

# **Towards Tenure Security in Customary Land in Malawi: What do we know about matrilineal society?**

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## **Abstract**

This paper challenges simplistic assumptions in the land policy in Malawi that land belongs to all members of the household. The study, carried out in two districts of Chiradzulu and Phalombe in the Southern Region of Malawi used qualitative methods to examine the local histories and practices to identify the social and power relations between male and female children in households and families, and the roles of chiefs, families and traditional practices in access to and control over customary land. The study reveals how the status quo in customary lands has been maintained whereby access and control is unequal among male and female members. Arguably, *not all children in the household are children of the household; not all people in the family are people of the family*. The pending land policy assumes that unequal access, control, and conflicts over customary land result from self interest, and population and economic pressures. The policy advocates simplistic solutions such as clarifying the processes of access and control, land redistribution and relocation. The policy does not recognize that patterns of access and control are historical in nature, and that the patterns are closely intertwined and embedded in social ties and power relations. Failure to understand the relations leads to a situation where inequalities are repeated and enhanced. It is argued in this paper that unless the inequalities are recognized and the perpetrators are transformed, some members will always have insecure tenure rights and that land tenure security debate will remain rhetoric.

Keywords: access, control, social and power relations, tenure security, Southern Region, Malawi

## **Introduction**

Dominant images in the land policy (GoM, 2002) are that “Malawi is moving quickly transforming its predominantly communal subsistence economy to a market driven economy based on private property and free enterprise” (p.19), and that “extended families are replaced with nuclear ones” (p.24). The concerns are that families risk losing their land by sale and that there is an increase in generational conflicts and competition for property rights and access to land. In light of these concerns the policy proposes to “promote the registration of individual and family title to customary land to avoid the inequalities often associated with property inheritance, and to confer equal rights to men and women” (p.24). Furthermore, the policy “dictates that all children inherit land and property belonging to parents equally in order to facilitate the transfer

of land ownership through market allocation mechanisms, and to facilitate the transfer of property acquired by parents directly to children” (p.24). As the policy waits for implementation there is need to analyze the relevance and the possible intended and unintended results of the proposals on societies in Malawi.

This paper focuses on the Lomwe and Yao tribes of Chiradzulu and Phalombe in the Southern Region of Malawi to understand how the policy would affect matrilineal societies. It is part of a sub-study called the Malawi Social Capital and Land Tenure (MLTSC) that was carried out between June and September 2007. The MLTSC sub-study was part of the larger countrywide study on the National Census for Agriculture and Livestock in Malawi. It was conducted among the Tumbuka and Ngoni tribes in Rumphi and Mzimba Districts in the Northern Region. In the Central Region the Chewa tribes of Dowa and Kasungu Districts were studied, while in the Southern Region the study took place among the Yao and Lomwe tribes in Chiradzulu and Phalombe Districts. The Tumbuka and Ngoni represented the patrilineal, while the Chewa, Yao and Lomwe represented matrilineal societies.

### **The land policy in Malawi**

Malawi, just as other countries in Africa, has experienced land reform processes. In response to the reforms the Malawi Government has produced a land policy (GoM, 2002). The goal of the policy is “*to ensure tenure security and equitable access to land, to facilitate the attainment of social harmony and broad based social and economic development through optimum and ecologically balanced used of land and land based resources*”. The policy recognizes that most of the land is under customary ownership, and claims that this tenure is evolving towards individual rights due to growing economic pressure. The policy proposes that customary landholdings can be made ‘customary estates’ and given full legal protection. This process has been interpreted as land titling. The idea is that customary land will be allocated exclusively to a clearly defined community, corporation or institution, clan, family or individual (GoM, 2002, P.13). The land policy also proposes to establish customary land committees (CLC) and traditional land clerks (TLC) in order to encourage transparency in customary land transactions. Furthermore, the policy is set to discourage, and where necessary prevent by law, the customary land administration practices that promote discrimination, abuse of administrative privilege and established property rights of customary landholders (p. 25).

### **Understanding the rights of female and male children in the matrilineal society**

A family structure is matrilineal where membership, succession and inheritance follow in the maternal line. The most important unit in the matrilineal family is the *mbumba*, a group of sisters and their descendants. Both in Phalombe and Chiradzulu the researchers observed that sisters of the *mbumba* usually lived together. Some sisters had gone to live in their husbands' villages but the numbers were small. Some sisters helped each other to carry out activities such as harvesting crops. The *mbumba* also cooperated especially in weddings and funerals. During such times even those who lived away in their husbands' villages came to attend weddings and funerals. Sisters of the *mbumba* in Mdoda and Murike villages in Phalombe explained that they assisted each other because they believed that they all relied and needed each other in times of sorrow or happiness. Furthermore, the *mbumba* members believed that by assisting each other they made the work or problems lighter. It therefore appears that families in matrilineal society have not reached a point where one would suggest that members do not rely on each other. Rather, the bonds of kinship are strong such that instead of limiting the relationship to the conjugal household of father, mother and children, members know that their livelihoods and welfare rely on others outside the household. In other words families in matrilineal society are not becoming nuclear in nature.

The *mbumba* is usually under the guardianship of the relative, who usually is a brother of the sisters and he is called *mwini-mbumba*. In some cases a female relative can also play the role of guardian. The guardian is usually chosen based on the fact that the person respects others, is cool tempered, and he/she is wise enough to make sound judgment about issues because he/she has to represent the *mbumba* in any dispute, at weddings and in marital matters, and at funerals. During the study the researchers observed that at village courts senior guardians were called to help resolve disputes by giving histories of land transfers. Again, on two occasions the researchers attended cases at the courts of the village headman (VH) and group village headman (GVH) where it was observed that before any deliberations commenced, those presiding over the cases asked those concerned if they had brought "their people", locally called *akwao*. This referred to the matrilineal guardians. On those two occasions deliberations failed to proceed because the *akwao* were not present. Sometimes there are cases where there is a junior and a senior guardian. The senior guardian is called *mkokowogona* (literally, a sleeping bunch of banana). The situation

where there is a senior and a junior guardian arise when the guardian lives very far away and the family chooses a junior one who lives nearby to take care of the day to day issues, and call the senior one only to deal with serious issues. Sometimes when the guardian has aged, the family chooses another one who is energetic enough to carry out most of the functions. The junior guardian always consults the senior when making decisions.

### **Post marital residence**

In the matrilineal society women are considered 'builders of the village' and they therefore live in their natal villages after marriage. Only in very few cases women live in the village of their husbands (virilocal residence). During the study it was observed that 4 out of 38 women interviewed lived under virilocal arrangement because their husbands wanted to attend to their parents who had become old. When women die, they are buried in their natal villages. Those who live and die in their husbands' villages have their bodies taken to their natal villages. Exceptions are when a woman is very old or when she has been absent for so long that she would be considered a stranger in her natal village. In Phalombe there was one woman who was over ninety years old and she said that she would be buried in her husband's village because that is where people know her better.

Women who lived in their husband's villages maintained their links with their natal villages by going home to take part in activities such as the annual clearing of the grave yard, attending funerals, weddings, and memorial feasts to remember the dead. On two occasions when the researchers participated in clearing the grave yard and festivals to remember the dead it was found that six women had traveled from their husband's villages to take part in the activities. One woman brought with her chickens and maize flour to prepare a special meal for her beloved relatives who had died. When asked why, the women said that they took part because it was a way to respect the dead, and to maintain their links with their families. Men also return to their natal villages to participate in clearing the grave yard and funerals because, they said, they felt it was one way to respect the dead. If one did not take part in these activities other members of the family interpret it as such a person no longer belonging to the family. In addition, unlike men, women living in their husband's village also felt that they could end up losing their land if they did not maintain their links with their own matrilineal family.

As for men (as husbands), after their wedding they leave their mothers and live with their wives (uxorilocal residence). Some men marry several wives in their lives and they live in several villages as they follow the wives. In their comments the men said they were like short trousers that are worn out as they walk up and down (*mwamuna ndi kabudula amathera moyenda*). On one occasion the researcher was asked to explain the objective of the research to a group of 40 people, 15 men and 25 women, in Phalombe. The men sat on one side and women on the other. The researchers asked questions but found that the men turned to the women to answer. Asked why they were not answering themselves, the men said they could not answer because the questions were about land, which was not theirs. They explained that they came to the village to marry the women and give them children, and that they just cultivated the land belonging to their wives (*ife tinagobwera kudzakwata azimayiwa ndipo timangolima nawo basi*).

When a man (husband) dies his body is taken back to his mother's village on an understanding that he has to be buried close to the spirits of his matrilineal relatives. Men who fall seriously ill are usually taken to their natal village to be looked after by their mother and/or sisters. In Chiradzulu, the researchers interacted with one man who had come back to his village because he was very sick and was tested positive for HIV. The man told the researchers that his wife said it was better that he should go back to his village and die there because she could not take care of him in his condition as a sick man. He came alone leaving the children with his wife, and in his village his sisters and nieces took care of him. As with a woman living in her husband's village, a man can be buried in his wife's village if he is very old and his children want the body to remain in the village. But such cases are very rare.

### **Access to and control over land in matrilineal society**

The best way to understand access to and control over land in matrilineal society is to appreciate the social and power relations among men and women. The relations have created an established status quo, whereby women, and not men, inherit and own the land. It is argued that women own the land because they live in their villages while men can only use the land through their wives. The patterns of women being the owners of the land are many generations old. The chiefs, women and men revealed that their ancestors practised it and they also do it, and they expected their children to do the same. The respondents emphasized that it was their culture (the way they do things) that land belongs to women. Therefore men cannot own or inherit the land belonging

to their mothers, but they can only use it, and they have the right to be buried in this land. Even in cases where men attempted to buy land, they indicated that they bought it for their daughters. In Chiradzulu, Mr X bought a piece of land but he shared it among his daughters, while none of his sons received any piece of land. In Phalombe, it was also observed that Mr D bought a piece of land and shared it among his daughters. None of his sons was given land. This is the pattern of well established set of principles and practices found in neighbouring Zomba (Peters 1997, Peters and Kambewa 2007).

The patterns of matrilineal and matrilineal groups are managed by a well developed institutional framework comprising the family and chiefship. The family institution has been instrumental in maintaining the status quo by making sure that the female members of the *mbumba* always reject and do not recognize male members as owners of family land. The female members include sisters (same father and mother) to the male member, distant sisters (cousins whose mothers are sisters) or aunts (sisters to mother). The female members have always allowed male members to borrow the land. In some cases the male members can use the land for a long time but the understanding is that the male member has borrowed it and therefore cannot take the land to be his own. In their explanation the female members said that they would not be happy to see a male member use the land and take the food grown on that land to eat it in his wife's village. While the argument about food would be true the major point is that male children are not recognized as owners of the land because, as Case 1 below shows, even those that do not take the food out the village face resistance from their sisters to own the land.

**Case 1:** In Mulambulo village in Chiradzulu district, in June 2007, the researchers met Mr SM who had come to live in his village after his marriage ended in Balaka district. When asked if he ever had any dispute over land, Mr SM reported that he had one some ten years ago when he was cultivating a garden along the river. He got the garden from his late mother. At that time he was living in his home with his wife. What happened was that three of his sisters (daughters of his mother's sister) encroached on the garden and they finally took it. Mr SM revealed that the sisters took the gardens because he (was) not the rightful owner because he was a male child in the family. Mr SM tried to resist but the sisters set fire to the sugarcane and bananas in the garden to force him to leave the village. Several institutions, from *mwinimbumba* to the VH, and GVH, tried to resolve the dispute between Mr SM and the sisters but they failed. It was finally appealed to the magistrate court in Chiradzulu, where it was finally ruled that the garden should be given to the sisters. Hence, Mr SM lost the garden on the basis that land belongs to female children. Mr SM accepted the ruling by the court. He then left his village and went to stay in his wife's village in Balaka district.

Eight years later, in the year 2004, Mr SM came back from Balaka district to stay in his village because he was sick. Some informants reported that Mr SM was HIV positive and because of that his wife decided that they should divorce. Mr SM came back to Mulambulo when his uncle (a brother to his mother), Mr D had just died. Mr D was a village headman and he took his wife to live with him in Mulambulo. At the time Mr SM came, Mrs D was still living in Mulambulo village because she was not yet formally released to go back to her village. However, Mr D's *mbumba* had already told Mrs D to leave because they wanted the land. According to the tradition, Mr D's relatives were supposed to build a house for Mrs D in her village before releasing her. But no one showed interest to build a house. The *mbumba* insisted that Mrs D should leave the gardens for them. Mrs D took the matter to the TA, who ruled that the *mbumba* should build the house for Mrs D in her village before taking her back. But no one was ready to do so. The fact that none of the *mbumba* was willing to build a house for Mrs D gave an idea to Mr SM that he could do something and get the gardens belonging to Mr D. He went to Mrs D village and built a house for her, and when it was finished he then took her back there.

After Mr SM took Mrs D to her village he took the two gardens which had belonged to Mr D. He claimed that he had a right to the gardens because he built a house for Mrs D. He justified his action by saying that he had done a lot of work on behalf of Mr D and his other relatives, so he deserved to be paid in a form of land that belonged to Mr D. However, by 2006, Mr SM's sisters had already asked him to consider giving them the land because one of the sisters did not have enough land. During interviews in 2007, Mr SM looked confused and did not know what to do with his sisters. He said the only solution he had was to marry again so that he could leave the village and stay with a new wife. But he could not marry again because he was sick.

One thing to notice is the fact that the sisters worked together to prevent their brothers from inheriting the land. The sisters comprised those from the same mother and those whose mothers are sisters. When asked, the sisters revealed that they supported each other to resist their brothers because they believe that the land belongs to all sisters although only one of them might be using it. In other words, the sisters know that they can inherit land from their mother's sister. The sisters to mothers are usually called young or old mother. It therefore appears that land in matrilineal society is not becoming individualistic because those who use it do so as trustees. It therefore means that if one was to dispose of the land he would have to consult all the sisters. This point came out clearly when the researchers observed that when one sister attempted to sell the land, the rest of the sisters protested and claimed the land back. On one occasion the

researchers attended the case where one of the sisters was accused of selling the land and the sisters wanted the chiefs to help them get back the land (see case 2).

**Case 2:** This case took place in Mthambi village in Chiladzulu District. In the case one of the sisters sold a garden to someone who wanted to build a church. The sisters asked her not to sell because the land belonged to their grandmother and they did not have enough land to cultivate. But the sister went ahead and sold the land. She got the money and shared it with the VH. The other sisters reported the matter to the GVH, arguing that the land should not have been sold because it belonged to members of the family. On the day the case was heard there were four VHs and two GVHs presiding over it. Before the case started the GVH asked both parties if they brought their people (*akwao* or the *mwinimbumba*). After taking note that their people were there the case started. The group of sisters was represented by the *mwinimbumba* while the accused and the VH, who had received part of the money, represented themselves. The *mwinimbumba* presented the case as an issue where the land could not be sold because some members of the family did not have enough land, and therefore they wanted the land back. The accused told the court of the GVH that she sold the land because the VH told her that it was infertile, therefore it was only good for building the church. After hearing from both sides the presiding team of GVHs ruled that the land should not have been sold and the money should be paid back to the one who wanted to build the church.

The researchers then asked the GVHs whether it was proper for one to sell land. If so, were there any cases where people were selling land? In reply, the GVHs said that land could not be sold and people were not selling it. However, if one wanted to, there were procedures to be followed. First, one would have to agree with other members of the family that land should be sold. This agreement is important to avoid other members of the family who could come later and claim that they did not recognize the sale. When the family has agreed the matter should be presented to the VH, who should take the matter to the GVH. In this case the VH and GVH should act as witnesses. The GVH then should take the matter and present it to the TA, where if it is confirmed that there is agreement among members of the family, land should be sold. The TA should write a certificate of approval that land has been sold. In the case just described the procedure was not followed, therefore the GVHs felt there would be more conflicts if they allowed the land to be sold.

Cases 1 and 2 show that in addition to the family, the institutions of the VH and GVH also maintain the status quo as they reinforce the position that land belongs to the family, and that female members of the family and not men are owners of the land. For a long time VHs, GVHs and TAs have been custodians of the land and they allocated this land to their subjects (Von Benda-Beckman, 2007). However, the responsibility to allocate land has diminished over time due to shortage of unused land especially in these southern districts, and families or households are the ones allocating the land to their members (Kambewa, 2006, Peters and Kambewa 2007). During the study, VHs, GVHs and TAs said that they had never allocated any land in their lifetime, and the major role they played was to settle disputes, which range from land, marriage and other conflicts. The process to settle disputes follows an appeal process and it starts with the people concerned. If they fail to resolve the dispute between themselves they refer to the leader of the family. If this fails the case goes to the VH. From here the case goes to the GVH, where if it fails the case goes to the TA. From the TA the case goes to the magistrate's court at the



District Assembly. If one is not satisfied with the ruling at the magistrate's court the case can be taken to the high court. During the study the researchers recorded four cases where a male child wanted to take land from his sisters. But only one is presented here as an example (see Case 3). In the case Mr JC had borrowed a garden from his sister for five years. In the year 2007 he decided to take the garden and claimed that it was his. Mr JC happened to be the *mwinimbumba*, so the *mbumba* asked Mr J, the *mkokowogona*, to help in resolving the case but he failed and referred it to the VH, Mr K. The researchers attended the case when it went to the court of the village headman.

One thing to take note about Case 3 is that all the VHs and GVH that presided over the case were all male. One would have therefore expected a conflict of interest whereby the traditional leaders, being male, would have been equally concerned with the status quo and they would have attempted to change it in favour of their fellow male counterparts. But such was not the case. The leaders were for the status quo. The way these chiefs acted towards Mr JC reaffirms the position and understanding of men on land issues that female members of the family own the land. In such a case male members have no option but to accept the status quo.

**Case 3:** This case took place in village K in Chiradzulu. At the court the two VHs from the neighbouring villages and one GVH presided over the case. Present were the *mbumba* (sisters) and other members of village, including some men, boys and girls. First to speak was Mr J, the *mkokowogona*. He told the court the history of the family and how land had been divided among the female members. In the presentation the *mkokowogona* indicated that Mr JC refused to give back the land to his sister, whose daughter wanted to start using it because she had grown up and she was ready to marry. He stressed the point that the family had always given land to sisters. Giving himself as an example, he revealed that he could not get any land for himself because land belonged to the sisters. As such the VHs and the GVH were asked to make sure that the sisters should get back the land, because doing so would maintain the way land had always been inherited in the family. When *mkokowogona* finished talking, all the sisters ululated in support of Mr J and also jeered Mr JC. They called Mr JC all sorts of bad names and spoke of Mr J as the real *mwini-mbumba*, who cared so much about the *mbumba*.

When time came for Mr JC to make a statement, the sisters called him a liar and within a short time Mr JC lost his temper and threatened to kill anybody who would cultivate the garden he had borrowed from his sister. He clarified that he indeed borrowed a garden from his sister for about 5 years. Since the time he started using the garden he extended it and had invested a lot. He said he did not see the reason why his sisters should mobilize themselves against him to take back the land when he did not have enough land from his wife. Immediately Mr JC stopped talking, the GVH took the stage. Before making a statement, he took a walking stick and started dancing. He pointed the stick at Mr JC and asked him if he was a man born in Chiradzulu, and if he ever knew what women in Chiradzulu did when a new baby was born. He continued that women wear sad faces when they notice that a new baby is a boy but they rejoice and ululate when they see that the child is a girl. As the GVH said this all the *mbumba* and the others, plus the VHs cheered in agreement. He then educated Mr JC that the sad faces are typical because a boy will leave the village while happy faces over girls are common because they build the village. The GVH then asked Mr JC if he had ever heard that “a man is like a pair of short trousers that is worn out wherever the man goes”, meaning that a man does not have a permanent home, rather, he belongs and he will end his life wherever he goes (to marry) The GVH went further and told the gathering that they should not waste time because the case was clear. Clear in the sense that Mr JC was acting inappropriately because he was only supposed to borrow the land, and not to take it as his. So in the final statement Mr JC should stop cultivating the land because it belonged to his sisters.

Mr JC was given a chance to appeal to the TA if he was not happy with the ruling by the GVH. But he was foretold to remember that he was in Chiradzulu and a Nyanja by tribe for that matter. As such, he was supposed to be aware that even the TA would not favour him, rather, the sisters would be protected. The case ended at a point when Mr JC walked out of the court to go to his wife’s village while the sisters jeered at him, calling him a thief and a devil (locally called satana). The researchers did not follow the case to the TA’s court. However, during the subsequent visits it was indicated that Mr JC did not appeal to the TA. The VH and GVH maintained that Mr JC would not win the case at the TA’s court because land belonged to his sisters, because it would be untraditional for a male member to inherit the land.

## Conclusions

The major conclusion in this paper is that long standing social and power relations have produced patterns of access that make female members have more secure tenure rights than male members in matrilineal-matrilocal society. In other words, women have more power over the land than men. This is a situation that is accepted even by the male members of the matrilineal society. The case of Mr JC is not a sign that there is need to change the status quo but examples

of situations where male children use specific reasons and claims such as having insufficient land at wife's place or having made investments in the land borrowed in order to continue using the borrowed land. The specific reasons could sometimes become volatile but the institutional frameworks have been able to manage the conflicts and violence. In the process women have not lost ownership over the land. However, the land policy in Malawi does not recognize the existing differentiation as it assumes that all children should inherit the land from their parents. According to the findings of this study any change to the matrilineal and matrilocal patterns that make daughters the heirs of land (to make land belong to all children in the household, as described in the land policy) the rights of male children to land will be secured, but women will lose those rights. By implication any loss of land rights may negatively affect household food security since women are the main cultivators of the land and providers of food.

It is also concluded that women are owners of the land in matrilineal society. Now that it is understood that land belongs to women it is important that the proposal that land should be made private should ensure that the land is registered in the name of women. The land cannot be registered in the name of men (husbands) because they are mere users of the land. The same applies to brothers. These are not favoured because they would take advantage and appropriate the land. Experience in the Lilongwe Land Development Project has shown land titling program brought conflicts among the Chewa in Lilongwe District in the 1970s. The land tenure system change instituted in this project was from customary to freehold, and the land was registered in the man's name. Contrary to the matrilineal system of the Chewa where the sister or sister's brother has customary authority, titling led to a woman's husband being recognized as the titleholder. In some cases, the sister's brothers sold the land (Masangano *et al.*,2001). If land is registered in the name of husbands and brothers it result in more conflicts in the societies. The male children should only be recognized as borrowers. In order to enhance tenure security for women there is need to provide legal recognition of the current situation which would, for example, provide protection against any lenders of land being told by the borrowers that the land is now theirs.

It is further concluded that in matrilineal-matrilocal society, sisters hold the land in trust. Indeed, when matrilineal societies are not properly understood the land appears to be individual but the members know that they do not own it, rather, it belongs to the family such that any decision

would have to recognize the views of other members of the family. In light of the foregoing conclusion it will be important to make sure that sisters of the woman should become signatories to the title deeds. By making sisters signatories to the title deeds it will enhance the ties and relations that already exist among the sisters of the *mbumba*.

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