAPACITY DEVELOPMENT

Both the new Malawi National Land Policy and the Local Government Decentralization Act of 1998 require the establishment of Land Registries able to support large volumes of high quality cadastral information to guide development planning and to lower land market transactions costs. Given the predominant role of Traditional Authorities in land transactions, a record of their dealings in land and early planning and survey concurrence is required before local planning compliance can become a reality.

The installation of newly decentralized local governments and the coming into force of a new

land policy in 2002 heightens the urgency of establishing and staffing Land Registries to serve Malawi's 3 Cities, 1 Municipality, 8 Townships and 27 local government assemblies. The capacity deficit created by the reforms in local government and the new land policy is not confined to the formal planning and development agencies of the government only. Because most land transactions occur on customary land, the land policy calls for the training of Land Clerks to work at 230 Traditional Authority Land Offices to control encroachment and fraudulent land allocation problems. The shortage of trained manpower to fill professional and technical support positions in land administration has to be addressed with the utmost urgency.

Currently Malawi has only 26 qualified physical planners, 20 land valuation professionals and 12 licensed land surveyors in the entire country. As a consequence, most land development activities occur without planning or land management intervention. This is evident by the overwhelming deforestation outside protected national parks and conservation areas, the large number of sporadic rural developments, unplanned settlements and poor management of the urban environment.

Due to the acute shortage of trained and experienced land administration personnel and the poor state of equipment and physical facilities at all the regional land offices, an aggressive program to train the personnel is required and the equipment needed will be undertaken as a necessary precondition for implementing the new Malawi Land Policy. Funding will be sought to accelerate the construction, staffing and operation of the District Land Registries that will also serve as repositories for all land records. Once completed, the final devolution of land administration to District Assemblies will be completed.

The lack of trained personnel is seen as the main barrier for implementation of the new land reform policy. The short-term capacity needs are assessed in details. In total the deficit is around 400 professionals and 800 technicians just to fill the vacant position in the public sector. This includes about 150 technicians and 100 professionals at national level and about 700 technicians and 300 professionals at the local government administrations. By including the private sector, the long-term needs are more than double.

To implement the land policy each traditional authority, headed by a local chief, will be staffed with one clerk to undertake the everyday land related matters. The clerks will need one year of basic training in the administrative routines related to land management. This means that there is an immediate need for about 300 trained clerks.

6. CURRICULA DEVELOPMENT

The design of a training program for Malawi considered the immediate short-term need for trained clerks and technician as well as the longer terms need for qualified professionals. The training policies will meet these needs by adopting a modular structure to ensure flexibility. Therefore, the diploma program has been designed to merge with the first part of the bachelor program. The program will also allow existing personnel to be updated and upgraded to fulfil the overall aims of the new land policy. The one-year certificate program for the land clerks will, however, have a separate approach. The total concept includes three programs:

- **Certificate in Land Administration.** This one-year program aim specifically at training the land clerks needed for the tasks to be undertaken by traditional authorities. The program is a mix of lecture courses (40%) and fieldwork at the pilot project (60%). The first semester is focused on land administration techniques to enable the students to understand the role of land rights in land registration and to undertake boundary demarcation and maintenance of land records. The second semester is focused on recording techniques to enable students to understand the basic land measuring and recording related to the formalization of customary land rights. The entrance requirement is a JSCE (10-year Junior School Certificate of Education). The certificate program will be hosted by the Natural Resource College in Lilongwe.

- **Diploma in Surveying and Land Administration.** This two-year program aims at training technicians in the broad area of surveying, planning and land administration. The first one and a half years is organised in four blocks of 12 weeks. The blocks focus on core subjects, physical planning, land surveying, and land administration. This way, all students will achieve a basic professional competence in all three professional areas. After completing the first one and a half years of the program the students may choose to continue for another half year and graduate as a technician with a diploma in surveying and land administration. Qualified students may, however, choose to continue at the fourth semester of the Bachelor program. To further enhance the entry skills of graduate technicians, the diploma program includes two periods of internship for 10 weeks in total. The entrance requirement is a MSCE (12-year Malawi School Certificate of Education). The Natural Resource College will also host the Diploma program.

- **Bachelor in Surveying and Land Management.** This four-year program is designed for educating professionals through three routes of specialization: Surveying, Planning, and Land Management. The diploma program covers the first one and a half years of the program. The students will thereby achieve a common educational basis in all three professional areas. The fourth semester is designed to establish skills in the key area of Geographic Information Management. The following one and half years of studies allow for three routes of specialisation. The specialisation in Surveying, Physical Planning, and Land Administration will provide the sufficient theoretical and professional knowledge and skills for developing and maintaining these professional areas in Malawi. After finishing the dissertation thesis the students will have to undertake 16 weeks of professional internship attachment before graduating as Bachelors of Science. The Bachelor program will be hosted by Mzuzu University.

Proposed Two-year Diploma and Four-year Bachelor Program.

Malawi

Semester Eight Bachelor	Professional Internship Attachment 16 weeks		B.Sc. Matriculation
Semester Seven Bachelor	PHYSICAL PLANNING DISSERTATION	LAND SURVEYING DISSERTATION	LAND ADMINISTRATION DISSERTATION
Semester Six Bachelor	Physical Planning Policy Studies & Professional Practice	Cadastral Surveying And Legal Studies & Professional Practice	Land Valuation and Legal Studies & Professional Practice
Semester Five Bachelor	Physical Planning Theories and Techniques	Geomatics Theories and Techniques	Land Administration Theories and Techniques
Semester Four Bachelor	Geographic Information Management and Applications		

Semester Four Diploma	Physical Planning	Land Surveying	Land Admin.	Specialization Final Project
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Semester Three Diploma	Land Administration 12 weeks		Internship 6 weeks	
Semester Two Diploma	Physical Planning 6 weeks	Land Surveying 12 weeks		Internship 4 weeks
Semester One Diploma	Core Subjects 12 weeks		Physical Planning 6 weeks	

5.1 Educational Methodology

It is agreed that the training and capacity development program should aim to achieve a dynamic relationship between academic theory and professional practice. The lecture courses will provide the relevant theoretical and professional knowledge. The project work will focus on professional practice, problem solving and management skills within the different fields. The project work will be designed to reflect the professional work in practice and the students will carry out the same processes and deal with the same problems as in professional practice. The project work is carried out by groups of four to six students, with a teacher appointed as their supervisor. The focus is on “learning by doing” and development of professional competence rather than just establishing professional knowledge.

5.2 Implementation

The curriculum was developed through a workshop initiated on the basis of the capacity needs. The workshop attracted around 40 participants including many key professionals at national level and also a number of experts from key universities in the Southern African region. The concept was developed in a consensus between local and foreign experts. There is no doubt that this is an important strength that should facilitate the implementation process. The final success will, however, depend on a very efficient and effective management of the implementation process.

A local/regional approach to the capacity building program should optimise the benefits to the ongoing development in Malawi as well as the Southern Africa region in general. The teaching and training team will consist of local specialists, regional experts and government personnel in the respective fields. A faculty will be established at Mzuzu University to run the Bachelor program. Foreign experts, provided through the donor project, will supervise, facilitate and monitor the implementation process.

6. CLOSING REMARKS

The new land policy proposed for the Republic of Malawi aims to achieve broad based social and economic development objectives as a contribution to poverty alleviation and sustainable development. The policy is remarkable in terms of empowering local government authorities and by institutionalizing the traditional authorities as an integrated part of the overall administrative framework.

The multi-donor project to support implementation of the land policy reform is remarkable in terms of focusing directly on capacity building as the very first issue to be addressed. Due to the acute shortage of trained and experienced land administration personnel an aggressive and integrated education and training program has been developed. The curriculum combines the diploma and the bachelor level in a uniquely synergetic manner, and it also combines the key areas of land surveying, land management and physical planning. There is, therefore, no doubt, that Malawi has established a modern and sustainable approach to capacity building worthy of emulation in this area.

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BIOGRAPHICAL NOTES

Prof. Stig Enemark is Head and Managing Director of the Surveying and Planning School at Aalborg University, where he is Reader in Cadastral Science and Land Management. He is Master of Science in Surveying, Planning and Land Management and he obtained his license for cadastral surveying in 1970. He worked for ten years as a consultant surveyor in private practice. He is Vice-President of the Danish Association of Chartered Surveyors and Invited Fellow of the Royal Institution of Chartered Surveyors, UK. He was awarded the Danish Real Estate Prize in 1991, and in 1994 he was appointed National Expert to the European Union within the areas of land management and spatial planning. He was Chairman (1994-98) of FIG Commission 2 (Professional Education) and he is an Honorary Member of FIG. His teaching and research interests are in the area of land administration systems and the application of cadastral systems for land management and spatial planning. Another research area is within project-organised educational and the interaction between education, research and professional practice. He has consulted and published widely within these topics, and presented invited papers at more than 40 international conferences.

Rexford Ahene is a Professor of Economics and Business and Head of the Africana Studies program at Lafayette College in Easton, Pennsylvania in the United States. He has served as a consultant on African land tenure and land policy reforms for the World Bank for more than ten years. and has contributed through his research and engagements as a land policy advisor to reforms in Ghana, Uganda, Botswana and South Africa. He is the principal architect of the land policy for the Republic of Tanzania and Malawi. Dr. Ahene is a land Economist by training and holds dual masters degrees in Economics and Agricultural Economics and received his PhD in Development Studies from the University of Wisconsin in 1983. He has served on the Graduate Scholarships Committee of the National Science Foundation since 1993 and has professional affiliations with the Lincoln Institute for Land Policy Studies, the Institute of Revenues, Rating and Valuation and the African Studies Association.