

Observations and tentative
conclusions from fieldwork
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MALAWI LAND TENURE AND SOCIAL
CAPITAL (MLTSC) STUDY

MALAWI LAND TENURE AND SOCIAL CAPITAL
(MLTSC) STUDY

- Malawian Land Tenure
 - Customary land tenure and land reform
 - Land tenure and development
 - Is African land tenure special?
- Social capital
 - Why social capital?
 - Trust and development
 - Local trust vs. generalised trust

Why land is important

- Land is needed for current livelihoods
- Land satisfies some common emotional/ cultural needs for belonging and identity
- Land can be an investment
 - In retirement security
 - In the future security of children
- Land can enhance a person's social status: the more the better
- Land is rapidly becoming a capital asset

Sources for title claims

- Land registers
- Wills from diseased persons with rights in the land
- Contracts between persons concerning rights in the land
- Formal law concerning rights in land
- Cultural beliefs and practices concerning rights in land

Land reform is important

- BUT titling is no instant fix. Land reforms take time
- There is no such thing as getting it right on first try. It took England some 800 years to get it working reasonable - if not right.
- Land reform needs to be an ongoing process
- In history titling is not the start - it is the end result

Issues in current Malawian customary land tenure

1. Usage of sales and rental contracts
2. Enforcement of court decisions and investigation of witchcraft accusations
3. Fragmentation of villages and an increasing hierarchy of traditional leaders

Contracts for sale and rental

- Usage of sales and rental contracts (at variable levels of formalisation) to assign use rights to land needs regulations and enforcement systems
- There is need for specification of the rights that can be traded
- There is need for procedures for validating and enforcing such contracts

Investigation of land related conflicts and enforcement of court decisions

- Customary law tribunals seem incapable of enforcing their decisions
- The high court says magistrate court has no jurisdiction in cases involving customary law land: can people afford to take a case to the high court directly?
- If a suspicious death occurs and seems to clear the way for land grabbing what should people do?

Fragmentation of villages and hierarchy of leaders

- Older villages split into mbumbas but the new “development villages” remain within the old village
- The number of positions of authority above the village leader is increasing. This new hierarchy of traditional leaders is expected to cause problems for land management. The costs for the users of their services may increase and validation of land transactions may become increasingly difficult

Formal land law

- Customary land vests in the president
- Chiefs can authorise use and occupation
- The formal law does not provide the regulations that people need.
 - In particular it does not provide sufficient security of use and occupation, or the means to reallocate use to new users in a reliable manner
- The problems have been recognized by the law reform committees
 - The reasons relate both to system design and to the fact that we are all fallible humans

Customary land tenure

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

Land allocations used to be

- Chiefs would usually delegated management powers to village leaders
- Initial allocations to households were in theory tailored to needs but would often be affected by relations between chief/ village leader and recipient so that closer relatives got more.
- As needs changed households could get supplementary allocations from the reserve of unallocated lands

Matrilineal land use rights (I)

- At TA or GVL level rights were held by the “fuko” with the “nkhoswe wamkulu” as its executive
- At village level rights were held by the mbumba with the “mwini mbumba” as its executive
- If the village comprised more than one mbumba the VL was the manager of unallocated land, the first authority in conflicts, and provided the official “land register”.
- Land transactions witnessed by the VL was valid.

Matrilineal land use rights (II)

- At HH level rights were held by the “banja”.
 - Land rights are at HH level specific individual use rights to specific parcels
- The “mwini mbumba” is responsible for allocating land to his sisters and their daughters in the area of the “mbumba”, to protect their interest in the land, and to resolve disputes
- Men were supposed to get land through marriage (chikamwini)

Land scarcity

- The system of land use described work very well as long as there is vacant land
- Land scarcity arrived with
 - Introduction of industrial scale commercial agriculture
 - Population growth, natural as well as migrations forced by wars
- It was intensified by the allocation of land to national parks, forest and wildlife reserves

From abundance to scarcity in 5 generations

- Uncle-Amona-Eliza-Tereza-Annie-Mebula
- Uncle came running from war in Mozambique
- Village Leader Mu. was already in the area. He had enough land and gave freely
- Since Amona's time land has gone only to daughters
- Today Mebula has one parcel: "I have not sold or bought any piece of land. This is because the parcel I am cultivating is not enough to share with other people"

Implications of scarcity

- Scarcity creates competition for access to land
- Scarcity creates prices - also for use rights
- Scarcity creates distributional conflicts - also among siblings
- People experience uncertainty and insecurity about the future of their children
- With little unallocated land available access to already allocated land become important
- People do not necessarily feel secure on land they rent or buy

But note in particular:

- People feel secure about holding land they have gotten from their parents

Malawians react to scarcity as expected

- A system for lending and renting developed
- Written contracts for sales and rentals appeared
- Sales apparently came before renting
 - Sale of use rights were observed already in the 80ies

Let us take a look at what we observe:

Sales procedure 2007

- The parents presented their request for land to the village headperson who accepted the request and proposed a date when they could walk around the land allocated to them. In June 2001 they made an agreement to pay 'chizulaminga' (money paid for the first walk around land allocated to a new operator/owner) amounting to K1000. After the first walk they were charged K13000 as operating fee for the land which was paid over a period of a year by instalments.
- (Field notes 2007 from Kasungu)

Renting of arable customary land ca 1985-90

- Land transfers are supposed to be approved and witnessed by the mwini mbumba and VL
- "In practice, however, it seems that these transactions are often entered into without the approval of the leaders, because families believe they have the right to do whatever they want with their land, provided they do not sell it. The use of cash in transactions involving customary land may be the first step in the commoditisation of land and it may, therefore, be one short step from leasing to outright sale of land." (Kishindo 1993-94:65)

2007: One generation after 1985-90

- Scarcity is increasing and land transactions become difficult.
- Sale, renting and lending today entails insecurities about tenure relations (Can I keep the land after renting it out?)
- Sale of land is formally prohibited. This is used against those buying use rights earlier (e.g. in the 80ies and 90ies)
- Renting out land induces risk of losing land to the renter

Documented consequences

- Where scarcity is most pronounced the insecurities multiply for some people, in particular the “obwera”: the newcomers, those not members of the mbumba
- Sales disappear
- Rentals become secret
- Unscrupulous chiefs are seen to misuse their land management powers with impunity

“Obwera” losing out ...

- Woman buys land from village head in 80ies
- Woman dies 2002, mother inherits
- Sons of sister to village head claims this land
- VH, GVH, TA are unable to protect the inheritor. She loses the land she inherited and another garden is taken as punishment:
- “if I had the land in my hands it was not possible to protect it through land rights just because they say I am an outsider (obwera)”
- Also the son of the woman is threatened: “sometimes there are threats from the same family that they are going to take my land [that he got from his mother] away because we don’t belong here (obwela)”

Field notes 2007 Chiradzulu

Sales disappear: fewer and fewer have land to sell

- I have never bought land before because I have never come across someone selling land.
- I have never sold land because I don’t have land to sell.
- But even if I had land in this village I would not have sold it, because there is shortage of land

Field notes 2007 Chiradzulu

Renting disappears from view

- I rented in land from Mr. X last season at a price of MK1500. This is done between the two of us because it is against the village regulations to rent in land. I have been renting land now for almost four years from different people.
- I don't rent out land just because I don't have enough land to do so. Long-term renting is done between the owner and the operator **secretly** as I said before. It does not involve a third party at all.

Field notes 2007 Chiradzulu

A greedy chief ...

- Sam bought a field from the former chief at a price of K8000. He paid K2000 as an installment. He was embarrassed that every time, everywhere he met the chief he was reprimanded for not having finished the balance. In the end he just left the village for good because he thought he was not being respected.
- When Sam left the village, the chief resold the land at a price of K10000. The new owner erected a temporal shelter on the land where he came to live only in the growing season. He spent the rest of the time in another village some 30km away. Last year he did not farm on the land. The chief then resold the land at a price of K30000. The chiefs' advisors now don't know what is going to happen next but they are expecting a very hot case to come.
- (Field notes 2007 from Kasungu)

Problems are linked

- The insecurities of contracts for sale or rental of use rights are increasing
- Chiefs allowed to misuse their powers are compounding the problems
- The recent mushrooming of new villages and leaders will add to both of these problems

New villages and lines of authority

- New villages and leaders add to the problems of land management
 - The increasing number of nodes in the chain of traditional authority adds new costs for the users of the services provided by the chiefs
 - The increasing number of villages fragments and may destroy some information on valid land claims. In particular the transition period will create difficulties

Increasing hierarchy in the traditional **authority** structure

- It used to be
 - Mwini mbumba - Chief– Paramount Chief
- Recently it was said to be
 - Mwini mbumba - **VH – GVH – TA –** Paramount Chief
- Now we find
 - Mwini mbumba – VH – GVH - **Senior group village leader - Sub traditional authority -** Traditional Authority - **Senior traditional authority -** Paramount chief

Villages are transforming

- The social units called villages are becoming more numerous.
- Some villages become pure lineages consisting only of the mbumba with the household lands
- Others remain geographically contiguous and socially heterogeneous
- Some dissolve and cease to exist

What is a village?

- Scarcity of land will prevent new villages from relocating to virgin or contiguous land like they used to
- What then is a village in current society?
 - A social unit? (another word for mbumba)
 - An administrative unit? (made for receiving subsidies)
 - A political unit? (village leader on the payroll of the government)
 - A geographical unit? (a point and a name on the map)

Why fragmentation of villages and village lands?

Some of the drivers for this development are

- The distribution of subsidies in the form of coupons targeted at the most needy
- The payment of chiefs from government
- The payment of chiefs by users of their services
- The acquisition of development projects
- The increased prestige accorded chiefs (of all kinds) for a larger number of subordinate units

Land management problems

- The fragmentation of villages in a situation with land scarcity creates problems for the village leader's role as land manager
- Group village leaders do not know enough (or anything) about land transactions in their area
- The land register in the village leader's head may not be there for new village leaders not brought up and trained to remember
- The possibilities for conflicts among village leaders increase with the number of leaders and the interleaving of their lands

Gender issues in land tenure

- In the north:
 - Patrilineal as before
 - Females can become chiefs
- In the centre:
 - Sons inherit land in previously matrilineal villages in the centre. Parents think the land should go to their children
 - Chieftaincies are as in the matrilineal system
- In the south:
 - Daughters own land while sons use land through their wives. Case: 14 sisters pursuing a brother for not vacating the land he has cultivated for more than 20 years
 - Matrilineal system seems strengthened

Sons inherit land in previously matrilineal villages in the centre

- **Sons inherit land from their mothers :**
- “When he came of age, he moved back to his mother’s village and asked the GVH for land. His request was granted.”
- “Respondent feels he will be able to leave the land to his children both male and female. He however feels that his wife can’t inherit his land upon his death because of the chitengwa issue.”
- Field notes 2007 from Kasungu

Legislation of equality?

- It is difficult to legislate equality in land tenure issues
- Rules must be simple and people must understand them and agree on their legitimacy
- A culture of equality needs nurture but must grow by itself
- What the judiciary can and must do is to go an extra mile to treat sexes equally in all cases taken to court and in particular to enforce the judgement
- The Chiradzulu story above is one case where this did not happen

The commons/ communal lands

- Scarcity takes away what is left of grazing commons (dambos)
- Livestock grazing causes damage on crops
There may be need for common regulations of punishments for damages
- The small seeming inconsequential ways that rights in forest and mountains, streams and lakes helps people seems to disappear with the forests and the general scarcity

Time to stop?

- More observations on
 - Development projects
 - Individualisation: less joint activity
 - Personal identity and place
 - Trust and corruption

The problems of externally initiated projects

- Imposing ideas
- Local lack of understanding reasons and disagreeing about priorities
- Jealousies among those favoured and those left out: localisation debates
- Lack of cooperation
- Cooperation out of fear of VL not listing them to get handouts

Individualisation

- There is less cooperation and work exchange
 - One reason is that most have less land to work on
 - Another reason is the preference for work that provides income

Identity and place

- For some people their identity is closely tied to the identity of a place. They come from so and so a village located in TA xx
- Maintaining this identity entails regular, not necessarily frequent returns to this place
- Occasional returns are triggered by events such as funerals and clearing of graveyards
- Sometimes the link entails retirement to the village in old age and/ or burial upon death

Belonging to a village

- Coming from a village entails having land rights in the village.
- The rights may vary:
 - From real rights demonstrated by growing food (read: maize) on land allocated to you in some way even if you live elsewhere
 - To wishful thinking based on a stipulation that your cousins or aunts/uncles will give you land if you go there. The thinking can be maintained as long as one do not go there

Some urbanites are not tied to place

- Some do not indicate rural roots.
- But they buy or rent land to grow their own maize.

Trust and trustworthiness

- There is trust among family members
- But probably there is
- Less trust among community members
 - Less trust for the village leaders
 - Less trust of unknown people