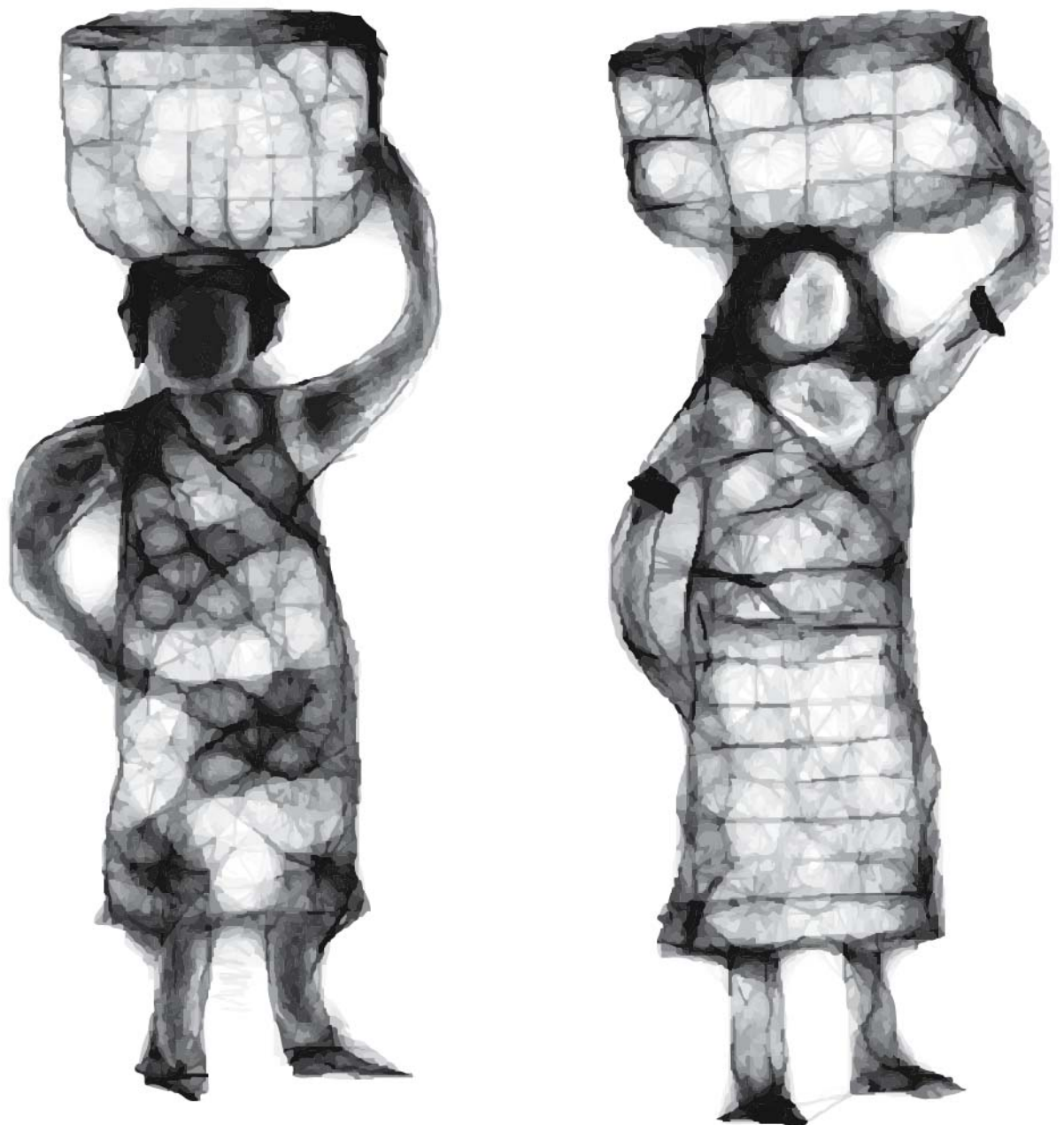


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RESEARCH REPORT

Women's access to land and household bargaining power: a comparative action-research project in patrilineal and matrilineal societies in Malawi



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Women's access to land and household bargaining power: a comparative action research project in patrilineal and matrilineal societies in Malawi

By:

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For the

Women's Legal Resource Centre (WOLREC)

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About the researchers

The Malawi research team composed of Maggie Kathewera Banda, a social scientist and a gender expert, currently the Executive Director of Women's Legal Resources Centre, Veronica Kamanga – Njikho, a gender and development expert working for UNFPA, Grace Malera, a human rights lawyer working for Malawi Law Commission, Martino Kamwano Mazinga, a cultural theorist and social worker, Steven Ndlovu a trained secondary school teacher and a renowned playwright and Gift Mauluka, also a trained secondary school teacher and a vibrant social worker with expertise in theatre for development.

Women's Legal Resources Centre (WOLREC)

WOLREC is a women's rights non-governmental organization based in Blantyre in Eber House near Limbe Cathedral. WOLREC was registered under the Trustees Incorporation Act in 2006. WOLREC's Mission is to promote and safeguard increased access to justice for women and girls in Malawi. WOLREC has conceptualized access to justice from three angles, namely legal, socio-political and economic justice. For legal justice, WOLREC looks at using the law in order for women to get the required justice. In terms of social justice, WOLREC addresses the problems that women encounter in their social and gender relations, for example gender based violence. Lastly, in terms of economic justice, WOLREC recognizes that sometimes women remain in abusive social relations due to poverty and reliance on the abuser for economic support. Considering that women's access to land is increasingly becoming a topical issue and that many women are subjected to land rights abuses, WOLREC, as part of a collaborative project entitled "Securing Women's Access to Land: Linking Research and Action", coordinated in Southern Africa by the International Land Coalition (ILC) and the Institute for Poverty, Land And Agrarian Studies (PLAAS) – University of Western Cape in South Africa has conducted comparative action research on women's access to land and their household bargaining power. The action research aims to provide WOLREC and other interested stakeholders, both at community and policy level, with evidence based data, to inform action around guaranteeing women's access to land and consequently to improve their bargaining power.

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List of acronyms

FGDs	-	Focus Group Discussions
GDP	-	Gross Domestic Product
GoM	-	Government of Malawi.
NAC	-	National Aids Commission
NGO	-	Non Governmental Organisation
TA	-	Traditional Authority
TFD	-	Theatre For Development
UNFPA	-	United Nations Population Fund.
WIA	-	Wills and inheritance Act.
WLSA	-	Women in Law in Southern Africa
WOLREC	-	Women's Legal Resources Centre

Introduction

WOLREC undertook this action research in order to enhance women's bargaining power through improved access and control over land in the patrilineal and matrilineal communities in Southern and Northern Malawi. Our assumption was that there is a strong correlation between the degree to which women have access to, and control over, the use of land and their bargaining power in the household. Argarwal (1994a:2), for instance, argues that land defines social status and political power and in this way structures relationships both within and outside the household. Similarly, the FAO (2002) argues that for the majority of women, their access to and control over land reflects intra-household decisions that create gender asymmetries in bargaining power between household members. However, the FAO (2002) also appears to contend at times that the causal relationship exists the other way round, namely, that the quantity and quality of the land rights held by that person affects the decision making powers that a person enjoys. For WOLREC, as an action-orientated NGO, the exact nature of the relationship between women's bargaining power in the household and their access to, and control over land is key to deciding which interventions are likely to improve poor rural women's access to economic justice.

Malawi, with its dual matrilineal and patrilineal customary ownership system, offers action researchers a rare opportunity to investigate the relationship between land ownership and intra-household bargaining power, and thus to inform policy debates in poor and developing countries on how to secure women's access to assets that would improve their lives and the lives of their children.

The rationale of the types of interventions to improve the situation of poor, rural women that are often proposed (Liweewe 2008) in developing countries are, to put it simply, the following:

- a. Legal ownership of land through joint titling or registration will equalize bargaining relationships within the household, giving women greater control over the core assets that shape their livelihood outcomes.
- b. Women who have high social status derived from a range of possible factors are better able to negotiate livelihood outcomes around the use of household assets, such as the use and control over land, both within and outside the household.

The first argument is frequently supported by the human rights discourse of law (Whitehead and Tsikata:2003) and by the relative simplicity of the intervention implied for NGOs working within a human rights paradigm. However, joint titling in customary tenure settings has been thoroughly challenged both at the level of its apparent simplicity and its effectiveness in improving livelihoods (Cousins et al:2008). The second argument poses the complexity of changing women's status in environments that are extremely complex in both cultural and economic aspects. What determines a woman's status in different cultural and economic environments and what forums can women of different status use to support their claims over essential livelihood assets?

Problems related to issues of women and land under customary and statutory laws have been highly researched and documented in Malawi. However, much of the research that has been carried out in Malawi has concentrated on documenting the general situation in matrilineal and patrilineal societies. This research has often assumed that women's ownership of land in matrilineal systems grants them automatic control rights over land and land resources and has therefore tended not to analyse the possible correlation between ownership, control and inter and intra-household

bargaining power. This research is unique as it goes further to analyse how access to and control over ownership to land enhance women's bargaining position within the household and ultimately contributes to improvements in their economic, social and cultural rights. In this sense, this research intended primarily to contribute to the debate surrounding the first intervention.

WOLREC's research was therefore guided by the following specific objectives:

- To examine the co-existence or overlapping of customary and statutory laws, practices and norms that govern women's access and control to/over land within patrilineal and matrilineal contexts.
- To assess the relationship between women's access to land and household bargaining power and compare how this varies in matrilineal and patrilineal contexts.
- To support and enhance the agency of women to influence gender sensitive changes in policy and practice.

Our findings, however, suggest that more research is required around interventions of the second type, namely how women's social status may be improved in order to increase their inter- and intra-household bargaining and hence their access to and control over land. Furthermore, research needs to investigate the possibility that ownership and household bargaining power are mutually shaping relationships, in which the neglect of either dynamic is likely to impact negatively on the improvement of poor, rural women's lives.

1. Research methodology

Straus and Schwartzman define a field researcher as “a methodological pragmatist,” a resourceful, talented individual who has ingenuity, and an ability to think on her/his feet while in the field (Neuman W L:2003). The research team applied different methodologies in the data collection and

analysis to capture the qualitative richness of women’s access, control and ownership to land, and their bargaining power in patrilineal and matrilineal societies.

The table below gives the summary of the research methods used and their effectiveness:

Table 1: Summary of research methods

Method	No in patrilineal	No in matrilineal	Usefulness	Limitations
Focus Group Discussions	10	10	Smaller groups able to engage in the research Done separately for men and women and created free atmosphere for sharing	Difficult when members of the same family are in the same group especially in patrilineal society, it becomes difficult for young women to speak freely when their mother-in-laws are present
Individual interviews	63 women 20 men	51 women 25 men	Were informal and semi-structured People open to share experiences	It was rain season and so people were busy in the fields. There were also some festivities and so was difficult to get people
Key	4 traditional leaders, 3 extension workers	5 traditional leaders 2 land registrars	They were authoritative figures in issues of land Provided useful information	Not very open to talk about their culture Difficult to find them for interviews as in most cases they are involved in resolving issues with their community
Participant Observation	1 resident field researcher	1 resident field researcher	Established a good rapport with communities, hence people trusted and believed in them The raw data collected was not fabricated as they were not seen as strangers	With the limited time available for the research, it was not possible to do as many participant observations as possible
Community Visioning	2 sessions were done	One session	Communities envisioned how they would want their societies to look. This method gave an opportunity to community members to draw maps of their “future” in terms of women’s ownership as well as control over land in their area. Basically the researchers asked community members to describe their present situation by looking at the particular challenges women face and discuss how the situation can improve. Therefore the maps show their vision for the future, the improved situation. This was a joint exercise done by women and men. This was a useful exercise as it provided a forum to determine how local advocacy should be done and advanced. As the next step was to identify what should be done to reach the desirable state.	People wanting immediate change forgetting that the change they wanted depended on other factors beyond them

Method	No in patrilineal	No in matrilineal	Usefulness	Limitations
Theatre for Development	4 Theatre for Development events.	6 Theatre for Development sessions	During these events, community based researchers that WOLREC identified, were performing plays addressing topical issues emanating from the research. In this case, plays focused on particular challenges that women face such as land dispossession. They were therefore moments for feeding back research findings to the community. This method was helpful in that it provided an opportunity to community members to discuss their lived realities and find solutions to the challenges regarding land.	If not handled properly the plays can just end up being for entertainment and not education. So need to ensure that the plays are both entertaining and educative that community members can get the message and change for the better
Peer to Peer Exchange Visit	1 exchange visit was done for community members from patrilineal society to matrilineal society	No exchange visit was done due to time limitations but it also became redundant since they were still able to meet with community members from patrilineal and were able to compare about the two systems	Enhanced the comparative aspect of the cultural dynamics of the two systems	Needed more resources to engage more community members
Video Documentation	10 women interviewed	10 women interviewed	Women's voices, traditional leaders, extension workers, songs, poetry and dramas were captured all about women's access and control over land Captured verbatim voices It will be used for advocacy	Need more resources Some women were not willing to face the camera as they did not want their identify to be revealed
Harvard Analytical Framework	Not used	Access and Control Profile	Relevant in understanding women's household bargaining power	It consumes a lot of time
Participant Photography	2 cameras used 2 training sessions conducted with respondents	4 cameras 4 training sessions for 4 respondents	Gave an opportunity to women respondents who were given the cameras to capture important aspects of their lives. Most women captured their fields and crops and also gave them an opportunity to interrogate further the concepts of access, ownership and control over land	Some participants did not know how to use the disposable cameras despite the civic education given People just interested in getting pictures of themselves even if they mean nothing
Action with Traditional Leaders	1 workshop	1 roundtable discussions session	Brought together the recognised traditional think-tanks and custodians of culture They conceded that there is a problem in patrilineal society where women do not own or control land in both their native and marital homes They were a stepping stone for advocacy Some chiefs starting discrediting land dispossession of widows in public meetings after this workshop ie, during funeral gatherings or any other village gathering	At first chiefs were not open Fear of the higher authority Most chiefs lacked knowledge on statutory laws in land issues as they just depend on customary laws which has been used since time immemorial
Feeding back research findings/ Awareness Campaigns	2 open awareness campaigns done	2 awareness campaigns done	The whole village/area knew about the research and were able to provide their input People were able to comment on the findings Formed the basis for advocacy	It created a lot of demand which the project could not handle as some village leaders present during the campaigns demanded that the research be extended to their villages

2. Country context

Malawi is a landlocked country in Southern Africa with an agricultural economy accounts for over 40% of Gross Domestic Product (GDP) and employs about 85% of the labour force (SADC Gender Protocol Barometer Baseline Survey: 2009). In an economy that is so predominantly agriculturally based, land is a primary and essential asset for most families.

According to 2008 population and household census, Malawi has a total population of 13,066,320, of which 6,365,771 (49%) are men and 6,700,549 (51%) are women¹. Of this population, approximately 85% live in the rural areas and are involved in subsistence farming. Malawi is a Least Developed Country (LDC), with 54.2% of its population classified as poor, the majority of whom are women (SADC Gender Protocol Barometer Baseline Survey: 2009)

Land is the primary resource in household livelihoods and food security in rural Malawi where communal/customary tenure systems predominate. Livelihood strategies, while largely agricultural and land based, are mixed in that the use of the land resource is, in itself, varied, and include the production of food for household consumption, grazing for livestock and the production of cash crops. In addition, land is also used for harvesting other natural resources such as grass which is used for thatching roofs, reeds for building, timber for coal as well as, fishing. In spite of its centrality to the livelihoods of rural Malawians, not all Malawians enjoy secure access to adequate land for their livelihoods, and insecure access tends to have a female face (Mbaya 2002).

Malawi has been profoundly modernized since it embraced democracy in 1994, yet it remains a very traditional society; where establishing real gender equality will take time. Existing inequalities between men and women are largely due to customary laws and traditions despite the Constitution of Malawi, which was adopted in 1994, upholding the principle of equal rights for men and women and prohibiting discrimination based on gender or marital status. (Section 24,

Constitution of Malawi). After the Constitution was adopted, the government established a Law Commission to assess whether existing legislation was compatible with the aims of the Constitution. The Commission has since reviewed several laws that discriminate against women. Rights to land imply security that is tied to an enforceable claim, while access to land is more informal and less enforceable. Women who become single heads of households are particularly vulnerable as their access to land is often through their husbands or fathers. This situation makes them prone to lose such access after widowhood, divorce, desertion or male migration (UN HABITAT 2005). There is thus a wide discrepancy between the declarations in the Constitution and the actual relationships between men and women, where customary law acts as a norm in the socialization process.

¹ The 2008 Population and Housing Census. National Statistical Office

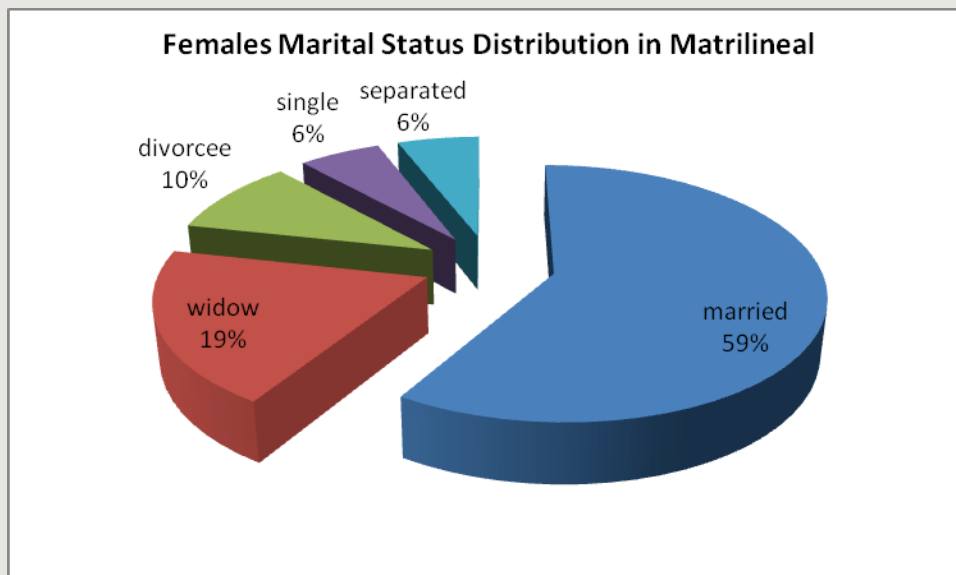
3. Research sites

Matrilineal Society: ZOMBA district

Zomba is located in the southern region of Malawi. The district has a heterogeneous population composed of different ethnic groups, cultures and languages. The dominant ethnic groups are Mang'anja, Yao and Lomwe. There are also the Chewa, Ngoni, Tumbuka and many other minor ethnic groups. Like most districts in Malawi, the economy of Zomba is agriculture-based. Maize is grown mainly as a food crop, while tobacco is cultivated as a cash crop. Other main staple crops produced include rice, cassava, sweet potato, groundnuts, beans and pigeon peas. Both smallholder farmers and estates grow wide ranges of crops. Most households own less than 1 hectare of land. Cattle, poultry, goats, sheep, pigs and rabbits are the most frequently raised livestock in Zomba. Most of these are local breeds raised mainly for meat

production. Poultry is the most common livestock in the district, followed by goats. The research in the Zomba district was conducted in Nkagula, Disi and Chilimani villages in sub traditional authority Nkagula. These villages are made up of about 1,876 residents. The area was chosen because it is a matrilineal community that practices the matrilocal system of marriage; that is, land is both bequeathed to daughters and husbands leave their villages to relocate to their wives' village on marriage. This research site was therefore chosen in order to examine the extent to which this kind of system enhances women's rights and identify spaces within which women can use to protect their rights given the fact that women seem to be the 'owners' of land by custom.

Figure 1: The marital status of the research respondents in Zomba



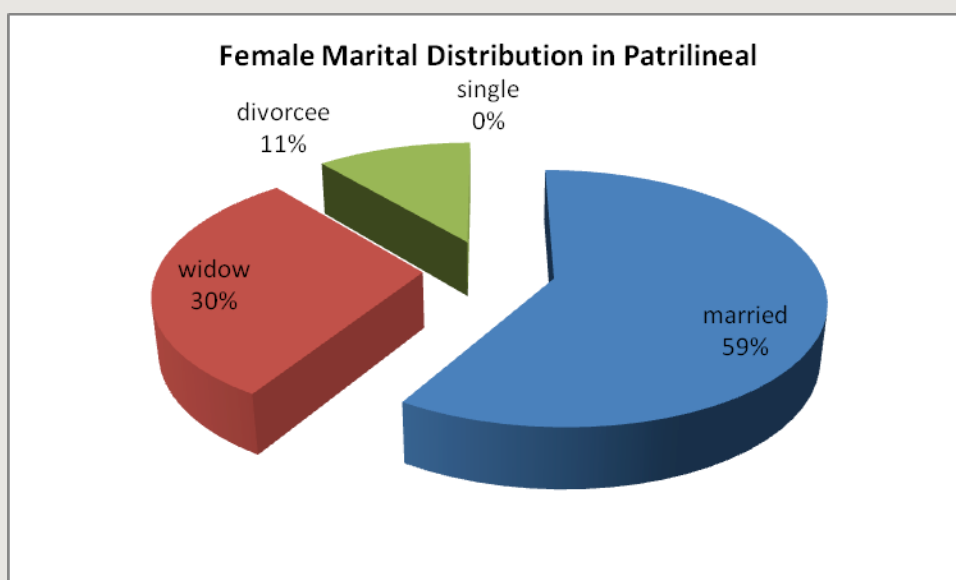
Source: WOLREC, 2011

Patrilineal Society: MZIMBA district

Mzimba is situated in the Northern part of Malawi covering 10,430 square kilometres. It borders Kasungu to the south, Nkhata Bay to the east, Rumphi to the north and Zambia to the west. Mzimba is the largest district in the country. People in Mzimba depend on agriculture for their survival and the main crops grown include; tobacco, maize, groundnuts and beans. Mzimba has 10 Traditional Authorities (chiefs) in the district namely M'mbelwa, Mtwalo, Kapingo Sibande, Jaravikuba Munthali, Chindi, Mzikubola, Mabalawo, Khosolo Gwaza, Mpherembe and Mzukuzuku. These traditional

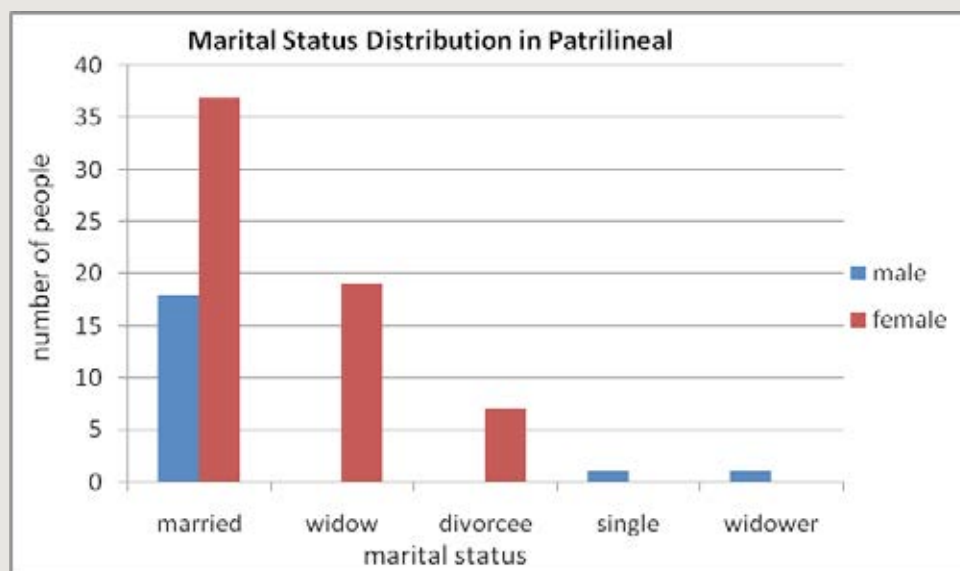
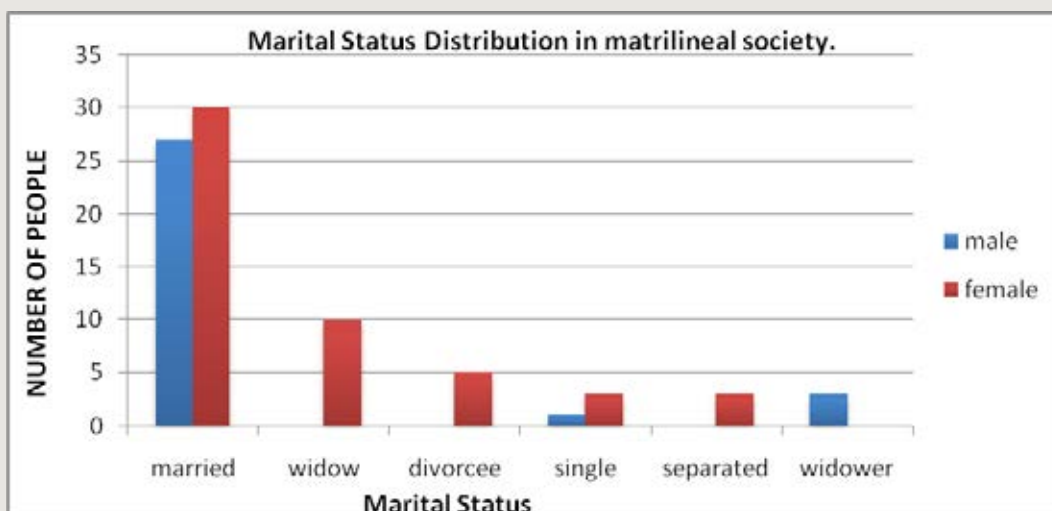
leaders are the overall custodians of culture practiced by the people in the district. The research in Mzimba was done in Labani Chirwa, Mtezi Mithi, Zibande Ngwata and Joseph Mumba villages in Traditional Authority Mzukuzuku. This area was chosen because it is a patrilineal society where inheritance is through the male lineage. It was therefore important to examine the extent to which the culture allows women's access, ownership and control over land given the fact that it is the male members who are regarded as the ones who are legitimate "owners" of land.

Figure 2: Marital status distribution for the respondents in patrilineal society



Source: WOLREC, 2011

Figures 3 and 4: Marital status in Zomba and Mzimba compared



Source: WOLREC, 2011

It is worth highlighting that there was no case of unmarried woman recorded in the patrilineal Mzimba. Possibly this explains how marriage is valued in this society. In addition, women in patrilineal societies cannot afford to stay unmarried because of the direct link between access to land and marriage. Single in this context refers to women who are of marriageable age but are not married and would include those from at least 18 years. The widowed and the divorcees are not regarded as part of this group.

4. Literature review

Many anthropologists have argued that any study should attempt to define the concepts because 'it is through naming that a certain object, event, or feeling comes into existence' (Tang et al 2000 in White et al 2002: 21). Therefore, in order to make a meaningful analysis of women and access to land and their intra-household relations, it is imperative to put into context various concepts and theories underpinning land rights issues and the effects on each other. This section, therefore, specifies the conceptual framework.

Access, control and ownership of land

Defining access, control and ownership of land looks simple and yet a lot of confusion is created on the ground by the way in which a right is defined and the ways in which rights are exercised (Rao: 1). Rao argues that this could be due to the varied understandings of rights themselves: ranging from rights of access to rights that allow land to be transacted and alienated. This multiplicity of rights to the same piece of land has given a rise to the concept of the "bundle of rights" (FAO, 2002). These rights include user rights (access), control rights and transfer rights (ownership). Where control rights refer to allocation and land use control, one could then also add to the bundle extraction rights to describe the rights to take off resources that are in or on the land, such as minerals, wild foods and even planted crops. This can get complicated because transfer rights usually mean ownership but sometimes different authorities have different types of transfer rights eg. Head of household, or village headman, may have the right to grant permission for allocation or to lease land but the state may have the right to take land out of customary ownership in order to develop it into a township; also a chief doesn't necessarily have allocation rights over specific land but the clan head may not be allowed to allocate land to a person that the chief has not approved for allocation. It should be noted that these different land

rights over the same piece of land may be held differently by different people. Considering the implications of different land rights for women, it is important to illustrate and define these rights and the understanding of these definitions will inform the discussions throughout this research report.

- Access to land is defined as the rights to use the land for grazing, growing subsistence as well as gathering minor forestry products with consent.
- Control over land is defined as the right to make decisions on how the land should be used and to benefit financially from the sale of the crop.
- Ownership of land has been defined as the rights to sell or mortgage the land, to convey the land to others through intra-community reallocation or to heirs and to reallocate use and control rights (FAO, 2002).

Women's bargaining power

Economists throughout the years have tried to develop models of a household. These household models (as formulated by Becker, 1981 among others) have a common belief that intra-household resource allocation involves income pooling and sharing among household members and that a household is a single decision making unit. This thinking has been widely challenged by many writers (see Sen, 1990; Nash, 1953; Kandiyoti, 1988). Their criticisms rest on the fact that such an approach 'misses entirely intra-household relations of power, negotiations, subordination, and perhaps conflict and dissent' (Wolf 1998:129) in descriptions of the household. Each of these dynamics within the household is associated with a different set of gender relations (Young, 1992; Wolf, 1998); showing that households are not necessarily a site of equity but of bargaining (Whitehead and Kabeer, 2001).

Amartya Sen's cooperative conflict model provides a clear understanding of gender relations within the

household and how access to a new resource (in this case land) may affect bargaining between partners. Sen sees the household as a site of both cooperation and conflict where intra-household allocation is the outcome of bargaining (Sen, 1990). Sen asserts that bargaining power is influenced by the following: (i) fallback position², (ii) a possibly clearer perception of individuality and wellbeing, (iii) a higher perceived economic contribution (1990:144). According to his interpretation; he thinks individuals may contend, and in many cases fail to bargain because of perception of self worth and self interest (see also Bruce, 1989). Fallback position is closely linked to the perceived contribution one makes to the households; the weaker the perception of contribution, the weaker the fall-back position. It also shows that an extra income can improve one's fallback position by making the economic contribution visible and in the long run influences bargaining position. Young further asserts that decisions about which 'allocative systems should be adopted, which spouse should have the final say on major financial decisions and the extent to which each spouse has control over expenditure depends on the entry point of money. The gender of the person owning wealth or earning an income seems to have a systematic effect on patterns of resource allocation and decision-making in the household (Kabeer, 1995; Sen, 1990; Kanji 1995).

This understanding of the household raises new questions about understanding whether different household members' access to and control over assets, such as land, have an impact on gender relations within the household and in the community. In particular, in the Malawian context, the question arises whether women's access to and control over land shifts household gender relations in any way? However, in order to answer this question, a deeper understanding of household relations and household bargaining is necessary.

The FAO (2002:3) argues further that there is a strong correlation in many societies between the decision making powers that a person enjoys and the quantity and quality of land rights held by that person. Effective rights in land should therefore strengthen women's fallback position not only directly, but also indirectly, by improving returns from other

income sources. Palmer (2002) further asserts that access to and/or ownership of land can greatly strengthen women's bargaining position in the domestic sphere and provide the opportunity to secure other social and economic rights while also embracing food security and nutrition for her family. This argument is further supported by Smith et al (2003) whose intra-household research showed the beneficial effects of increasing resources/human capital for women. The research found that there is increased household food security when women hold control over land. In addition, social expenditure such as education, health and food expenditures positively linked to women's income or resources. Further than that, children's health and nutritional status more positively linked to mother's control over resources/educational status than father's (Smith et al, 2003). On the other hand unequal access to land constraints women's productivity as the women do have limited decision making power and depend on men for use rights which are easily lost if they are widowed or divorced (IFPRI, 2001).

Women's agency

Verma argues that while women may be rendered vulnerable and marginalized in accessing, defending and controlling land and other productive resources, they are not powerless actors (Verma, 2007). Verma (2007) has defined women's agency as the creative and powerful ways women use to negotiate, contest, resist and create room for maneuver in their struggle over land (Verma 2007). Therefore, recognizing women's agency, creativity and backdoor resistance and activism is crucial for advocating recognition and protection of women's rights. Abwuzza (quoted in Verma 2007) in fact argues that women adopt postures of deference to patriarchy in public while creating room to maneuver in back door spaces (Verma 2007: 2). Therefore, it is necessary when analyzing women's access and control over land that one should be able to go deeper and understand differences between what is portrayed in public and the hidden power and negotiations women have. As Kandiyoti (1997) observes, women strategise within a set of concrete constraints, which she calls patriarchal bargain. This exerts a powerful influence in shaping gendered subjectivity and determines the nature of gender ideology in different contexts.

2 This as the option one has if cooperation within the household breaks down.

5. Legal framework

The current land law in Malawi divides land into three regimes namely private land, public land and customary land. These broad categories are further divided depending on usage or title holding. The official statistics of Malawi according to the National Statistical Report of 2004 indicates that 75 % of the land surface in Malawi is customary land. However, the new land policy has proposed to maintain only two types of land – public and private. As we examine the implications the current, and proposed new land laws will have on women, it is important to keep this in mind. The implications of this reform for women's hold over land in customary settings urgently needs to be explored. It is hoped that this research contributes to one aspect of the possible implications.

Land is considered very significant in Malawi because not only is it a source of livelihood (especially for rural residents) but a person and family's landholdings are determining of social status, as well as providing the basis for belonging and identity, especially for the rural poor (Liwewe et al 2008). Thus security of tenure to land by women is critical for a range of reasons, including livelihood security, social status and identity.

By secure tenure, we mean that a person's access, control and use of land are assured and can be defended. Defendable rights to land, we would argue, means that the law recognizes and protects these rights. Women's equal rights to access, own and control land, adequate housing and property are firmly recognized under the Malawi constitution, as well as international law. However, currently, there is a complicated array of constitutional, common, customary and statutory laws which operate side by side creating a persistence of discriminatory laws, policies, patriarchal customs, traditions and attitudes that still block women from enjoying their rights to land and create ambiguous spaces that allow men to gain control over land that historically they may not have had exclusive control over.

Malawi is not unique in having this scenario whereby land rights for the majority of the rural poor are governed by

customary tenure in a legally pluralist environment. Land rights for women are in most instances often compromised by a number of social, political, and legal factors. With a new land law in the pipeline, securing legal tenure seems to revolve around registering or titling of land. However, as previous experience in Malawi and other studies of titling programmes across Africa have shown, the intentions might be good but there are several problems which can be encountered. Among them, there is a problem of identifying the unit of land ownership, and the tendency for chiefs and family elders to control the knowledge and practices, which might dispossess women as it may lead to many women losing rather than gaining security.

As land is a vital resource for rural livelihoods for women, establishing and clarifying land rights through formalization is a key issue. In doing so, however, the new legal framework should not further dispossess women, but increase tenure security by retaining some positive aspects of customary land holdings. The legal analysis below focuses on identifying some key opportunities and challenges in the land laws, as well as making suggestions that may require further research and advocacy especially in the light of current land reform processes.

Analysis of customary laws on land ownership by women

Under section 25 of the Land Act 'All customary land is '...declared to be the lawful property of the people of Malawi and is vested in perpetuity in the President...' In section 26 of the same Act, the minister of lands is tasked with administering and controlling customary land, and has powers to delegate chiefs to authorize the use and occupation of any customary land in accordance with customary law. Land ownership for men and women under customary law is determined by the type of marriage one has contracted. There are two

main types of marriage customs in Malawi: matrilineal and patrilineal.

Studies conducted have confirmed that land ownership and other rights that go along with land are different in Malawi according to the two different social systems prevailing in the areas – mainly patrilineal and matrilineal systems.

Customary land ownership under patrilineal system

The patrilineal system of marriage is practised in the northern region as well as Nsanje and Chikwawa districts in the south. A number of distinctive features set this system apart from the matrilineal system. The marriage residence is virilocal, that is, the man's village is the matrimonial home and the man pays *lobola* or bride price to the wife's parents to establish his right to take his wife and children to his own village. In this system, land belongs to the man's family. There is lack of entitlements to land ownership for women in patrilineal societies; as under patrilineal customary laws women cannot own land. Descent and inheritance passes through sons or male relatives. Since daughters are transient, that is, they are expected to get married and live in their husband's village; they do not inherit property, including land. Thus the customary heir is the firstborn son. A woman will only access land during the subsistence of her marriage and cannot own or inherit it except as a proxy for her children. If divorced, she loses her access to land as she has to go back to her village. Widows are inheritable and can secure their rights to continue accessing land after their husband's deaths. This is practised because payment of *lobola* is a family matter. The man's father and brother(s) may be asked to contribute towards the payment, hence their vested interest and entitlement to inherit the widow and the property (Mkandawire 1986).

Customary land ownership under matrilineal systems

According to Liwewe et al, 2008 matrilineal households in Malawi centre on a woman who has primary rights to land through her lineage. The matrilineal custom can be further grouped into two, *chikamwini* and *chitengwa*. In *chikamwini* marriages the man moves to the wife's village, and lineage is traced through the woman. In *chitengwa* marriages, the woman goes to live in the man's village but the children still belong to the woman's lineage. In theory the matrilineal social organization acts as a leveling mechanism in gender relations as it is supposed to award women direct land rights, both user and control rights. However, the lived reality is much more complex.

Although women in matrilineal systems of marriage have the legal rights to make decisions on land, men still control most of the decisions as they are clan leaders. For example, when it comes to land sales, even though women own land, they need to consult their maternal uncles who have got the final say for such decisions. Inheritance of property passes through the female line. Similarly inheritance of land passes through female offspring. Children belong to the woman and her brothers and by custom the brothers who are maternal uncles to the children are supposed to be responsible for raising the children. Upon death of a man the wife and children are undisturbed in terms of residence and land use. When a wife dies the man is expected to return to his village – as the property he was residing on belonged to the wife's family.

From the analysis above, it is clear that whether it is a matrilineal or patrilineal system, women have lesser or no independent legal rights to access and control land (Ngwira *et.al.*). This stems from patriarchal legal systems and perceptions, in some cases, as well as eroded customary laws and practices in others. However, in comparison to the legal regime under patrilineal system, there are some positive customs under matrimony, which if followed could foster greater opportunities for women (Liwewe, 34). For example, in matrilineal individual women can be regarded as owners of land regardless of their marital status.

As Malawi is reviewing its laws, the point of advocacy should be in ensuring that women do not lose the significant indirect access and rights to land under customary law. Further research could explore on how positive customs supporting women's access can be incorporated into the new law. In addition, it would also be important for the law to stipulate clearly the principles which the customary structures should follow to ensure that women's rights are also recognized and upheld.

Analysis of land ownership and administration under statutory Law

In Malawi, the statutory law provides the de jure land rights to women in the sense that the statutory law on land itself does not explicitly state how women can access land taking into consideration their already disadvantaged position. In addition, the new land policy and proposed land bill do recognize the plight of women and other vulnerable groups in as far as land access is concerned. However, it is not clear as to how the policy will address this plight despite being mentioned and recognized. Therefore, the policy does not adequately address women's access and control over land. Statutory law can have major positive or negative implications on women's land holding-whether under patrilineal or matrilineal systems. This is why it is important to review some key clauses relating to land rights.

Constitution of Malawi

Sections 20 and 24 of the Constitution of Malawi give women the right to property. In s.24, women have the right to full and equal protection of the law, and have the right not to be discriminated against on the basis of their gender or marital status, which includes the right to acquire and maintain rights in property, independently or in association with others, regardless of their marital status; and on the dissolution of marriage, to a fair disposition of property that is held jointly with a husband. The constitution, further, states that any

law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women, particularly, practices such as deprivation of property, including property obtained by inheritance.

The constitution has set out a very good threshold for promulgating the rights of women to property including land. However, unless this is translated into relevant legislation, women will continue to face disadvantages as a result of patriarchal statutory laws, practices, norms and their interpretation. The land policy (2002) and the proposed Land Amendment Bill might be opportunities for putting into practice this constitutional intention.

Wills and Inheritance Act

While the Constitution gives women equality in property ownership the Wills and Inheritance Act (WIA) does not deal with land, consigning it to the jurisdiction of customary law, except if leasehold. The law on property is also not well harmonized with the inheritance and marriage laws. There is need for a gender sensitive assignment of land inheritance rights through the law. For instance, it is important to nullify clauses in the Wills and Inheritance law that dispossess widows, divorced women and their children of land and other property required for normal subsistence (see annex for details).

Land Act and reform processes (land policy and Land Act, Wills and Inheritance)

The current statutory law on land dates back to colonial times when British colonial law introduced freehold and leasehold estates. The main legislation dealing with land is the Land Act, 1967. It divides land into three main categories: public land, private land and customary land. Public land is that owned by government or other public institutions, while private land is either leasehold, or freehold land held

by individuals. There are also other land related laws including the Registered Land Act, Adjudication of Title Act and Deeds Legislation Act, among others. All these are intended to control access and use of land in Malawi. Land laws have undergone a number of reforms to try and increase its productivity, and to reduce disputes (Micheal Wilkinson, 1978). A common feature in these laws is that they did not deliberately make efforts to stipulate how women's rights to land would be guaranteed.

In 1995 a Land Reform Commission was formed and the result was the formulation of a Land Reform Policy and a proposal to harmonize most of the land laws through a land amendment law and make specific provisions with regard to land rights. The work done by the commission led to the formulation of a new land policy for Malawi. The Malawi National Land Policy was approved by Cabinet and Parliament in 2002. A Special Law Commission was set up in 2003 to review all land-related laws. As a follow-up to this policy, a new Land Amendment Act is supposed to be passed in parliament.

As of now, that law has still not been passed. The process was delayed partly due to the resistance the law faced from customary leaders who felt that their mandate over land would be taken away with the coming in of the new law as the law proposes of having land management committees and tribunals as opposed to the past where customary leaders/traditional chiefs would singlehandedly handle land issue within their locality.

The stated purposes of the policy includes: to clarify and strengthen 'customary land rights' and to formalize the role of 'traditional authorities' in the administration of customary land that now covers about 70% of national land (*ibid.*). The policy provides that customary landholders will be able to register their land as 'customary estates'. These will have 'private usufructuary rights in perpetuity, and once registered, the title of the owner will have full legal status and can be leased or used as security for a mortgage loan' (GoM 2002: 4.72c). The definition of a 'customary estate' is given as 'land with secure tenure by families, corporations, organizations and individuals' (*ibid.* 4.72a), hence, the unit (the rights holder) for titling is not specified.

The policy is intended to increase the security of land rights for the majority of Malawians living on land formally under customary tenure. The policy associates increased insecurity in land with 'fraudulent disposal of customary land by headmen, chiefs and government officials' (GoM 2002: 2.4.2, 4.18.2). In order to make the process as 'transparent and democratic' as possible, the policy seeks to set up customary land committees 'headed by the Headperson [and] composed of three (3) recognized and respected community elders (at least one being a woman) who will be elected in accordance with tradition to serve as members' (*ibid.*: 5.12.1a).

Generally, therefore, the Land Policy includes ambitious activities to deal with gender issues such as representation of women in committees. In addition, it also advocates for titling of land in the family name which includes the man, wife and children. In this way regardless of which social system a woman finds herself in, whether it is patrilineal or matrilineal, they will be regarded as joint owners of the land. This also entails that men in matrilineal systems where they are regarded as non-owners of land will also benefit from this joint ownership approach as stated in the policy.

In both past law and the new policy, a central idea is that titling is a way of 'unifying the law', replacing the dualism of customary and statutory with a unitary law (Mbalanje 1986). This, in turn, was and is assumed to increase security for landholders including women and, thereby, leading to investment and increased productivity.

Past experience in Malawi and across Africa throws considerable doubt on this outcome from titling alone, and reveals broader social and political economic circumstances as more determinant (Bruce & Mighot-Adholla 1994). However, competing claims over land suggest that titling may provide a further means by which *some* individuals and families secure their land. This may be to the disadvantage of women as those who have better literacy and exposure may take advantage of this provision.

Upon critical examination, the land policy reforms and proposed new laws while aiming to increase security of land tenure might result in new forms of tenure insecurity for particular people, who are likely to be those with tenuous and mediated rights to land, such as women. The reforms

entail too much dependence on official processing of rights, which means that those who are not competent to navigate the processing course will be left out, such as the poor and women.

Looking ahead, what should be done include the need for full consultation with people on the law and procedures for land management, the need to move slowly but effectively to prevent opportunists from hijacking the process; people should be well informed; need for the laws to be reviewed and harmonized and the capacity for land administration and also of the Courts need to be enhanced. These and other concerns would need to be clearly reflected in any Draft Land Amendment Bill that might be presented in parliament.

It is clear from the above review that the customary rights given to women to use (in both matrilineal and patrilineal systems) and to transfer land (mainly matrilineal systems) are not sufficiently defensible in law, possibly due to the ambiguities and contradictions that exist between various laws and the Malawian Constitution. There is a land law policy which came into effect in 2002. Emanating from this will be a new land law. It is critical that the new law should systematically recognize and protect women's land rights. Tenure reforms have focused on changing the law/rules but little has been done on capacity building, translation of new laws into implementable programs and prioritization of resources to support tenure reform. In view of the above gaps, there is need to (a) translate law/policy into implementable programs, (b) design and implement training programs on new laws to ensure change does take place, (c) establish strong representative rural land institutions which are engendered, transparent and accountable.

6. Research findings: Characteristics of land tenure systems in patrilineal and matrilineal societies in Malawi

The Law on Land Administration

The law governing issues relating to land is complex and vast, and hence, for purposes of this study, the focus is mainly on customary land law since the regime of the land in the areas in which the study was conducted largely fall under customary law. Customary land is defined by Section 2 of the Land Act as “all land which is held, occupied or used under customary law, but does not include public land.”

Customary land rights, just like any property rights, can be classified in terms of ownership, use, and disposal. This provides for modalities for determining who can own customary land, who can use customary land, and who can dispose of customary land.

In terms of ownership, customary land is the “undoubted property of the people of Malawi and is vested in perpetuity in the President³”. Thus customary land belongs to the people of Malawi in general and ownership is not limited to the people in a specific village. The Minister responsible for land matters has the power to administer and control all customary land for the benefit of the inhabitants of Malawi⁴. However, a chief may authorize the use and occupation of customary land within his/her area in accordance with the customary law of his area⁵.

The Chief’s power is subject to the general or special directions of the Minister. In practice, the Chiefs are the active players in the administration of customary land. The

Chiefs exercise this power not as individuals but as the personification of the general will of the community⁶. The Chiefs allocate the land and in some cases they also forfeit land. They do this in accordance with customary law applicable to their area. Land can be forfeited for misconduct e.g. witchcraft. Land is usually allocated to families and the head of the family is the one who administers the land at family level.

The study findings demonstrate major disparities between what is provided for in the law on customary land administration, and what obtains in practice. The ensuing subheading discusses on the administration of customary land in the two areas under study.

Patrilineal societies

In the patrilineal system, the Ngoni tribe that occupies the area under study settled in the area around the year 1800. The Ngoni’s were warriors that trekked from South Africa fleeing from the wrath of Tchaka Zulu. The Ngoni of Mzimba settled in this area and displaced people of the Tumbuka tribe. Upon settling on the land, chiefs distributed the land to the heads of clans in his chieftaincy. Apparently, the Ngoni chiefs did not have land for cultivation. The practice was that the chiefs used to get farm produce as contributions from their subordinates during the harvesting season. Since that

3 Section 25 of the Land Act

4 Section 26 of the Land Act

5 Section 26 of the Land Act

6 Land Transactions in Malawi, Michael Wilkinson

time, land in the patrilineal society has been entirely in the hands of elders of the clan or specific family lineages. Currently chiefs roles are mostly in resolving conflicts. Each family or clan, for instance, Ndhlovu, has their own land which was left to them by their forefathers. And, it is male elders from this clan that have the responsibility to administer this land.

Matrilineal societies

On the other hand, in matrilineal society, land is vested in the hands of village chiefs. The Yao tribe in the area under study, settled in this area in the 1800's from Mozambique. Unlike the Ngoni's of Mzimba, the Yao tribe settled peacefully and intermingled with the original inhabitants. Upon settlement, the land was administered by chiefs who had the mandate to sub-divide the same to clan heads, who further allocated it to individual households within their clans. This system of land administration is still practiced up to this day.

It is worth pointing out that nowadays due to overpopulation, there is no unused land. Different family clans acquired their land long time ago from their chiefs, now it is the responsibility of the clan leaders and family heads to share this land to the current generation.

Land acquisition

A majority of the respondents interviewed in both societies indicated that the process of land acquisition is largely through inheritance and allocation by family or clan elders.

In patrilineal society, a father gives pieces of land, exclusively, to his male children, beginning with the eldest son at the time of his marriage. Daughters are excluded on assumption that they will marry and move to their husband's households and utilize the land that is allocated to their husbands. Basically a son is allocated a portion of land when he gets married that his wife has a field to use to provide for him, herself and their children. By extension, the land ideally is an allocation to the family of the son and not actually to the son, because of the new responsibilities he assumes with marriage since

he has the responsibility to make sure his wife has enough land for her to perform her familial and marital duties.

Interestingly, when the women get divorced or are widowed and return to their natal village they can access land given by their parents or brothers but they can not claim ownership over the same. It is expected that they will remarry. As a result some women stay in abusive marital relationships or unduly consent to the system since marriage is their link to access to land. Rose's experience testifies to this. Rose has married four times; each time she lost her husband she was unable to access enough land at her marital natal home. "My brothers told me that I am *nthengwa* (someone who should marry off) therefore I should not be bothering them with issues of land." It was also however noted by men in a FGD in Laban Chirwa in Mzimba that much as brothers would want to allocate land to their sisters, due to scarcity of land, this proves to be difficult, as a result, women are expected to go away and get married so that they can access land in their marital homes.

For widows at the death of one's husband, a brother from the deceased family may inherit the widow. By implication, the man also inherits the piece of land that his brother left. In this scenario, the wife still has access to the land but its ownership vests in the deceased's brother who now becomes the husband. This practice is called *chokolo* (widow inheritance). Women who refuse to be inherited are usually "dispossessed of" rather "grabbed off" their husband's land and when they go to their natal homes their male relations hardly grant them land for use. Mercy says "I could hardly have anywhere to build my house in my own native village when my marriage failed. This place, where I am was given to me by one Samaritan Ngwata who the chief has asked to consider giving me land as he had a lot of unused land himself but there are rumours that his children want the land. But my father left a lot of land which is shared amongst my brothers and they do not bother about me and my children. Although Mercy knows that by custom her brother are not responsible for her well-being and that of her family, she still felt that humanitarian point of view they should be concerned about her since they are her blood relations. *Ndise anthu yayi kuno* (we women are not considered humans here). The findings on land tenure systems in patrilineal society demonstrate

that practices trap women in a complex and stressful web. Going by the customs of land tenure, women do not own land, both where they are born and also where they are married. This practice is “a grave to bury women alive” as one woman complained at Mtezi Mithi (during a FGD with women)

In matrilineal society land acquisition is usually through the maternal lineage. A mother gives pieces of land to both her daughters and sons when they are mature enough to have a piece of land or when they get married. For male children, their access to land ceases when they move out to marry because by custom, they can not own land, while for female children, access is guaranteed even in situations where they are not physically present in their original homes. This is based on the fact that women in matrilineal society have land ownership in their native homes and that lineage is passed down through them. In situations when the sons get divorced, they move back to their native village where they are given land temporarily as they are expected to go and marry again somewhere.

Land as an asset

Land is recognized as a primary source of wealth, social status and power in both matrilineal and patrilineal societies, it also has a great cultural and social significance. It is not only a fundamental livelihood resource but also constitutes a secure place to live and a base for social and cultural identity and belonging. Land is life, as one respondent at Mtezi Mithi in Mzimba put it that “wali na charo wali na moyo” (the one who has land has life). Land owners enjoy certain privileges just because they have land, especially recognition and respect in the society. “We (women) and men here are different; men own land and have full control whereas in our case we just toe the line in matters of land and even property. Men are in control here” said one respondent at Zibande Ngwata in Mzimba. A discussion with women and men from all the four villages, in patrilineal society, revealed how much people regard land as an asset. Women in patrilineal societies claimed that they would like to have the privilege of

having control and ownership of an asset which they hear their friends in matrilineal societies have.

In Matrilineal society, just like in patrilineal, land is also treated as an asset that should be safeguarded seriously. Almost all the community members interviewed mentioned that land is a symbol of status; thus, people who have a lot of land are respected and treated with a certain amount of dignity. Furthermore, it was said that “*chajila ni mbiya*” (land is an income generating asset). Land is also an economic asset here. It was also discovered that those with plenty of land rent out some pieces during cultivation to those who do not have.

Because of its economic value, conflicts arise over the administration of land. During an interview with Sub TA Nkagula from Zomba, he said “Most of the cases that I handle in my court involve land disputes. This is regardless of how small the piece of land is. You will see people fighting over a ridge.” The extent of land disputes makes it apparent that land is indeed a valuable resource in the community as it is in short supply and yet it is a key resource for survival.

7. Women and land

Land ownership in patrilineal societies

All the interviewed women in patrilineal society said they did not own land. When asked why they did not own land, almost all the women gave the same reason that “here in Mzimba women do not own land; *ni mkhuwo*” (It is our culture). Female respondents further said that “We do not own land here because we are *wakunthengwa/wamtengwa* (we are married off, we do not stay in our native villages.), only males own land because they stay in the village.” Apparently, women did not question this practice as they considered it a normal long standing cultural practice. It was only after they were posed with the question why they do not own land that they started to scratch their heads and notice the cultural anomaly they had taken for granted for a long time. The research was like an eye opener to the women who started questioning their land status to men and chiefs in the area. Much as no action has been taken towards granting women land ownership but the gender glitch in terms of land ownership in the area has been acknowledged by the community and the traditional leaders.

Ownership of land in matrilineal society

Women in matrilineal society own land. In the research area, in times of marriage, it is a man who follows the woman to her place. During the discussions, a lot of women said that *‘malo ndi athu chifukwa azimbuyathu anatigawilako kuti tizilima*” (we own the land because it was passed down to us. A lot of women and men alike agreed that when apportioning land girls are given pieces of land according to seniority and marital status. Boys are not allocated pieces of land because they go out to marry and they access land for cultivation there. A woman at Disi during a FGD said “mwana wamkazi

ndiye mudzi” (a daughter is of the village”, meaning that “she will grow, get married, have children and die in the same village.” This was further validated at one of the community meetings where Sub TA Nkagula said that *“mbeu ya mtundu kapena mudzi ili ndi nkazi, iwowa nde ofunika kukhala ndi malo pamtundu”*. (Women are the seeds of a clan or a village that is why they need to have land). The marriage tradition and the value given women in matrilineal society helps to explain why women own land.

Access to land

Most of the women interviewed, both in patrilineal and matrilineal societies, were subsistence farmers. The research discovered that in patrilineal society a women’s access to land is not guaranteed unlike in matrilineal society where it is guaranteed regardless of one’s marital status. Farming, by its nature, requires one to have access to land. The determining factors for women’s access to land in patrilineal society were marital status and one’s positionality (one’s position in relation to others in that particular system) which include for example, number of children one has as well as age among other variables.

Married women

Married women in patrilineal societies indicated that they have access to land through their husbands. As smallholder farmers, on subsistence farming, they cultivate together with their spouses and this enhances their access to land. In this case, for married women, full access to land is dependent on the husband; however, the situation changes in times of divorce and death. It was clear from the discussions held with

different respondents that women's access to land diminishes, or is lost altogether, when they are widowed or divorced. However, in matrilineal societies, married women's access to land is not dependent on their husbands.

Widows

In matrilineal and patrilineal societies widows' access to land varies. In patrilineal societies, in many cases, widows' access to land is dependent on the good will of male relatives of their deceased husbands. It was discovered that at the demise of their husbands most women are denied access to land, which prior to their husbands' death they enjoyed. Out of the 19 widows that were interviewed in patrilineal only two said that their access rights to their matrimonial land have not changed with the death of their husbands. None of the widows had been remarried to their husband's brothers. "After the death of my husband his brothers told me to stop using certain pieces of land. Last month (May 2009) one of my brother-in-laws came to tell me that this year he wants to use the remaining land" complained a sad faced Linily Phiri during a one-on-one interview.

However, the situation is different in matrilineal societies where death of a spouse does not lead to lack of or diminished land access, since most women live in their maternal villages.

Divorced women

In patrilineal society a divorced woman's access to land in her former marital homestead is impossible; here women lose their access to land at the moment of divorce. It was further discovered that when they go back to their native homes they have limited access to land since once they are married off and *lobola* is paid they are no longer considered part of the family. But if the divorce is her husband's fault, then the *lobola* remains with her brothers giving her some entitlement to a place in her natal home. It's only if she's "at fault" and the *lobola* has to be repaid to the husband's family that she's vulnerable in her natal home. A typical example is that of Mercy Manda who, after losing access to land in her former marital home, couldn't access land in her native village. Mercy Manda says "Since my divorce in 2001 I have had struggle to access land for cultivating and even putting up a structure to lie my head on. I know what land my father had

before he died but each time I want to claim part of it for my use, I am reminded by my brother that *ndine mthengwa* (I am a woman who is supposed to be married off). Worse still when I go to the chief he tells me that he does not want to be troubled with women's land problems, my home is where I was married. I am in a fix, I cannot marry again."

On the other hand, in matrilineal societies, divorced women do not lose access to land at the moment of divorce; mainly because they stay in their native villages. In the case of divorced men, the research found that when they go back to their native homes, they are given pieces of land temporarily while being expected that they will go away again and get married to another woman. However, it was discovered that some women in matrilineal societies are prone to loss of access to land initiated by their maternal uncles who are ordinarily heads of the clan. A typical example is that of Mrs. Phiri (not real name) of Nkagula village who lost access to her fertile land to her maternal uncle "*one day my uncle told me that he wanted my land because he had found someone who wanted to lease it. I accepted because he is my uncle and if I refused, it would not have given a good picture of myself. But that was the only source of my livelihood.*"

In conclusion, for patrilineal societies, it became clear that marital status determines women's access to land. It also came out that women's conditional access to land for agricultural utility impinges on their livelihood security. Mrs. P M Chavula's speech during one of the awareness campaign said that "if we were given land ownership and control, this would help us prosper economically for we could use land productively, planting crops that would assist us to get more money. We are limited." However, unlike in patrilineal societies, where marital status is a determinant to women's access to land, in matrilineal societies marital status has very little implication on women's access to land, especially in the area where the research was carried out, which practices the matrilocal system of marriage. Women's access to land only faces challenges from male relatives like uncles and brothers like the case of Linily Phiri mentioned earlier who lost land to her maternal uncle.

Control over land

Control over land entails making decisions with regard to the use of a piece of land. This includes what to plant, when, where, as well as how to use the proceeds from the harvest or sale of crops planted. In addition, it also includes the selling and leasing of the land. Although women in both societies, that is patrilineal and matrilineal, indicated that they have access to land, control of the land is more limited. In the patrilineal case study area, a women's control is determined by her marital status, the size of land and its prospective utility. On the other hand, in matrilineal society, women's control over land is influenced by their marital status, family ties and the fertility of the land.

Married women

Married women in the patrilineal society usually, and automatically, assume control over the land (kitchen gardens) that surrounds their houses. These small portions of land are mostly used for growing beans, pumpkins, tomatoes, and other crops typically considered "feminine crops," which do not fetch a lot of money on the market. On the other hand, decisions about what to plant on the larger pieces of land are made by their husbands as such land is used for crops that would fetch a lot of money such as tobacco. Married women do not have control over larger pieces of land in patrilineal societies. For example, one woman from Labani Chirwa Village indicated that "sometimes when you insist on planting some crops which your husband is disapproving of, he goes to an extent of reminding you that you are a stranger, you are not supposed to decide anything on a piece of land that does not belong to you". The woman further lamented that "*ndise wanthu yayi ku nthengwa.*" (We are not recognized as human beings under the patrilocal system of marriage).

Furthermore, the control women do have over kitchen gardens and, in some cases, to be consulted about crops on bigger pieces of land, has definite limits. When a group of married women in the patrilineal Joseph Mumba Village were asked if they could decide to plant a tree on a piece of land that they have access to, they all laughed out loud and exclaimed in unison that "*ku nthengwa mpaka kupanda makuni ghako!*" (In patrilineal society a woman planting trees on a piece of land is unheard of!). Ironically according to the

women, planting of trees which are like perennial in nature would indicate the kind of control one has over a piece of land, therefore women would not be allowed to do that as it would show as if they have control over what to use the land for. Married women said that in their own right they do not have full control over any piece of land but that they assume some partial control in light of their co-existence with their husbands.

Similarly, in matrilineal societies, even though women own land and have greater access to it, the capacity of married women to make decisions with regard to the use of land is somehow limited. Inside a family, the husband is said to have a greater say on what should be planted on a piece of land and how the produce should be managed. Women in a focus group discussion indicated that "mwamuna amakhalabe mwamuna ndi mutu wa banja" meaning that a man still remains a man, he is the head of the family. Despite the fact that women own land but their general feeling was that a man as he is regarded as head of a household, has decision-making powers over how land that belongs to his wife should be used. Furthermore, outside the family, greater decisions and control powers over land lie in the hands of her male relations. For instance, she cannot sell a piece of land in her own right without permission from her uncles and brothers. The final decision about this transaction is granted by the brother or the uncle. "We own the land and much as we can make certain decisions but our husbands and uncles still have a big say, remember a man is a man" said Namagetsi (not real name) during a one on one interviews.

Divorced women

In patrilineal societies divorcees automatically lose control over pieces of land they had access to while with their husbands. No single case, from the sampled respondents, was found where the divorced woman has control over land in her former marital place. When they return to their natal home, their control over land is also limited for they cannot plant perennial crops, as is also the case with widows who remain in the marital homes or even those who go back to their native homes. The reason given is that they are women in transit and will marry off again. The story is different in matrilineal societies where divorced women continue to enjoy control to use the land they have access to. This is

mainly because of the matrilineal system of marriage; at the moment of divorce the woman remains in her native village.

In matrilineal societies, divorced women's control over land in terms of what should be grown on her piece of land and how such produce is to be used is not threatened and this situation was not made worse by divorce in any case that we found during the research.

Widowed women

Widowed women in matrilineal and patrilineal societies have different stories to tell though at one point they share the same fate when it comes to control over land. All the widowed women interviewed in patrilineal societies except two (see case below) said their access to land is likened to tenancy, because there is always uncertainty that they may be "dispossessed" from the land at any time. What this implies is that they do not have full control over their accessible land because, more often than not, male relations to the deceased come to claim ownership of the land. The situation is worsened when the widowed woman does not have children, or in some situations, male children or they are still young. A typical example is that of Tifiness from Labani Chirwa village who is on the verge of losing control over the land she was suing with her husband to the elder brother to her deceased husband, who says Tifiness should go to her native home. "He told me that there is no reason why I should stay here because my husband is dead and I have no child," laments Tifiness. However, Tifiness says she cannot leave her marital home because she is still married as lobola was paid. She says "they have to divorce me before I leave here". Although the husband is dead, Tifiness speaks as if he is still alive, and she thinks so long as she is not divorced she has to enjoy the same land rights she enjoyed when the husband was alive. According to Chief Mtezi of Mzimba, women can indeed use lobola as a bargaining tool when they are facing eviction, because if a husband dies, the woman should still be regarded as part of the husband's family and can therefore continue using the land that she was using when the husband was alive. He argues that payment of lobola signifies that a woman now becomes a "daughter" of the man's family.

Most of the widows interviewed, save for Costas J., would prefer to use the term *munda wobwereka* (rented land) in reference to the pieces of land they are cultivating on because they have no legal or customary ownership of it both in the place they are married and even their natal homes.

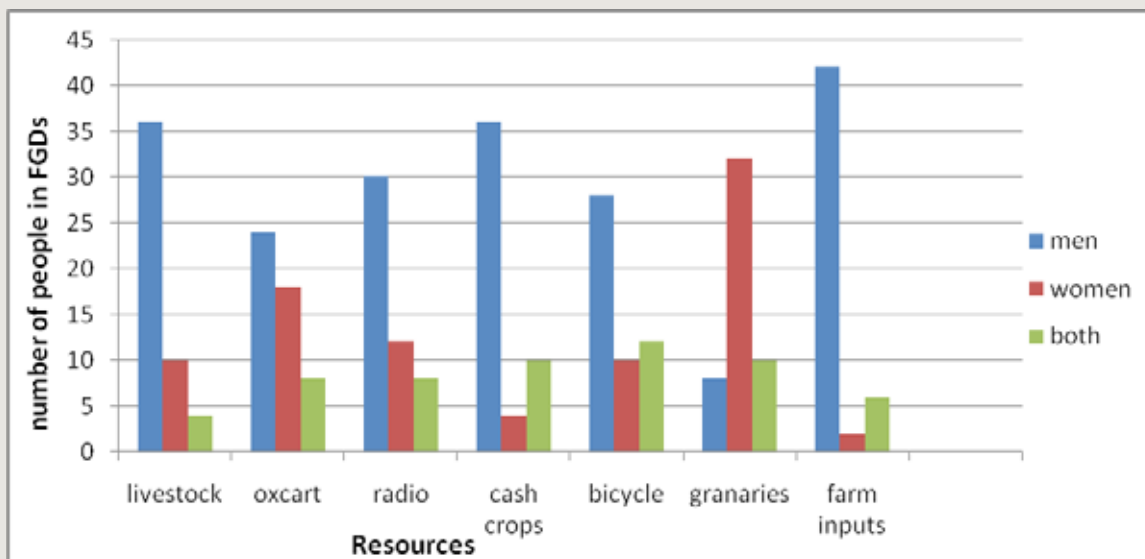
Costas J., 77, a widow, wife to late Manda from Joseph Mumba village, says she has never been threatened in any way on the land she uses since her husband died in 1999. She boldly says "I have control over the land I use because this is my home, when a Manda paid lobola I was incorporated into their family and I have the right to use the land left by my husband. I can't go back to my place; they will not welcome me, I am married."

From the two cases above and indeed Chief Mtezi's assertions, it seems lobola is actually one of the tools women in patrilineal society can use to defend their rights to land. The challenge therefore remains on how best women's agency can be built in this kind of system to use what is already available to work for women. On the other hand, in matrilineal societies, widowhood status does not affect women's control to land use for the same reason of matrilineal system of marriage.

Control over household resources

In both matrilineal and patrilineal societies, it is the men who control household resources that are regarded as "masculine in nature". Resources that are regarded as masculine include cash crops such as tobacco, sunflower, rice as well as money realised from produce, including monetary proceeds from land. On the other hand, women control resources regarded as feminine and include mostly produce from their kitchen gardens which include beans, tomatoes among other crops. This is evidenced from responses from a practical exercise with men and women using Harvard Access and Control Profile Tool in matrilineal society. The graph below shows what items are mostly controlled by men and women.

Figure 5: Resource control graph



Source: WOLREC, 2011

The graph above shows that men control most of the household resources.

Access to justice over land disputes

Land disputes occur in both patrilineal and matrilineal societies where land is regarded as an increasingly scarce asset and an important livelihood resource. Women encounter various problems with regard to their enjoyment of land rights. The major problem is that of land dispossession in its different manifestations.

In both matrilineal and patrilineal societies, traditional leaders adjudicate over land disputes. Basically, it was revealed that these leaders use customary laws and also depend on their natural wisdom and common sense to resolve such disputes. It was also clear that lack of availability of statutory laws that would properly guide chiefs in ensuring gender fairness are also hindering factor to the realization of women's rights given the fact some customary laws are actually disadvantaging women.

Most of the chiefs interviewed in patrilineal pronounced ignorance of knowledge of any codified customary law to be used in the administration of justice over land issues. "We are not even aware of any law on how we should adjudicate land issues, we rely on clan and family history when settling down land disputes." When chiefs were asked about the kinds of issues that come before them, all of the chiefs spoke about cases involving women in "land dispossession" or "land grabbing" from widows by their in-laws.

"Most of the cases which women bring to our court are on land dispossession from widows" said one village headman (name withheld). Asked on why he used the word "land dispossession" yet women do not own land in patrilineal, the chief said "by virtue of a traditional marriage in which *lobola* is paid, the woman becomes a permanent member of that family and she is supposed to enjoy all the family benefits her husband enjoys including owning the land". The chiefs largely attributed the current spate of "land dispossession" to land shortages resulting from the growing rural population. "In the past we did not have these cases of widows dispossessed of land but because we have grown in numbers there is more demand for land, hence widows fall prey." All the chiefs who were consulted during this research admitted that there is a problem in how land has been administered in

patrilineal society over the years but asked for more consultation with their Paramount chiefs as it was clear that village chiefs can not change a custom on their own.

On the other hand, one traditional leader in patrilineal society claimed that divorced women and widows are not necessarily "given" small pieces of land nor are they dispossessed of "their" land, but that widows themselves shed off some pieces of land as they realize that they cannot manage all of it. However, when the same issue was brought forward before widows, in another Focus Group Discussion, they bashed this claim as a mere fabrication, which chiefs are using to defend their position and culture. These widows actually said women are viewed as "nobodies" by men in patrilineal societies. Hence, "*ndise wanthu yayi kuno ku nthengwa*" has become the common expression among women in patrilineal societies. The expression simply means "we are not regarded as equal human beings here." Mercy Ndhlovu during a one on one interview hopelessly complained that "here in Mzimba, we (women) are strangers in our own land; we have nowhere to lean on, neither our marital villages nor natal villages recognize our land rights." Concurring with Mercy Ndhlovu was Wayles Ndolo of the same village who said, "When we come to their (men's) villages, we have no say over anything to do with land because we are bought off with cows. And at our birth places, land belongs to our brothers and their male children."

These findings demonstrate that in times of social pressure or resource scarcity, the protections granted women in patrilineal, patrilocal societies begin to fray. An institution like *lobola* is supposed to represent the formation of a binding relationship between two families, a relationship that forms kinship networks that can be called upon to support members of the families. In Malawi, the pressure on patrilineal norms and customs created by the scarcity of land, which remains a vital livelihood resource, begins to shatter the institutions that defend the interests of weaker members of families, specifically married women whose marriages have failed or whose husbands have died, and who, under "normal" conditions should have been able to call on firstly, members of her husband's family to help her and her children, and in the event

of that failing, then her brothers in terms of the lobola paid to them on her marriage. This shattering pushes women to the extreme margins in terms of land rights.

In matrilineal societies, women's access to justice over land issues is also not guaranteed. It was discovered that fear of being bewitched is one of the deterrent factors for women that want to seek justice over land issues. Coupled with that is also the fear with regard to people in authority. It became clear that there is even more fear when the chief, or his/her direct relative is involved in the issue, as in the case of Mrs. Maloto (not real name), whose land was disposed by the chief and given out to his relative by claiming that the land was borrowed by Mrs. Maloto's kinfolks long time ago. What she fears is that if she decides to take the issue further, "*akhoza kungondilanda kambali kotsalako*" (If I push for this case they may just come to grab the remaining part.)

A lot of people, in both matrilineal and patrilineal societies, indicated ignorance of statutory laws and customary laws that govern land administration in Malawi. Even traditional chiefs, who ordinarily preside over land disputes, do not have adequate knowledge of laws governing land administration. A typical example is that of Sub-Traditional Authority Nkagula who was of the view that "when a person has rented and used a piece of land for more than five consecutive years, he or she automatically assumes ownership rights of it". He claimed this is what the laws stipulate. However, the law as it stands now does not have such a provision. It is clear that this misinformation has direct implications for the enjoyment of land rights by women in this society because it was clear that women because of lack of economic means to invest in their land prefer to lease out their land for income and if such chief's rule continues, more and more women might find themselves without land.

Does access and control over land by women enhance their bargaining power?

Agarwal (1994a: 2) has argued that land defines social status and political power and structures relationship both within and outside the household. FAO (2002) further contends that there is a strong correlation between the decision making powers that a person enjoys and the quantity and quality of the land rights held by that person. FAO further argues that a majority of women's access to and control over land often reflects intra-household decisions which create gender asymmetries in bargaining power between household members.

The research has revealed rather interesting findings which are not necessary in line with the assertions made by FAO. The research has revealed that in both matrilineal and patrilineal societies, access, control and ownership of land does not necessarily lead to more bargaining power for women within the household. It is clear that bargaining power is determined by many other factors. The findings have shown that, sometimes where women have control and ownership over land, this does not translate into enhancing their household bargaining power. In matrilineal society where women own land it was discovered that it is still the man who makes crucial decisions in the household. Women in a focus group discussion in Nkagula village in Zomba plainly stated that "*mwamuna ndi mwamuna*" (a man is man).

Male superiority in decision making powers was echoed in different FGDs in Zomba district, with recurring statement like this one from women: "*pachikhalidwe chathu timadziwa kale kuti mwamuna ndi mutu wa banja ndipo zochitika zambiri za m'banja amalamulira ndi amuna*, (we all know that a man is the head of a family, a lot of decisions are made by them, and no matter what capacity a woman has, she still seeks clarity of issues from the head." Most women would resignedly say '*Bambo amakhalabe bambo*' (a man still remains a man) ... "*mwamuna ndi tcheya man wa banja*" (a man is a chairman of the family) even when the wife is the owner of the land where he is staying. It became clear that for all the decisions

made, be it at household or intra-household level have to pass through male figures. "It is our culture" they would say.

This long standing cultural perception is what has chained most women in total dependence on men in terms of decision making. Therefore, within matrilineal society culture stands out as one factors in determining women's bargaining power. In a way, ownership of land by married women has little to do with decisions being made in the family. Other married women in Zomba respondents stressed that in fact, their land ownership changes nothing at all even in situations where the larger part of household income is generated from the wife's land men are the ones who use their money to invest and therefore also control the sales of the cash crops.

Decision making power in Zomba was only clear and apparent when it came to single women, widows and divorcees. These have absolute power over their children's education and other household decision. The conclusion which can be drawn from the research findings is that whoever is considered to be the head of the household has more bargaining power in the household. "I do not have a husband so I freely make decisions in my family on how to spend my resources and educate my children" says Emma Makhasu.

In patrilineal society of Mzimba, it was rather difficult to determine how women's access and control over land enhances their bargaining power. This is attributed to their little or no control over land both in their natal and matrimonial homes. However, women's perception was that owning land would give them a 'free breathing space' to make some decisions within their households. They argued, for instance, that they would freely decide on the kind of crops to plant and would make decisions on the income accrued from the land. "Sometimes you want to do something like buying one house item but you are limited because after selling the agricultural produce the man has to make the decision. Of course sometimes we are consulted on what we should do but more often than not it is just for formality. They ask us for our suggestions when they have already made their decisions." While most women described this absence of influence in their marriages, some women said access and control depends on how close you are in the family. Some

men do consult their wives regularly and it is these wives that experience greater security.

Some male respondents in patrilineal society viewed women's land ownership as a threat to male power within the household. They argued that "giving land ownership to women is letting a woman wear the trousers," and that if women were to own land they would assume the same power as men. In one FGD with men at Labani Chirwa village some men blankly put it that "women are better handled while disadvantaged". It was maintained that if land is given to women, they would begin to fend for themselves, thereby reducing their dependence on men, and that would demean men's power in their household and community. On the other hand, men in matrilineal society highlighted that women would actually lose their marriage if they are to take land ownership as something to demean their husband's power within their household.

This, therefore, raises questions over the whole notion of bargaining power in the household especially whether women's access, control and ownership of land really gives them the necessary bargaining in either patrilineal and matrilineal societies. From the research, it is clear that women in matrilineal groups have better and more secure access to their land, particularly at vulnerable times, such as single mothers, divorced and widowed women, than do women in patrilineal groups. The main reason for this appears to be the result of matrilocal practices especially in the set up of Zomba where a woman resides in her village. Furthermore, there are signs of serious social tensions in both groups as a result of land scarcity in an environment where land is a vital livelihood resource. The ways these tensions are played out in the two groups are different, however. In patrilineal groups, the basis for a woman's rights to claim entitlements to the resources required to look after herself and her children (eg. through the institution of lobola), is undergoing a cultural distortion. This distortion emphasises a notion of male ownership that excludes responsibility for the care of wives and unmarried, divorced or widowed sisters. In matrilineal groups, these tensions express themselves in terms of threats of witchcraft, which operate to keep women compliant and unwilling to stand out by asserting or defending a right to land, particularly against someone in authority. However, in terms of

controlling household resources, land ownership does not appear to play a significant role. In both matrilineal and patrilineal groups men control land that produces crops for market and they control the marketing processes and payments for the crops. In this respect, they control a key component to decision-making power within a household, namely, financial resources. Similarly, although ownership tends to be associated with the rights of alienation and transfer, matrilineal groups are like their patrilineal counterparts in that the decision to lease or sell household land cannot be made unilaterally by the so-called owner. In matrilineal groups, a woman's brothers and uncles would have to be consulted before family land can be alienated, whereas in patrilineal groups, a man's brothers and paternal uncles form the group who are consulted prior to a decision to transfer or alienate household land. Patriarchy as well as traditional laws and norms seem to come into play when it comes to inter and intra-household decision making.

The findings in matrilineal society defeat what women wish in patrilineal society. In patrilineal society there was a general perception that women's access to land would enhance their household bargaining power as argued by Mrs. M.P. Chavula, a teacher at Mbawa Community Day Secondary, who spoke on behalf of women during one of the awareness campaign at Labani Chirwa village in Mzimba. Mrs Chavula castigated the status quo in patrilineal society. She argued that

Land is the nearest resource women have access to, but the Ngoni culture has pushed us [women] to the margins in terms of control over it. Women cook and are in charge of the kitchen yet are not mandated to take control of the land that produces food. If women had land ownership and control they would be very productive in agricultural undertakings and self-reliant. They would actively participate in household and intra-household decision making activities, and no longer be taken for granted. Sometimes women do not compete in other decision making positions because they lack the resources which can be realized from land utilization.

Mrs Chavula's sentiments were shared by Mr. B Themba Jere, the Agricultural Field Officer at Mbawa Research Training Centre in Mzimba who shared his observation that

Women participate more in agricultural programmes and are exposed to new agricultural methods. However, when they get back home, they cannot influence their spouses on adoption of new farming technologies because they have no ownership and control over land. Sometimes our energies are wasted because we teach women farming methods yet their control to land is limited. Men need to be sensitized on the role women play in land utilization.

8. Conclusions and recommendations

The research findings have brought to light major disparities and discrepancies in women's access, control and ownership of land in both patrilineal and matrilineal societies. Conclusions which can be drawn from these findings are that women's access, control and ownership of land is still a relevant question. In matrilineal where women are said to own land, ownership is limited for married women because their husband's control the use of land and decisions about crops. For other women, such as sisters, divorced and widowed women, the maternal uncle sits in the background as a key decision-maker who can, if it is in his interests, threatened the tenure security and ownership of women. However, there are clear benefits to women's ownership as found in matrilineal society: they have continued access to land if they end up being divorced or widowed or do not marry, which when seen in contrast to the situation of women in patrilineal society, is very important.

Standing in the way of women's land rights are negative traditional and cultural beliefs which demean their position in society. Coupled with that is the scarcity of land which has put a lot of pressure on communities to find ways of survival. This has led in some instances to distortion of positive customs. Women in both societies are pushed to the margins of the social spectrum; they only appear as means to an end in the production utilization of the land as evidenced that they do not even have control over most resources realized from land.

If a social change in terms of women's land rights is to become reality there is need to improve women's effective control over their land rights by empowering them to defend and challenge cultural constraints which impinge on their land rights. Also in the light of land scarcity, it would be important that customary practices and indeed the law should be able to take into account both women's and men's land requirements. Women should be empowered to use the law to claim their land rights and be able to negotiate their way taking advantage of legal pluralism to find spaces for their agency. In cases where statutory laws fail them they should be able to see through customary laws and negotiate their

land rights for example asserting the rights of widows to secure land because of the lobola paid.

Some of the reasons, as the research has unearthed, which throws women off balance in regard to land rights are based on household power imbalances caused by the cultural belief that men are heads of the family and are supposed to make all decisions. Women need to be sensitized and empowered through the provision of assertiveness skills which will make them self-worthy. This research mainly dealt with women from the rural areas with high levels of illiteracy.

The interventions which can be proposed in these kinds of settings could be a more open analytical framework where roads do not necessarily lead to a singular destination of the justification of women's land rights (Jackson 2003:462). Some of the interventions required are: conscientising women on their rights, tackling masculinity issues and male identities in order for them to appreciate the need to provide space to women to negotiate their needs properly. On the other hand where women assume automatic control of kitchen gardens increased technology on these small gardens could be ideal so that there is increased productivity, particularly in patrilineal society, where women's ownership of big fields of land is a dream yet to come true. In addition, it would also be important statutory laws should give women equal access as men to land. In addition, it would also be important if the land law should also cater for women that are widowed, divorced and not married since the land policy as it stands now assumes that every person is married and therefore their land be registered in their family name

The role of chiefs in changing the status quo cannot be overlooked; they are considered custodians of culture and some of those cultural practices that violate women's land rights. Therefore, working closely with chiefs would help in bringing about the social change. Any advocacy strategy which can be put in place should be twofold; community based and also policy makers focused. There is need for a multidimensional approach to women's land rights by maneuvering through the spaces in the current legal pluralism.

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Our Mission

A global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue, knowledge sharing and capacity building.

Our Vision

Secure and equitable access to and control over land reduces poverty and contributes to identity, dignity and inclusion.

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Its overarching aim was to learn from women and respond to their needs through action-oriented research. The purpose of the research carried out under this project was not only to provide an evidence-base for advocacy on women's rights, but also to strengthen the research and advocacy capacity of civil society organizations, and to build a platform to advocate for a transformative agenda that supports rural poor women to improve their access to and control over land and other natural resources, including the building of linkages with the wider advocacy relationships and programmes of the ILC.

This report is part of a wider initiative on Women's Land Rights (WLR). If you would like further information on the initiative and on the collaborating partners, please feel free to contact the International Land Coalition.