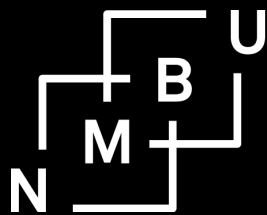


Land Tenure and Social Relations in Matrilineal and Uxorilocal Societies in Malawi

Daimon Kambewa, Erling Berge, Stanley Khaila, Alister Munthali, and
Henrik Wiig



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written by

Daimon Kambewa, Erling Berge, Stanley Khaila, Alister Munthali, and Henrik Wiig
as part of the *Malawian Land Tenure and Social Capital Project 2007-8*.

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Preface

The present paper is a revision of a paper that was submitted to Land Use Policy in 2009. The review from LUP from 2010 asked for a rewrite. Due to personal reasons this was not possible before other tasks took all available time. In connection with the lead authors work on an assessment of the fit of the Customary Land Act 2016 and its Amendments 2022 with rural lives and customary land management in Malawi, the discussion in the present paper was necessary as background. Hence we have updated the paper and present it as a report from the Centre for Land Tenure Studies at the Norwegian University of Life Sciences.

Erling Berge, Ås, March 2023

Land Tenure and Social Relations in Matrilineal and Uxorilocal Societies in Malawi

Daimon Kambewa¹, Erling Berge, Stanley Khaila, Alister Munthali, and Henrik Wiig

ABSTRACT

This paper is about social relations in customary lands for the matrilineal uxoriocal culture of the Lomwe, Nyanja and Yao tribes in Southern Malawi. The study was carried out in the districts of Chiradzulu and Phalombe. Qualitative methods were used to examine local histories and practices to identify the social and power relations between males and females in matrilineal groups and the roles of chiefs, extended families, and traditional practices in access to and control over customary land. By focusing on local histories the study documents that patterns of access to and control over customary lands are historical in nature and embedded in social ties and power relations. Male and female members of the household or family have equal use rights but unequal ownership rights. The land belongs to the extended family and not to the community or individuals. Instead of saying the land belongs to 'me' the people say the land belongs to 'us' even though the individuals may have user rights in perpetuity. The 'us' implies the extended family and not the community. The power and control over the land is located in the group of sisters and not in the head of family (mwini-mbumba) or the Chief. The patterns of control have to be understood for proper decisions to be made on how to organize access to and control over land, especially in a country where livelihoods are dependent on agriculture or are land based in nature.

Keywords: matrilineal, matrilocal, uxoriocal, land tenure, access rights, use rights, ownership rights, Yao, Lomwe, Nyanja, Malawi

JEL Codes: Q15, P14, P26, P48, D23

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Corresponding Author:

Daimon Kambewa, Lilongwe University of Agriculture and Natural Resources, Bunda College of Agriculture,
P.O. Box 219, Lilongwe, Malawi

E-mail: dkambewa@hotmail.com,

Phone no: +2658830860

Fax : +2651277281

¹ Daimon Kambewa, Stanley Khaila, Lilongwe University of Agriculture and Natural Resources; Alister Munthali, University of Malawi; Erling Berge, Norwegian University of Life Sciences; Henrik Wiig, Oslo Metropolitan University.

SAMANDRAG

Denne artikkelen handlar om dei sosiale relasjonane i tradisjonelle jordbruksområde innan den matrilineale og uxori-lokale kulturen hos Lomwe, Nyanja og Yao stammene i det sørlege Malawi. Studien vart gjort i distrikta Chiradzulu og Phalombe. Det vart nytta kvalitative metodar for å studere lokalhistorie og praksisar for å identifisere sosial- og makt-relasjonar mellom menn og kvinner i matrilineale grupper og kva roller høvdingar, stor-familiar og tradisjonelle praksisar har for tilgang til og kontroll over tradisjonelle jordbruksområde. Ved å fokusere på lokalhistorie dokumenterer studien at mønsteret i tilgang til og kontroll over tradisjonelle jordbruksområde er historisk i utgangspunktet og innbakt i sosiale band og makt relasjonar. Mannlege og kvinnelege medlemmer i hushaldet eller stor-familien har dei same bruksrettane, men ulike eigarrettar. Jorda tilhøyrer stor-familien og ikkje lokalsamfunnet eller individa. I staden for å seie at jorda tilhøyrer «meg» seier folk at jorda tilhøyrer «oss» sjølv om individet kan ha bruksrettar for all æve. «Oss» tyder stor-familien og ikkje lokalsamfunnet. Makt og kontroll over jorda er lokalisert i gruppa av søstrer og ikkje i sjefen for stor-familien (mwini-mbumba) eller høvdingen. Dette mønsteret for kontroll må ein skjønne for å kunne ta skikkelege avgjerder om korleis ein kan organisere tilgang til og kontroll over jorda, særleg i eit land der levebrødet er avhengig av jordbruk eller er grunnleggande arealbasert.

[uxori-lokal (= matrilokal) tyder at personane er busett på kvinna sin heimstad; matrilineal tyder at ein reknar slektslinjer gjennom mødrer; høvdingar og mwini-mumba-er kan like gjerne vere menn som kvinner; familie tyder stor-familien av mødrer, tanter, søstrer, søskenbarn, osv; menn har sjølvsgt sin plass i storfamilien, men dei er ikkje jordeigarar]

Nøkkelord: matrilineal, matrilokal, uxori-lokal, jordeige, tilgangsrettar, bruksrettar, eigarrettar, Yao, Lomwe, Nyanja, Malawi

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Land Tenure and Social Relations in Matrilineal and Uxorilocal Societies in Malawi

Daimon Kambewa¹, Erling Berge, Stanley Khaila, Alister Munthali, and Henrik Wiig

1. INTRODUCTION

Land reforms based on customary law and providing justice and security of tenure in countries where very different cultures co-reside is an unsolved problem. One particular variant of this problem is found in several Central and East African countries. Here one see communities, side by side, with matrilineal and patrilineal principles for organising social systems and matching customary land law.

Land holding systems in patrilineal social systems are better known than in matrilineal social systems. The standard belief among policy makers about matrilineal communities in Malawi is that “Under matrilineal marriages land is inherited by sons from their mother's brother and women do not have full ownership and control of it because uncles control the land owned by the women.” (Hatcher, Meggiolaro, and Santonico Ferrer (2005, p.51), Berge et al. (2014), also see Voegele, Villarreal, and Cooke (2009, p.128)). We will show that this is not valid for all matrilineal societies. The paper will present observations from communities where land inheritance is matrilineal and residence is uxorilocal (matrilocal). In particular it will focus on the present situation in Malawi and how matrilineal-uxorilocal communities among the Lomwe, Nyanja², and Yao peoples might be affected if or when land reforms are enacted.

Land tenure relations are governed by local customs for most Malawians, especially the small-scale farmers who comprise about 85 percent of the farmers in Malawi. This means that for the Lomwe, Nyanja, and Yao the distribution of access to and control over land is organized according to their strong matrilineal and uxorilocal culture. This is called the chikamwini system in Chichewa³. Not everything in the situation is relevant. However, it is important to know the rights and duties people believe they have and the rights and duties they believe others have. Property rights (like other rights) have this asymmetry between an “owner's” rights and other people's (non-owners) rights⁴. We need to understand both sides. The goal for this paper is to describe customary land tenure relations in the chikamwini communities in Southern Malawi.

The fieldwork targeted land tenure relations because of the pending land reforms where statutory law is proposed to replace customary law. Background material to the proposed reforms is found in Saidi (1999) and the land policy GoM (2002). Proposals for new legislation were presented to the Government in 2006⁵. Our investigations will throw some light on the possibility for different impacts of the land reforms on matrilineal-uxorilocal

¹ Daimon Kambewa, Stanley Khaila, Lilongwe University of Agriculture and Natural Resources; Alister Munthali, University of Malawi; Erling Berge, Norwegian University of Life Sciences; Henrik Wiig, Oslo Metropolitan University.

² The "Nyanja" are the Chewa people of the Southern Region. In the study area, they are commonly known by their nickname "Mang'anja".

³ For a survey of matrilineal social organization in general, and in south Malawi in particular, see Peters (2019).

⁴ On this topic see Hohfeld (1913); (Hohfeld 1917).

⁵ A survey of this proposal can be found in Holden, Kaarhus, and Lunduka (2006, 13-23)

people. We will elsewhere discuss land tenure relations and the impacts that land reforms might have on patrilineal society of the Ngoni and Tumbuka in the Northern Region and matrilineal and virilocal (patrilocal) societies of Central Region of Malawi. The paper is based on fieldwork in the Chiradzulu and Phalombe districts of Southern Malawi during June-August, 2007. After a discussion of the fieldwork and a short presentation of the descent and residential patterns found in the districts, the paper will present observations of differences in rights of female and male children in *chikamwini* households. We will explore exceptions to residence rules in *chikamwini* households, and demonstrate the location of control over land. In the concluding discussion we will raise questions about security of tenure for men in *chikamwini* cultures and why statutory legislation should handle men and women differently.

2. METHODS

This paper is based on the Malawi Land Tenure and Social Capital Project⁶. The project was coordinated by the Norwegian Institute of Urban and Regional Research (NIBR) in Oslo. Primary data were collected in Malawi during the period June-August 2007. The conduct of fieldwork in Malawi was coordinated by Bunda College of Agriculture of the University of Malawi. The study was conducted in 6 districts: Rumphi and Mzimba in the north, Kasungu and Dowa in the central and Chiradzulu and Phalombe in the south. In each district one Traditional Authority (TA)⁷ was chosen where data collection took place. The choice of districts and TAs was purposively done. Three enumeration areas in each Traditional Authority were randomly selected. In each enumeration area a list of villages was made and one village was randomly selected. Hence, in each district 3 villages were selected. Research assistants were recruited and assigned to work in one of the selected villages where he or she lived for about 6 weeks after which they moved to a second district in their region.

In each village 15 households were randomly selected to participate in this study. A household questionnaire was administered to all the 15 households. For each of the participating households an in-depth interview was conducted which was aimed at understanding land tenure and social capital issues in the sampled districts and villages. In addition to this, key informant interviews were conducted with village heads (VHs), group village heads (GVHs) and others in the selected communities. A total of 269 household were surveyed (from the sample of 270). In addition 17 key informant questionnaires and over 293 in-depth interviews were completed.

⁶ For background see Berge et al. (2009), available from <https://www.erlingberge.no/MLTSCreport20190917.pdf>

⁷ TA refers to both the Chief and his area

3. MATRILINEAL AND UXORILocal COMMUNITIES IN CHIRADZULU AND PHALOMBE

3.1 Descent system

The people of Chiradzulu and Phalombe (and neighbouring districts) of Southern Malawi practice the matrilineal system of descent (Peters 1997). This also applies to the Chewa of Central Malawi (Chisale 2002). Membership, succession, and inheritance follow the maternal line. The woman is central in the family, and she is considered the ‘owner’ of the village (Peters 1997, 2002; Peters and Kambewa 2007). A household is comprised of a woman, her husband and children (if any) or a woman and her children in case of death of the husband or divorce or a woman alone if there are no children and no husband. It is locally known as khomo. People say khomo *la* XY, meaning a household of XY. A family is larger. It is constituted of several households and known as banja. People say banja *la* VW, meaning a family of VW where, for example, the household of XY is part. However, in other places banja refers to the household, based on a conjugal couple, even if there are other relatives present. People referred to khomo if asked specific questions about kinship units but it was almost never used in ordinary life. Some people did extend banja to mean a compound. The most important unit in the matrilineage is the mbumba, a group of sisters and their descendants. The sisters of the mbumba usually live together, although a few go to live in their husbands’ villages, and some live away because of employment. Sisters often help each other to carry out activities such as harvesting crops, and they cooperate 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 Katundu and Mpeni⁸ villages in Phalombe explained that they assisted each other because they all depended on and needed each other in times of sorrow or happiness. They further added that by assisting each other they made the work and subsistence problems lighter. It therefore appears that the bonds of kinship are strong among the sisters and they are important for the livelihoods and welfare of the members.

The mbumba is usually under the guardianship of a relative, who usually is a brother of the sisters, although sometimes it can be the elder sister. He/she is called mwini-mbumba, the owner of the mbumba. The qualities of the guardian are respect for others, cool tempered, and wise enough to make sound judgment since he/she has to represent the mbumba in marital matters, disputes, at weddings, and funerals. In some cases there is a senior guardian called *mkokowogona* (literally, a sleeping bunch of banana). The situation of senior and junior guardian arises when a guardian lives very far away and the matrilineal group 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 matrilineal group chooses another one who is energetic enough to carry out most of the functions. The junior guardian always consults the senior when making decisions. During the study the researchers observed that at village courts senior guardians were called to help resolve disputes by giving

⁸ Village names are made up to protect the identity of the people talking to us.

histories of land transfers. On two occasions when the researchers attended cases at the courts of the village head and group village head, 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 guardians or *akwao* were not present.

3.2 Post Marital Residence

While there might be some changes in some matrilineal societies, observations in Chiradzulu and Phalombe have established that women are still considered as ‘builders of the village’ and they therefore live in their natal villages after marriage. Men are considered as wanderers. This has implications for place of residence when one has married. After getting married a man (as husband) leaves his mother and lives in his wife’s natal village (uxorilocal residence). It is very rare for a woman to move out of her natal village to join her husband in his natal village (virilocal residence). Such marriage is called *chitengwa* in Chichewa but *ulooka* in the study districts. During the study there were very few cases where women lived in the villages of their husbands. For example only 4 out of 38 women interviewed lived in virilocal arrangement. They did so because the husband wanted to attend to his parents who had become too old, or because the husband had become a village headman.

Upon death of the wife or divorce a man returns to his natal village. The children remain with their mother or her relatives in case of her death. Some men marry several wives in their life time and they live in several villages as they follow the wives. When a man (husband) dies in his wife’s village his body is taken back to his mother’s (natal) 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 villages to be looked after by their mother and/or sisters. In Chiradzulu, the researchers talked to one man who had come back to his village because he was very sick and had 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. However, a man can be buried in his wife’s village if he is very old and his children (daughters) want to take care of his grave. But such cases are rare.

Upon the death of the husband a woman who lives under virilocal arrangement takes her children and goes back to her natal village. Again, children go with the woman because they belong to her lineage. When a woman dies her body is taken to her natal village. 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 Mpeni village in Phalombe one woman who was over ninety years old said that she would be buried in her husband’s village because that was where she was best known. It should be recognized that the stage when a man or a woman leaves for his or her natal village marks the end of marriage but the relationship still remains such that the two parties inform each other when there is need, for example, in times when a

child is sick or has died or marries. Divorce in the meaning of final severing of a marriage tie is locally called kusudzula, which means to set free, that is, free to marry again.

4. DIFFERENTIAL ACCESS TO AND CONTROL OVER LAND

Social relations involve differential power relations between men and women, as well as among women and among men. They are powerful shapers of who gets access to critical resources. Social relations interact with differences in ethnicity, class, age, and other characteristics of identity. In general, women across the world have less access to credit, hired labour, inputs, markets and extension services than men, and they have less control over land than their male relatives (FAO 2007; Mehra and Rojas 2008). The observations from matrilineal-uxorilocal societies in Chiradzulu and Phalombe provide a case where women have more control over land than their male relatives.

4.1 Access to and control over land by children of the same household

The descent system and post marital residence described above, result in differential rights to land between male and female children. The female child is recognized as the permanent resident of the village. Others say a woman is the builder or the owner of the village. By being recognized as a permanent member a woman is taken as the owner of the land and the fields she uses. Usually, in Phalombe and Chiradzulu, a daughter gets a field from her mother or grandmother when she marries. Sometimes a young girl is assigned a field when she is as young as 8 or 10 years. It is usually said that the field is for the girl to play with. Parents help the girl to cultivate. Upon getting married the girl (wife) uses the field with her husband. When a woman lives in her husband's village (ulooka) she accesses the fields through her husband. When a husband dies or in case of divorce a woman goes back to her fields in her natal village. The women that lived ulooka still maintained the fields in their natal villages. Some went back and cultivated the fields every year while others lent them to their sisters or brothers. The women made sure that they participated in various ceremonies so that they would not be forgotten by the other members of their mbumba. The common ceremonies included clearing of graveyard, funerals, weddings, and feasts to remember the dead (*sadaka*).

The researchers participated in clearing of a graveyard and *sadaka* and talked to six women who had travelled from their husband's villages to take part in the ceremonies. One woman brought with her chickens and maize flour to prepare a special meal to eat with her family and relatives in remembrance of her beloved sisters who had died. When asked, the women said that they took part in the activities because it was a way to respect the dead. But on further inquiry the women revealed that they also took part in the ceremonies as a way to maintain links with their families. They elaborated that it was important for them to maintain the links so that they should not lose their fields. Matrilineal relatives might borrow the field when the owner was away and unable to use it. Sometimes, a borrower would claim the field as their own if the owner spent more than three years without using the field and so was considered to no longer belong to the mbumba.

As for the male child the common understanding is that he is temporary resident and a wanderer, therefore, he is not the owner of the village and he can not own the fields in his natal village. While a daughter is given a field when she is very young, the male child (the son) is not assigned any unless there is no daughter in the household. Up until he marries, the son uses the fields belonging to his mother. Upon marriage, the son (husband) uses the fields of his wife. When the wife dies or in case of divorce a man loses the right to use her field and returns to his natal village until he remarries. It is common for the man to stay in his natal village in between marriages or when he is sick. During this time the man borrows fields from his sisters or mother. Sons or brothers are recognized as users in their wives' villages and borrowers of the land in their natal villages. Of course, just as women, men participate in different ceremonies to maintain their links with their natal villages so that they should not be forgotten by their mbumba. The researchers talked to five men who had travelled all the way from their wives' villages to participate in clearing of graveyards. The men explained that it was important for them to maintain the links with their villages, not to maintain rights to fields but to get a decent burial because usually the body of a man had to be buried in his natal village.

In sum, the female children have ownership rights while male children have use rights. These sets of rights have different levels of security. Ownership rights are more secure than rights to borrow. Security of tenure means that one believes that one can use the field without any interference. Unlike ownership rights to a field, the right to borrow can be withdrawn easily. Women said they feared nobody because they received the fields from their mothers or grandmothers, and they would pass the fields to their daughters. The men said that they feared their sisters as they could take away the fields any time. They added that they would not attempt to pass the fields to their children since that would result in conflicts with their sisters from whom the fields were borrowed. The 'sisters' are not only those from the same mother but also those whose mothers are sisters, those from distant sisters (cousins whose mothers are sisters), those whose grandmothers are sisters – that is, a matrilineal group. During the study the researchers registered a number of cases where a group of sisters confronted their brothers who tried to take away the fields (see Case 1 as an example).

CASE 1: In Payere village in Chiradzulu district, in June 2007, the researchers met Che 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 his fields, Che SM reported that he had one some ten years ago when he was cultivating a field along the river. He got the field from his late mother. At that time he was living in his natal village with his wife. What happened was that three of his sisters (daughters of his mother's sister) encroached on the field and they finally took it. Che SM said that the sisters took the field because he was not the rightful owner because he was a male child in the family. Che 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 *mwini-mbumba* to the village head, and group village head, tried to resolve the dispute between Che SM and the sisters but they failed. It was appealed to the magistrate court in Chiradzulu, where it was finally ruled

that the field should be given to the sisters on the basis that he was not the rightful owner because traditionally land belongs to female children. Che 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, Che SM came back from Balaka district to stay in his village because he was sick. Some informants reported that Che SM was HIV positive and because of that his wife decided that they should divorce. Che SM came back to Payere village when his mother's brother, also *mwini-mbumba*, Che D, had just died. Che D had taken his wife, Mai D, to live with him in Payere village. At the time Che SM came back, Mai D was still living in Payere village because she was not yet formally released to go back to her village. However, Che D's *mbumba* had already told Mai D to leave because they wanted the fields. According to tradition, Che D's relatives were supposed to build a house for Mai D in her village before releasing her. But no one showed interest to build a house. The *mbumba* insisted that Mai D should leave the fields for them. Mai D took the matter to the Chief⁹, who ruled that the *mbumba* should first build the house for Mai D in her natal village before she could return there. But no one was ready to do so. Che SM decided to build a house and when it was finished he took Mai D and her children back to her village. When he came back he claimed that the fields belonging to Che D were his as payment for building the house. He had done a lot of work on behalf of Che D and his other relatives, so he deserved to be paid in a form of land that belonged to Che D. However, by 2006, Che 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, Che 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.

It is important to understand that the period the brother can use a borrowed field is not specified. He can sometimes use it for a long time as if he is the owner. But the understanding is that land has been borrowed and the brother can not take it to be his own. The group of sisters also plays a major role in preventing members of the matrilineage from disposing of their fields. This was observed in Tsavu village where a woman attempted to sell a field but her sisters protested and claimed it back from the buyer. The researchers attended the case when the sisters sought the assistance of the Chiefs to get back the field (see Case 2).

CASE 2: This case took place in Tsavu village in Chiladzulu District. In this 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 village head. The other sisters reported the matter to the group village head, 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 village heads

⁹ That is the TA Chief. Chief with a capital "C" will according to law refer to a person holding or acting in the office of Chief under the Chiefs Act of Malawi. Traditional Authority Chiefs (or TAs for short) are appointed by the government.

and two group village heads presiding over it. Before the case started the group village head asked both parties if they brought their people (*akwao* or the *mwini-mbumba*). After taking note that their people were present the case started. The group of sisters was represented by the *mwini-mbumba* while the accused and the village head, who had received part of the money, represented themselves. The *mwini-mbumba* 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 group village head that she sold the land because the village head told her that it was infertile, therefore it was only good for building the church. After hearing from both sides the presiding team of group village heads ruled that the land should not have been sold and the money should be paid back to the buyer.

The researchers then asked the group village heads whether it was proper for one to sell land. If so, were there any cases where people were selling land? In reply, the group village heads 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 village head, who should take the matter to the group village head. In this case the village head and group village head should act as witnesses. The group village head then should take the matter and present it to the Chief, where if it is confirmed that there is agreement among members of the family, land should be sold. The Chief should write a certificate of approval that land has been sold. In the case just described the procedure was not followed, therefore the group village heads felt there would be more conflicts if they allowed the land to be sold.

This case shows that land is not an individual but a family asset. Respondents say land belongs to “us” and not “me”. Thus, although only one member might be using the land at a particular time it belongs to the matrilineal group. Under this existing arrangement the wider matrilineal group exerts control, and decisions over the land can never come from an individual, rather, there has to be full consideration of the other members of the family. As shown in Case 2, the sister could not sell the land without consulting her sisters in the transaction. She could have sold it if the land was her individual asset. It therefore appears that the conception of matrilineal land is the force that prevents individuals from selling the land. The explanation by the group village head on how the sale of land could be legitimized is a statement of procedure which may or may not happen. However, the explanation shows further complexities over the land question. If the land was going to be sold the transaction costs would be very high as it would involve a lot of institutions and a lot of individuals to reach an agreement.

4.2 Access to and control over land by people of the same village

An analysis of different families in the village shows that when it comes to land matters social relations interact with differences in characteristics of identity. “Village” or *mudzi* is

the major identity that people use. *Mudzi* means a home (*kwathu* or *kwao*). *Mudzi* also means the final resting place for every person, which is the graveyard. Thus a person has two villages. The first one is where he/she lives when alive and the other one is where he/she lives when dead. In some cases a woman has a third village if her house is turned into a shrine (*kachisi*) after her death. The usual practice is that a house of the eldest sister of the *mbumba* is pulled down and made into a shrine when she dies, in honour of her as the owner of the village. This honour is not given to a brother or *mwini-mbumba* in the family because he is not the owner of the village. Therefore a village has a larger meaning than just any assemblage of houses. Everyone belongs to a social place and identifies oneself with a village. To be without a village would be to be destitute (*alibe kwao*) and to have no social identity.

Matrilineal groups who came into the area earlier call themselves bona fide villagers (*mbadwa*: literally those born here), while those that came later are called newcomers (*obwera*). The *mbadwa* villagers claim to be the real owners of the village, saying they set the first fire and cleared the bush for crops (*kuswa mphanje*). Besides the question of first occupant, practices such as *mphambano* also known as *malekano* legitimize membership in the village. The term *mphambano* means a junction or crossroads but it is literally translated as leaving each other. This follows a belief that the spirits (*mizimu*) of the dead have to be taken out into a place where they can not return to the house where the body was kept (*msiwa*). Three days after burial of the dead, members of the family come together at the *msiwa* and clean the surround including the places where food was cooked during the funeral. Members of the family shave their head to get rid of the spirits of the dead. This is called a shaving day (*tsiku lometa*). The hair, the ash, the wood that did not burn completely, the pots or cups used to clean the body and the utensils that were used before the deceased died are gathered and put at a place where the paths cross (*mphambano* or *malekano*). So, every matrilineal group has its own *mphambano*. When a section of the matrilineage breaks away it creates its own *mphambano*.

The *obwera* are considered non-residents or temporary members and they have insecure rights. Thus, their land can be taken away. The distinction of *obwera* comes into play especially when there are cases of land shortage. In such cases the state of being *obwera* does not end, especially when one behaves contrary to the expectations and norms of the village. By extension, land tenure insecurity for *obwera* does not end. Indeed bona fide villagers or their children remind or insult *obwera* about their liability to have land withdrawn. One example is Mai EF of Naphini village in Chiradzulu. She came to live in the village in 1977 and the village head allocated her a field in the same year. But in 2004 the nieces and sisters of the village head took away the field because, according to Mai EF, she was *obwera*. The issue started because of disagreements over a field which Mai EF claimed her daughter bought from the sister of the village head. The nieces and the sisters of the village head claimed that the field was only rented and not sold (see Case 3 for details).

CASE 3: Mai EF came to Naphini village in 1977 with her two daughters to live with her eldest daughter who had married in the village. This was after her husband died in 1974. When she came to Naphini village the village head allocated her a field in the same year. In 1998 the second daughter of Mai EF bought a field from a sister of the village head Naphini for MKW3000¹⁰. In 2001 the second daughter died and Mai EF inherited the field. However, in 2004 adult children of the sister of the one who sold the field claimed back the land, saying that it was their land and they did not recognize the sale. The claimants were the nieces (sister's daughters) to the one who sold the land and to the village head. Mai EF took the matter to the village head but he failed to stop the children from taking the field and the matter was referred to the group village head, who ruled in favour of Mai EF. But the nieces ignored the ruling and continued to threaten to take the field. The group village head referred the matter to the Chief, who ordered that Mai EF should give back the field and asked the one who sold the field to pay back the money (MKW3000). Other key informants revealed that Mai EF was told to surrender the field because it is believed that no one could sell the land. So, Mai EF surrendered the field but to her surprise the nieces also took the field which she was allocated by the village head. Mai EF explained that she lost all the fields and she felt that the village head did not protect her because she was *obwera* in the village. She added that the argument about the field that her daughter bought was a conspiracy by the village head and his relatives to chase her from the village. It was the last plan after the village head and relatives had bewitched and killed her two daughters. However, she was not ready to leave the village because she had nowhere to go as she left her natal village some years ago and she would not be welcomed and her fields had been shared among her sisters. At the time of the interview Mai EF did not have any field and she lived by renting.

Besides insecure land tenure, some *obwera* also face exclusion from other means of production. This was observed in the same Naphini village, where the village head excluded *obwera* from receiving agricultural inputs. The village head was asked about the number of households in the village and he indicated that there were 54. When the researchers physically counted there were 85 households. The village head explained that the differences between the two lists were due to the fact that his list was made when he was registering people to receive fertilizer coupons and he did not include households belonging to *obwera*. Social place and identity seem to be central in the distribution of resources such as land and other means of production. What we see is that the differences in identity interact with social relations to create different rights for different members of the same village. The results are that members of different families have different rights to land depending on how they can identify with and legitimize themselves in the village.

4.3 Locating power over land in the matrilineal uxori-local society

Research across Africa has shown that in patrilineal groups, women generally have fewer rights over land than their male relatives. In matrilineal and uxori-local societies the women holds rights over the land. The group of sisters in the *mbumba* holds the power to allocate

¹⁰ This would be about USD22 in 2007.

land to their daughters. Rather than the *mwini-mbumba* or the Chiefs allocating the land, all respondents (male and female) said they received the land from either a mother or grandmother. No one mentioned *mwini-mbumba* as allocating the fields. The *mwini-mbumba* only takes note of the fields his *mbumba* use so that he can be able to defend them in case of conflicts. An incident was recorded in Naphini village in Chiradzulu where a group of sisters confronted their *mwini-mbumba* who wanted to use force to take away the fields from one of the sisters (see Case 4).

CASE 4: This case took place in Naphini village in Chiradzulu. At the court the two village heads from the neighbouring villages and one Group Village Head presided over the case. Present were the *mbumba* (sisters) and other members of village, including some men, boys and girls. First to speak was Che SU, the *mkokowogona*. He told the court the history of the family and how land had been divided among the female members. He said that Che JC, who was the *mwini-mbumba* borrowed land from one of the sisters. With time one of the daughters had grown up and wanted to take back the field but Che JC refused. He added that he had tried to reason with Che JC by stressing that the land should go back to the daughter as had been the tradition. Giving an example, he said that he could not get any land for himself because it belonged to the sisters. He then asked the village and group village heads to make sure that the daughter should get back the land, because doing so would maintain the way land had been inherited in the family. When Che SU finished talking, all the sisters ululated in support and jeered at Che JC. They said Che SU was the real *mwini-mbumba*, because he cared so much about the *mbumba*. When time came for Che JC to make a statement, the sisters called him a liar and within a short time Che JC lost his temper and threatened to kill anybody who would cultivate the garden he had borrowed. He clarified that he had 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. So, in 2007, he had decided to take the field as his own. 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 Che JC stopped talking, the Group Village Head took the stage. Before making a statement, he took a walking stick and started dancing. He pointed the stick at Che JC and asked him if he was a man born in Chiradzulu, and if he knew what women in Chiradzulu did when a new baby was born. He clarified 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 group village head said this all the *mbumba* and the others, plus the village heads laughed and cheered in agreement. He then educated Che 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 group village head then asked Che 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 wherever he goes to marry. The group village head went further and told the gathering that they should not waste time because the case was clear. Clear in the sense that Che JC was acting inappropriately because he was only

supposed to borrow the land, and not to take it as his. It was also inappropriate because instead of protecting as *mwini-mbumba*, Che JC victimized his *mbumba*. So, in the final statement Che JC should stop cultivating the land because it belonged to his sisters. Che JC was given a chance to appeal to the Chief if he was not happy with the ruling by the group village head. But he was told 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 Chief would not favour him, rather, the sisters would be protected. The case ended at a point when Che 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 (*satana*). The researchers did not follow the case to the Chief's court. However, during subsequent visits it was indicated that Che JC did not appeal to the Chief. The village head and group village head maintained that Che JC would not win the case at the Chief's court.

The Chiefs (village heads, group village heads, and the Chief or TA) themselves said that they do not allocate the land due to shortage of unused land. Some of the Chiefs said that they had never allocated any land since becoming Chiefs: the longest period was since 1949 while the shortest was since 2004. These findings agree with the situation in another matrilineal uxori-local area in Zomba where matrilineal groups are the ones allocating land to their members (Kambewa 2006; Peters and Kambewa 2007). Of course the findings do not suggest that the institutions of *mwini-mbumba*, village head, group village head, and Chief have ceased to be custodians of land as indicated in the literature (Benda-Beckmann [1970] 2007), but it means that in land-short areas such as the study districts, Chiefs no longer allocate land since there is virtually no unused land left and that their major role is as recorder of transfers and hearers of conflicts. Women have to be recognized as the owners and the power behind decisions on how the land should be accessed and used in a matrilineal and uxori-local society. The major role that remains for the Chiefs is to resolve conflicts over the land. These conflicts could be between members of different families or among members of the same family. With increasing scarcity of land the number of conflicts is expected to rise.

5. REFLECTIONS ON MEN IN MATRILINEAL AND UXORILocal SOCIETY

The fact that women, and not men, are in control over the land in the matrilineal and uxori-local society does not make men (husbands) less important. The men acknowledge their position, for example, on one occasion in Phalombe, the researchers were asked to explain the objectives of the research to a group of 40 people, 15 men and 25 women. The men sat on one side and women on the other. Whenever the researchers asked questions about land tenure matters the men turned to the women for answers. When asked why they were not answering, the men said they could not answer because the questions were about land, which was not theirs. They added 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*). We are like pairs of short trousers that are worn out as we walk up and down (*ndife a kabudula othera moyenda*). This answer emphasizes that the role of men is to cultivate the land and to give children. However, men have important roles and power in other domains in matrilineal and uxori-local society. It is

time to recognize their roles and powers, as failure to do so leads to misinterpretation of men as victims, thereby requiring a movement for men's rights to fight for equal rights.

In order to trace the roles of men in a matrilineal and uxorilocal society the researchers analyzed the village unit question. Here, the village is taken as a system, defined as a collection of parts and their interrelationships that interact over a period of time to produce behaviour. This behaviour can not be deduced or guessed from the individual parts. Men are part of the system. Their roles can only be understood from their social relations as well as relations in the economic and political systems of the society. First, men are members of the village because of the social ties with the women. The membership of the man in the village depends on stability of the marriage. The usual practice is that both women and men have multiple spouses in their life time. For example, 23 out of 34 women and 10 out of 22 men had married more than once. While this observation suggests that the divorce rate is high, it does not mean that women do not retain husbands; rather, the conjugal bonds are weaker than familial bonds. Thus, sisters in the family are more strongly connected to each other than to their husbands. Under the existing situation, where the conjugal bond is weak, it would be very complex to implement joint ownership of properties such as land between a wife and a husband. Land is owned jointly by the sisters.

Despite weak conjugal bonds men play important roles and have considerable power by being counsellors to the Chiefs, members of associations or organizations such as religious groups, clubs, community-based organizations, village savings groups, village committees and other groups in the village where they live and the larger society beyond. Membership in the organizations and groups provides opportunities for men to cultivate economic and political ties necessary for providing the needs of their households. These ties are bound together by trust between the men and those in power as well as those in control of the resources. The trust with those in power enables men to assume higher positions of power and decision making. For example, in Mpeni village in Phalombe a man who had married in the village (*mkamwini*) was acting as a village headman on behalf of his sister-in-law who was sick. It was said that the headwoman had been bewitched by those who wanted to take over the headship. None of her sisters or relatives was willing to act because they feared of being bewitched. The only person ready to act was the *mkamwini*. When asked, the *mkamwini* said he would not be bewitched by the Chief's matrilineal relatives because, being *mkamwini*, he had no right to be enthroned as a full village head. In Katundu village in Chiradzulu another *mkamwini* was a secretary for the village headman. He was recording minutes for the cases at the court of the village head. It is clear that men are in positions of authority or decision making. This makes the men able to access resources such as fertilizer coupons, thereby bringing resources for their households. Women appreciate the economic and political roles of men. In their comments they acknowledged that they could not live without men (husbands) because they were the economic pillars in the households. Usually the women said husbands were there to keep women. This reveals that even in matrilineal settings where women control access to land, they do not necessarily hold more economic

power than men. They may even be discriminated against in important ways that impinge on their rights – like having access to fertilizer etc.

6. CONCLUSIONS

We have discussed a customary land tenure system with differential access to and control over land among women and men in a society where descent and inheritance are matrilineal and post-marital residence is uxori-local. The dominant mode of access to land is inheritance from mother or grandmother. On the one hand female children have the rights to use, own and inherit the land - women are owners of the land. On the other hand male children have the right to use and borrow but not the right to own and inherit land. Men are recognized as users and borrowers. It therefore appears that the power of women over land is strong in matrilineal uxori-local societies contrary to what generally is believed about matrilineal societies. Even in cases where men were buying land, they did so for their daughters. In Chiradzulu, in Naphini village, Che LU bought a piece of land. He shared it among his daughters. None of his sons received any piece of land. In Phalombe, in Katundu village, it was observed that Che GU bought a piece of land and shared it among his daughters. None of his sons got any land. This is also the pattern of a well established set of principles and practices found in the neighbouring Zomba district (Peters 1997; Peters and Kambewa 2007). In light of these findings, any attempt to give equal rights to men and women as owners of the land would cause conflicts. Any attempt to make equal rights would make male children have more secure rights, while female children would inherit less. Already women face threats from their brothers who borrow the land but also want to take it by force. In some cases those who rent the land have a tendency to claim full ownership by saying they have bought the land. In order to enhance tenure security for women, matrilineal systems need legal recognition of their de facto joint ownership, for example to provide protection against any lenders or borrowers of land who afterwards claim the land is theirs.

The dominant literature focuses on land as a productive asset but this study has shown that major concerns are unequal access and lack of security of tenure. The major driving forces on land matters are the daily actions and interactions of the people and their common practices. This interactionist view entails that land means more than just being a productive asset. In everyday life the land has a social value. The challenge for lawmakers is therefore to combine productive concerns such as food provision and social concerns such as identity. This point is relevant in times of land redistribution or resettlement and irrigation schemes.

Although the matrilineal-uxori-local systems make women ‘owners’, the study has revealed that land is conceived to belong to the matrilineal group. Therefore any debate on land matters has to take into consideration the members of the wider matrilineal group, beyond the person using the land. In the same way, the problems over land have to be understood in the context of the existing relations between an individual and the wider network. Simplistic and technical solutions that focus on the immediate land user without paying attention to the wider lineal network, and simplistic understandings of matrilineal society that blame lack of

“development” on men’s lack of formal land rights (for which there is no evidence) or see men as victims, would only exacerbate the problems instead of reducing them.

As family property, land has become a highly contested asset when it is inadequate. The processes of exclusion whereby the immigrants (*obwera*) are excluded by the bona fide villagers are probably increasing in frequency and intensity. The situation is that some *obwera* have insecure rights although they live together and in the same village with bona fide members and have done so for a long time. The immigrant members try to find ways to justify and legitimize their membership to the family or to identify themselves with the village so that they can have access to land but their rights are not always protected by the existing institutions.

In an effort to justify their claims over land, members move from one institution to another for justice. Some resort to violence. Others think they can secure their right by claiming that the land has been bought. However, all the claims are contested and some are more insecure than others. While some might suggest that there is need to change the status quo (where women will not inherit and own the land) the violence might be an example of how people use specific reasons to justify their claims and interests. The case of Mr JC is an example where male children use claims such as having insufficient land at the wife’s place or having made investment in the land in order to continue using the borrowed land. What is needed therefore is a mechanism that can protect ownership of land by the women.

Finally, for a long time traditional leaders as well as *mwini-mbumba* have been seen as custodians and allocators of the land. However, this study has revealed that, at least in land-short areas, lineal groups and specifically women and not the *mwini-mbumba* or traditional leaders, allocate land to members of the lineal group. Therefore the pattern that should be recognized is one where women are in control of land matters. These patterns have existed for a long time. The Chiefs, women and men agreed that their ancestors practiced the same pattern and they also did it, and they expected their children to do the same. In other words, it is part of the culture that land belongs to women and men can not 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.

The patterns of access and control identified in this study have to be understood for proper decisions to be made on how to organize access to and control over land, especially in a country where livelihoods are dependent on agriculture or are land based in nature. Failure to recognize the patterns would result in policies that would benefit some sections of the society while disadvantaging other sections.

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