

Lineage and Land Reform in Malawi

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Topic for discussion

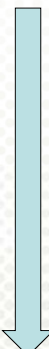
- What should Malawi do with lineage rights?
- My message today:
 - Accept the facts of lineage based rights
 - Try to provide procedures the enhances tenure security and justice in inheritance
- Why do I think so?



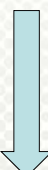
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Lineages are core carriers of culture

- Land tenure in formal legislation



- Cultural conventions on land tenure and lineage (incl. customary law)



- Form of Land Tenure

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Main conclusion on lineage and land

- The emotional ties between lineage and land are strong and cannot be legislated away
- In transferring or introducing new rules there is not much to learn from specific details in other jurisdictions. But some facts may be helpful:
 - Knowing what is possible elsewhere is an enormous advantage. For example:
 - There are ways of creating equitable inheritance laws that do respect the emotional ties between lineage and land
- Freedom of contract (e.g. Wills) is important but needs to be circumscribed by rules protecting the weak and furthering equitable outcomes

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Malawi: Customary land tenure

- Land is considered to belong to all members of a community, individuals and families have rights to use it
- Chiefs are custodians of the land managing it on behalf of their people
- Land should not be alienated by sale (e.g. in the sense of sale in English land law)
- Kinship and residence determine access to land
- Rights to use the land can be inherited

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Customary lineage based rights

- Land is supposed to belong to descendants of the founder of the village
- Selling or giving land to people who do not belong to the landholding lineage is not supposed to happen (unless there is abundant land and proper procedure is followed)
- When land scarcity is felt to be a problem some will take back land sold or given to outsiders, sometimes by force or witchcraft
- These seem to be default rules in both patrilineal and matrilineal communities. But
 - In matrilineal tribes the land belongs to the female line
 - In patrilineal tribes the land belongs to the male line
 (The two are for practical purposes here mirror images)

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Malawi is a country where matrilineal land ownership dominates

- Based on the population and housing census of 2008 and J.O.Ibik's classification of customary marriage systems and inheritance in Malawi from 1970 we find that
- Between 69.5 and 81 % of the population belong to matrilineal tribes (as defined in the census)



Tribes in Malawi	Persons	%	Classification by Ibik (1970)
Chewa	4252204	32,6	Matrilineal
Lomwe	2288285	17,6	Matrilineal
Yao	1760843	13,5	Matrilineal
Ngoni	1492850	11,5	Matrilineal (not in Mzimba)
Tumbuka	1152017	8,8	Patrilineal
Nyanja	754410	5,8	Matrilineal
Sena	467958	3,6	Patrilineal
Tonga	270833	2,1	Patrilineal
Ngonde (Nkhonde)	129914	1,0	Patrilineal
Lambya	59452	0,5	Patrilineal
Senga	24366	0,2	
Nyakyusa	18751	0,1	Patrilineal
Other	357615	2,7	
Total	13029498	100,0	





Settlement of married couples is important

- Uxorilocal settlement – in the woman’s birth village
- Virilocal settlement – in the man’s birth village
- Neo-local settlement – in neither of the two’s birth village This is as of today negligible: 5.7% of the villages had a majority of households of this type
- Of investigated villages
 - **45,1%** were matrilineal and uxori-local or neo-local
 - **29.9%** were patrilineal and viri-local or neo-local
 - **23.7%** were **matrilineal and viri-local**

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District	more than 50% of villages	Matrilineal (uxorilocal + neolocal)	Matrilineal and virilocal	Patrilineal (virilocal + neolocal)	Do not know	Total (N = villages)	more than 50% of villages
Chitipa	Patrilineal		0,6%	98,3%	1,1%	174	Lambya
Karonga	Patrilineal			98,6%	1,4%	147	Ngonde/ Nkhonde
Rumphi	Patrilineal		0,5%	99,0%	0,5%	197	Tumbuka
Nkhata Bay	Patrilineal	1,4%		96,5%	2,1%	144	Tonga
Likoma	Patrilineal			100%		13	Nyanja
Mzimba	Patrilineal	0,3%	9,2%	90,4%		292	Tumbuka
Mzuzu City	Patrilineal		9,5%	61,9%	28,6%	21	Tumbuka

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Kasungu	Matrilineal/virilocal	10,9%	55,0%	33,8%	0,3%	340 Chewa
Ntchisi	Matrilineal/virilocal	11,3%	63,2%	24,3%	1,3%	239 Chewa
Dowa	Matrilineal/virilocal	9,4%	61,3%	28,6%	0,8%	266 Chewa
Nkhota kota		16,4%	43,2%	39,7%	0,7%	146 Chewa
Salima	Matrilineal	57,1%	36,3%	6,6%		212 Chewa
Dedza	Matrilineal	92,7%	6,8%		0,5%	220 Chewa
Ntcheu	Matrilineal	84,2%	15,8%			133 Ngoni
Lilongwe Rural	Matrilineal/virilocal	41,3%	51,6%	6,9%	0,2%	525 Chewa
Lilongwe City		30,0%	40,0%	7,5%	22,5%	40 Chewa
Mchinji	Matrilineal/virilocal	19,9%	58,8%	19,9%	1,3%	226 Chewa

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Balaka	Matrilineal	83,5%	15,7%	0,8%		127 Yao
Mangochi	Matrilineal	83,0%	15,7%	1,3%		159 Yao
Machinga	Matrilineal	96,8%	2,8%	0,5%		218 Yao
Zomba Rural	Matrilineal	94,7%	3,3%	1,0%	1,0%	302
Zomba Municipality	Matrilineal	71,2%	1,7%	11,9%	15,3%	59 Nyanja
Chirazulu	Matrilineal	99,5%	0,5%			211
Blantyre Rural	Matrilineal	83,7%	13,7%	0,7%	2,0%	153
Blantyre City		41,7%	22,2%	11,1%	25,0%	36
Thyolo	Matrilineal	96,0%	2,0%		2,0%	101 Lomwe
Mulanje	Matrilineal	100,0%				121 Lomwe
Phalombe	Matrilineal	81,7%	18,3%			82 Lomwe
Mwanza	Matrilineal	98,0%	2,0%			102 Ngoni

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District	more than 50% of villages	Matrilineal (uxorilocal + neolocal)	Matrilineal and virilocal	Patrilineal (virilocal + neolocal)	Do not know	Total (N = villages)	more than 50% of villages
Chikwawa	Patrilineal	21,8%	2,7%	71,8%	3,6%	110	Sena
Nsanje	Patrilineal	3,6%	1,5%	94,9%		137	Sena
All		45,1%	23,7%	29,9%	1,2%	5253	

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The regional clustering is remarkable

- All 10 tribes with 0.5% or more of the population are dominant in at least one district
- All districts except 4 are dominated by one tribal group with a majority in more than 50% of the villages
- For culturally governed behaviour this is important. The default rule for behaviour is to do as the majority does.

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Matrilineal landholding is understudied

- Despite the numerical dominance of matrilineal landholding it is understudied and to some extent misunderstood:
- “Under matrilineal marriages land is inherited by sons from their mother's brother and women do not have full ownership and control of it because uncles control the land owned by the women.” (Hatcher, Meggiolaro, and Santonico Ferrer 2005)
- There is no evidence supporting such a conclusion



A western patrilineal bias in scholarship

- During the last few decade an increasing number of scholars have started to see the western patrilineal bias of researchers and administrators as a main explanation for this
- “a distinctly anthropological view of women with regard to power and politics. The first revolutionary phase” ... “is marked by the belated recognition of a **pronounced male bias** in ethnographic writing and anthropological theory.” (p.131 in Lewellen 2003, my emphasis)
- The same (not surprisingly) has been found for western administrators



Land scarcity and economic modernization

- The customary system of land ownership work very well as long as there is vacant land
 - Vacant land is no more to be found
- Land scarcity
 - Originate with population growth & migrations
 - Introduction of industrial scale commercial agriculture & displacement of populations
 - Intensified by allocation of land to national parks, forest and wildlife reserves
- Modernization meant
 - People moving to cities **away from their lineage**

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Implications of scarcity

- Scarcity creates competition for access to land
- This means distributional conflicts - also among brothers and sisters, and unsustainable subdivisions of land from inheritance
- With little unallocated land available access to already allocated land become important
- People will experience uncertainty and insecurity about the future of their children
- We find
 - Scarcity creates prices also for use rights
 - People do not feel secure on the land they rent or buy
 - People do feel secure on land inherited

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Problems at the system level

- Contracts about land rental and land trades are not trustworthy. The experience may have repercussions to the general system of contracts
- Inheritance is inequitable.
- The problems will be felt the most by those who move to cities who also have power to affect land reforms
- But easy solutions to problems of equity or trustworthiness of contract may create more problems than they solve



Norway: 800 years of formal legislation on land tenure relations

- All land has an owner
- Land may belong to all sorts of legally recognized "persons" (King, church, companies, groups, individuals, etc.: key is **legally recognized**)
- Freedom of contract exist also in devolving land
- Inheritance is seen as different from taking over land.
- All children will inherit but not all can get land. Those who do not get land may get equity in the land or other wealth items.



Lineage rights in Norway

- On farming estates **family members** acquire certain rights of preferential treatment to take over the farm under certain restricted conditions
- The right to this preferential treatment is called **odel right**
- The group holding this right is ranked. One may say that a person x has better odel than y
- Rights of odel applies **only at the time of transfer** (conveyancing) to persons without or with lesser rank among those with odel right
- If the right is **not used** within a specified period of time after the transfer, **the right is void**



History matters

- Norway's right of odel may have an origin similar to Malawi's strong customary rules about lineage rights to land
- In Norway modifications came as responses to
 - Land scarcity
 - Concern for the future of one's children
- Facilitated by knowing the monetary value of the land through long experience of land rentals of various kinds
- Struggle to retain preferential treatment based on kinship
- King + farmers defended it
- Landed nobility and bureaucrats wanted to delete it
- Freedom of contract was circumscribed



Learning

- In general there is not much to learn from specific details. But some facts may be helpful:
 - The emotional ties between lineage and land are strong and cannot be legislated away.
 - 61% of active farmers in Norway support the act on odal rights
 - There are ways of creating equitable inheritance laws that do respect the emotional ties between lineage and land
 - Freedom of contract is important but needs to be circumscribed by rules protecting the weak and furthering equitable outcomes



- Thanks for your attention