

Abstract

Malawi has both matrilineal and patrilineal kinship systems. In Malawi's customary areas, women's access to land is closely related to kinship and residency. This paper examines the intersection of gender equality, the 2002 National Land Policy, and customary land inheritance practices as they relate to women's access to land in rural Malawi. Malawi's 2002 National Land Policy proposed equal inheritance of land for men and women. We conducted fieldwork with women and key informants to determine whether people wanted their children to be able to inherit equally. Respondents reported divided views on the desirability of equal inheritance, but all agreed that equal inheritance for women and men is not feasible in practice. Furthermore, based on inheritance norms in matrilineal communities, we suggest that equal inheritance is not always advantageous for women.

Biography

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Equal Inheritance Is Not Always Advantageous for Women: A Discussion on Gender, Customary Law, and Access to Land for Women in Rural Malawi

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INTRODUCTION

As a term, gender equality has become embedded as a priority in international policy documents such as the Convention to Eliminate Discrimination Against Women (UN General Assembly 1979) and the recent Sustainable Development Goals (United Nations 2016). Gender equality refers to equal “rights, responsibilities and opportunities of men and women” (Office of the Special Advisor on Gender Issues and Advancement of Women 2001, para. 2). This term is often conflated with improving women’s economic, social, and political circumstances through the discontinuation of discriminatory practices against women. This conflation is natural given the large economic and social inequalities between men and women across the globe.

As a response to international political commitments to gender equality, national governments have introduced this concept into policies and legislation. In Malawi this translated into “equal inheritance” as proposed in the 2002 National Land Policy. Equal inheritance would permit female and male children to equally inherit their parents’ land. In some situations, shifting from customary inheritance practices to equal inheritance may reduce women’s access to land. This primarily depends on the nature of women’s access in the specific customary system. In the instance of Malawi, both patrilineal and matrilineal kinship groups exist, and it has been argued that in the latter group women enjoy control over customary land (Peters 1997).

This paper therefore examines the intersection of gender equality, 2002 National Land Policy, and local customary practices as they relate to women’s access to land in rural Malawi. In probing the benefits of equal inheritance for women, we discuss the themes that emerged from conversations with women and key informants during our fieldwork in Malawi.

BACKGROUND

Women’s access to customary land in rural Malawi is closely linked to the type of kinship descent and marital residence. Malawi has both matrilineal and patrilineal kinship groups where descent is traced through the female and male line, respectively. The literature suggests that women living in matrilineal matrilocal kinship groups where the husband relocates to live with the wife have the best access to land, followed by women from matrilineal kinship groups who go to live with their husband’s group after marriage and women living in patrilineal kinship organizations (Peters 1997; Mutangadura 2004). Women living on their husband’s land, regardless of whether they are part of matrilineal or patrilineal kinship and residence systems, have reduced tenure in comparison with matrilineal women living in matrilocal residence patterns. Tenure refers to the manner in which land rights are held and includes three elements: duration of rights, protection of rights, and robustness of rights (Bruce and Migot-Adholla 1994, 252). Differences in tenure can be linked to kinship inheritance systems designed to keep land within one’s clan. Rights to land can also mean rights to use and benefit from resources such as fruits and firewood, as well as occupy land.

To describe kinship relations, this article uses the differentiations described by Stone (2006), namely: a) descent (matrilineal/patrilineal), b) residency patterns (patrilocal/matrilocal/neolocal),

and c) marriage typology (monogamy/polygyny/polyandry). Women living in polygamous marriages may have greater challenges accessing land as they must compete with their husband's other wives (Lastarria-Cornhiel et al. 2014).

While kinship is important, it is not the sole factor that determines a Malawian woman's access to land. Kinship traditions play out against gender inequalities, land shortages, and national policies. Peters (2004, 2009) cites increasing conflict and competition over customary land in Africa as evidence that researchers should go beyond admiration of the negotiability of customary systems to further investigate who benefits from this flexibility and who is left out. Malawi faces land shortages, and a 2007 study found that in land-scarce situations, individuals' strategies to obtain land by any means may conflict with customary strategies to keep the land within the lineage (Takane 2007). The work of Peters (2004, 2009) and Takane (2007) points to the need to carefully consider access to customary land within a dynamic environment informed by kinship traditions.

Gender Issues in Malawi

Malawi has made a strong policy commitment to women's equality and is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly 1979). The 1979 convention specifically addresses equality in familial relations, including "ownership, acquisition, management, administration, enjoyment and disposition of property" (UN General Assembly 1979, Article 16.1h). Malawi's 1994 constitution similarly advocates gender equality and non-discrimination:

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 ... c) deprivation of property, including property obtained through inheritance. (Government of Malawi 1994, Ch. IV, 24.2)

While the government of Malawi is pursuing gender equality through public policy, these policies have been slow to translate into widespread societal equity. Gender inequality in Malawi is structural and has been produced by historical and economic processes. Historic policies, such as the colonial and postcolonial governments' prioritization of tea and tobacco estates, led to the rise of male migrant wage labor on large-scale plantations (Bryceson and Fonseca 2006). These policies influenced gender roles and contributed to women's marginal participation in the market economy. While Malawi's population remains largely rural with most workers employed in subsistence agriculture, labor has gendered dimensions (FAO 2011). Rural women have a heavy domestic work burden compared to men, which gives them less time for paid work (FAO 2011). In Malawi, almost a quarter of all households are female-headed (FAO 2011). Such households have less labor, inputs, and credit (Ngwira 2010). Agricultural farm productivity is lower for female operators than their male counterparts due in part to less fertilizer use by women and insufficient labor to weed the fields adequately (Ngwira 2010). Women in female-headed households need to divide their labor between domestic and farm work and typically have less labor to weed the fields compared to male-headed households. In the rural areas of Malawi there is also a disparity between women and men's access to learning, as evidenced by women's lower rate of literacy—58% compared with 78% among men (FAO 2011). Women's heavy domestic

responsibilities, limited access to agricultural inputs and credit, and low literacy rate make it difficult to move out of poverty.

To achieve gender equality, it is necessary to examine and reevaluate the cultural norms through which gender relations are produced (Tiessen 2005). In the case of Malawi's rural customary areas, women's access to land is closely linked to customary law. As new national policies promoting gender equality are implemented, consideration of both the policy realm and the customary reality is increasingly important.

Land Policy in Malawi

Malawi was colonized by the British between 1875 and 1964, and from 1891, land concessions were granted to foreigners (Pachai 1978). These concessions are described by the Presidential Commission of Inquiry on Land Policy Reform as “essentially frauds perpetuated on indigenous communities ... [which] remain a source of legitimate land grievances particularly in the Southern Region of Malawi” (Saidi 1999, 20). These historical land concessions have created contemporary grievances and contestation regarding land distribution, as much of the fertile agricultural land was given to white farmers in the South.

As determined by a 1951 land ordinance and later the Land Act of 1965, land was divided into three categories—namely, public, private, and customary (Government of Malawi 1965). However, “customary” land was effectively a type of public land, as it was not legally controlled or owned by native Malawians but was controlled and managed by the governor and subsequently a government minister (Saidi 1999, 21). Land was implicitly leased to native communities but remained property of the government. In this situation the government acted as the leaser and Malawian citizens were the lessees. As a leaser, the government reserved the right to appropriate customary land. According to the World Bank (1987), under this arrangement 400,000 hectares of land were taken and transferred to leasehold between 1977 and 1983 (quoted in Kishindo 2004). As the government of Malawi has yet to enact a new land law, ownership is currently dictated by the Land Act of 1965 and 2002 Land Policy provisions.

In 2002, the Government of Malawi introduced the National Land Policy. This policy has important implications for customary land as “the government will allow all customary land to be registered and protected by law against arbitrary conversion to public land” (Government of Malawi 2002, 1). Customary land owners, both individuals and groups, will be able to register their land as “private customary estates,” thus gaining further tenure security.

The Land Policy also holds changes for customary leaders, with a shift to make their administration of customary land more transparent and democratic: “The power of traditional leaders to control the allocation of customary land among members of their respective communities, including access rights granted to outsiders will be democratized and protected by statute” (Government of Malawi 2002, 22). The themes of accountability and democratic reform for customary systems echo throughout the document. While it gives traditional leaders supervisory responsibility over customary land, the National Land Policy is quick to highlight that certain cultural attitudes should change. Section 1.3.7, regarding vulnerable groups, reads:

More often than not, the rights of women, children and the disabled are denied on the basis of customs and traditions that are no longer relevant, or they are totally disregarded due to prejudice and lack of effective representation. This being so and in view of the effects of increasing land pressure due to population as well as the devastating effects of the HIV/AIDS pandemic, a clear policy on gender access and the rights of children and the disabled should always be considered in policy planning and implementation strategies. (Government of Malawi 2002, 4)

This statement acknowledges the importance of women's access to land and attributes unequal access to land to customs and traditions as well as unequal political representation. However, the perception that customs and traditions that oversee access to customary land are "no longer relevant" is likely to be highly contested in rural communities.

Customary Law, National Land Policies, and Gender Equality

For most Malawians, land tenure is under the purview of customary law (Berge et al. 2014). Customary law is "a body of rules governing personal status, communal resources, and local organization in many parts of Africa" (Joireman 2008, 1235). In rural areas of Malawi where customary laws inform land use, the belief that land should be inherited through the lineage remains robust (Berge et al. 2014). Malawi has both matrilineal and patrilineal descent groups in which lineage is traced through the female or male line. Subsequently, in matrilineal matrilineal communities, land is primarily inherited by women. Inversely, in patrilineal patrilineal groups, men are the primary heirs of the land. The suggestion of gender equality as advocated by the 1994 Constitution of the Republic of Malawi and the 2002 National Land Policy is a significant departure from current customary practices.

At the time of the fieldwork for this article (February 2008), the land bill as outlined in the 2002 National Land Policy had yet to be enacted.¹ Still, there was evidence that traditional authorities were concerned that the land bill could weaken their "traditional and legitimate power over land at the community level" (Holden, Kaarhus, and Lunduka 2006, 15). Malawian scholar Paul Kishindo (2004) argues, "Those in positions of power, and those who benefit from the status quo, are not likely to readily accept changes that threaten their traditions. Custom may prove to be stronger than the law" (p. 24). It remains to be seen whether customary law will adapt to the National Land Policy once it is enacted or if these two systems will continue to diverge. Evidence of a potential conflict may be found in the expected role reversal advocated by the National Land Policy (Government of Malawi 2002). The policy has given the authority to democratically administer customary lands in a gender-equitable fashion to the same traditional leaders who have historically governed only according to customary law. It is unclear whether traditional authorities will adapt their land administration practices to meet the requirements of future land laws.

Beyond legitimacy challenges, Kishindo (2004) and Peters and Kambewa (2007) have asserted that land titling, as proposed in the National Land Policy, will have distinct gendered implications. Research from other countries in southern Africa has shown that title registration in

¹ In 2013 parliament passed a new land bill, but it was not assented into law by the president. In 2016 another land bill and a customary land bill were passed by parliament and were assented by the president.

which a woman is not registered may further decrease her tenure security in comparison with traditional customary law (Cousins et al. 2005). Kishindo explains that the National Land Policy does not specify in whose name the land should be registered, which leaves open the possibility that land be registered in the name of the head of the household (2004, 220). On first glance, this appears gender-neutral as it could refer to either a male or female head of household. However, Peters and Kambewa argue,

Such a recording of the “head” will result in men’s (as husbands and brothers) names being recorded with a likely loss to women and young men. The interpretation of “head” will be followed even in the matrilineal matrilocal areas described here, but will not reflect the ways in which land is allocated, used and transferred in which women as daughters and wives have more authority. (2007, 30)

In Malawi, there is a distinct difference between the “head of household” and the legitimate property heir.

The National Land Policy advocates for gender equality in inheritance rights and stipulates that land should be inherited equally by male and female children. Peters and Kambewa are concerned that the policy’s stipulation of equal inheritance for female and male children may disadvantage women in matrilineal areas (2007, 454). While the policy increases inheritance rights for women living in patrilineal patrilocal communities, it also diminishes the inheritance rights of women living in matrilineal matrilocal areas. Further concerns about equal inheritance stem from the shortage of tillable land within Malawi. Kishindo (2004) is concerned that the policy of equal inheritance will lead to continuous divisions of existing land plots. Division of plots among family members combined with existing land pressure yields parcels of land which are too small to sustain a household between harvests, given the available farming equipment (Kishindo 2004, 217). Peters (2010), who has conducted extensive fieldwork in the southern region of Malawi, asserts that further division of property based on equal inheritance could be a source of conflict, as the average plot size is already small and less than one acre in size.

METHODOLOGY

Data were collected in 2008 through fieldwork undertaken in cooperation with the Department of Land Management at Mzuzu University. Ten focus group discussions were held with women living in patrilineal (Nsanje, Rumphi, and Karonga districts) and matrilineal communities (Mulanje and Mangochi districts). The matrilineal communities visited in Mangochi are part of the World Bank-funded Community-Based Rural Land Development Project. Focus group participants were selected using convenience sampling. Individuals who identified as female and were willing to provide consent were eligible to participate. Focus group size ranged from four to 60 participants.² Size was dependent on local women’s availability; in communities where few participants attended the focus group, women were occupied with other activities such as weeding and attending funerals and were thus not available to participate. The study team travelled Malawi from the southern town of Nsanje to the northern town of Karonga to collect data from different regions. In addition to the focus group discussions, 23 key informant

² In one village we had an especially large focus group with 60 people. We had not put a limit on the number of people invited and many showed up.

interviews were conducted with NGO workers, village chiefs, government officials, and academics. We conducted the interviews in Mzuzu, Lilongwe, Blantyre, and Zomba. Interviewees were male and female Malawian nationals with linkages to community-based organizations, local and international NGOs, government, and universities. We invited key informants to participate based on their involvement in gender, HIV/AIDS, and land issues in Malawi.

As the 2002 National Land Policy proposes equal inheritance for male and female children across the country, this research project asked focus group participants and key informants about their thoughts on the concept of equal inheritance. The 2002 policy was not mentioned by interviewers. Participants were asked, “Do you want your children to be able to inherit equally?” In this context inheritance refers specifically to land. Data were subsequently transcribed and then analyzed for themes using content analysis.

Ethics approval for this project was obtained from the University of New Brunswick Research Ethics Board (File #2007-092). Consent was obtained from participants prior to participation.

RESULTS

Perspectives on the feasibility and desirability of equal inheritance varied greatly between women living in patrilineal communities, women in matrilineal communities, and key informants. Results are reported here, followed by an analysis of the discord between national land policies and the rural reality.

Responses from Women in Patrilineal Communities

Female respondents in patrilineal communities were supportive of the idea of equal inheritance but were doubtful that it could be successfully implemented. It was described as “difficult” and “impossible,” as it had already been accepted that male children should inherit the land. A woman from Karonga district explained, “We have to accept that the boy child is the one to get the land, so it [equal inheritance] will be difficult.” Once women are married, their use rights to resources at their parents’ home and land diminish. A focus group participant explained that women “are said to be for the husband.” Other participants clarified that the land is divided when a woman leaves the village to live with her husband. At that time land is divided between the male children. A woman from Rumphi district in northern Malawi explained that while equal inheritance would be good in theory,

Maybe when I’m chased from my husband’s place, I will find that the land has already been allocated to my brothers, so it’s just up to my brothers’ goodwill to share a small portion. They cannot allow equal inheritance as they’ve already shared the land.

Women felt that equal inheritance would be beneficial, as they would have stronger rights to access this land should they have to return from their husband’s village due to marriage dissolution or their husband’s death. By inheriting the land, women would also have stronger tenure. “Like when she has the same land like her brother, if she is weak her children will be able to help her work on that garden,” explained one woman. Essentially, women would have land tenure which is similarly robust to that provided to their brothers through patrilineal inheritance,

and these rigorous usage rights would allow them to make land use decisions such as allowing their children to work the garden.

One focus group explored the idea of women being able to inherit their husband's land. They proposed that the government of Malawi enact a law whereby upon marriage, the husband's land would be registered in the name of the wife. They argued that this would stop land grabbing:

Because if the husband dies and that land is in your name, there will be nobody to come and complain about the land. You can say, "This is my land, I've got my name on that particular land as registered land." (Woman, patrilineal community)

In addition, participants in this specific community thought that in matrilineal communities where men access land through their wives, the husband's name should also be on the title, so that the husband could maintain his access rights should his spouse pass away.

Responses from Women in Matrilineal Communities

Focus group participants from matrilineal communities were adamant that equal inheritance was not necessary. Participants from a matrilineal resettlement community in Mangochi district, southern Malawi, explained, "Inheritance of the land goes to the girl child." Women explained that as men leave the village to marry, they should not be permitted to inherit. A woman clarified that it is important to "avoid a scenario where the land is going to a male child who is going to move somewhere, get married, and bring the wife here" (woman, matrilineal resettlement community). Sons bringing their wives to live in the matrilineal community were seen as a potential source of conflict, as the wife might argue with her sisters-in-law. A second rationale used to legitimize female-only inheritance was the concept that the female child will continue to bear children within the lineage. As such, land should be kept for the offspring of the female child. In a second matrilineal resettlement community in Mangochi district, participants explained that initially male and female children share the land equally, but when the male child goes out to marry, the land stays with his sisters. Both matrilineal resettlement communities were relocated to Mangochi district by the Community-Based Rural Land Development Project in the 12 months prior to data collection, and it is interesting that participants from both communities indicated the intention to continue with matrilineal inheritance practices despite their community's new location.

In a matrilineal community in Mulanje district, southern Malawi, participants expressed that while equal inheritance is undesirable, in some specific cases it is possible to distribute land to your sons for the purpose of safeguarding it. A woman expressed, "If you have only sons, you will distribute the pieces of land to the sons so that you can still safeguard it . . . Other people shouldn't come and claim that land." It is important to note that land tenure given to sons who are safeguarding land is not as robust as that which would be given to children who are inheritors, as the sons' tenure is seen as temporary.

Responses from Key Informants

Key informants had different responses to the concept of equal inheritance. A chief from a patrilineal community in Nsanje, southern Malawi, responded that equal inheritance after the

death of both parents would be permissible if the boy and the girl were of the same age. Embedded in his answer is the idea that the younger sibling should be left a greater amount of resources, as he or she had less time to benefit from their father's labor and subsequently would have received financial support for fewer years than the older siblings.

A key informant and academic spoke at length about the potential implications of equal inheritance. He explained that, from the matrilineal perspective, equal inheritance would be difficult to implement, because men's use of land is seen as impermanent even if it lasts for years. In a situation in which a woman has inherited land from her mother, she may lend excess land to her brother. One or two generations later when the man thinks that he is settled on this land, female heirs may come and evict him. The academic informant explained that this is "not uncommon in Machinga or Balaka, where an uncle has been evicted from the land by his sister's granddaughters who say, 'No, no, this is our land,' and they have got the support of the chiefs."

Equal inheritance in both the matrilineal and patrilineal systems challenges traditional ways of organizing communities and distributing customary land across generations. The academic informant argued that "tradition dies hard" and that it is going to take a long time to accept changes to these traditional inheritance practices in both the North and the South. He indicated that equal inheritance could potentially affect gender relations in matrilineal communities and predicted that the policy would not lead to equal access:

Where you have women's interest competing against men's interests, the men are likely to win. Because we've got to be making that sharing up, it's likely to be a male village headman or male chief [making decisions], and males understand each other, right? So on paper it's going to happen. But in practice the males are still going to win over the women.

The concern is, by allowing men to inherit in what has traditionally been a matrilineal area, the gender balance tips in favor of male interests.

Discord between National Land Policies and the Rural Reality

Our fieldwork uncovered a significant gap between policy makers and rural Malawians on the issue of the National Land Policy. Gaps exist in terms of involvement in policy development and knowledge of the policy and its implications.

At the time of the fieldwork, academic and NGO informants working in the areas of gender, HIV/AIDS, and land explained that the National Land Policy remained inaccessible at the village level. This discord between the policy and the local reality also emerged from our focus group data, as participants regarded the concept of equal inheritance as a novel idea that they had not previously considered. Key informants asserted that these policies had not been fully disseminated at the ground level and that even many of the government workers at the district level were not aware of them. Key informants explained that, for rural Malawians, district workers are the primary source of dissemination for government policies and initiatives. Correspondingly, if the district officials are not well informed, information cannot pass to the villagers. Lack of local dissemination reflects a shortage in allocated resources, as well as minimal local involvement in policy development. In terms of involving village people in land

policy discussions, an academic and interview respondent attributed some of the lack of rural participation in the policy-making process to the prevailing biased mindset among government officials that “we can’t get anything intelligent coming from the village people” and the associated limited value placed on local consultation.

Acknowledging rural women’s lack of participation in the policy-making process, one NGO organized a coalition of female farmers to work in policy consultations for the upcoming Land Act. An informant from the NGO explained that although it is challenging to get rural women involved in policy work, it is also important that they be represented. He explained that his organization decided that it was necessary to have the voice of HIV-positive rural women at the table, as often only the voice of HIV-positive women from urban areas is represented. In Malawi, the difference between urban and rural life is significant, and rural women with HIV may struggle to keep up with the physical demands associated with subsistence farming.

If rural Malawians are not aware of the National Land Policy, how are they likely to react should it be enacted without amendment? One academic informant predicts that it would be partially accepted and partially rejected. The informant explains that section 5.20 of the policy, “Land Redistribution and Resettlement,” which states that abandoned land or estates that are in default will be seized and redistributed, would be popular. However, he anticipates that villagers would have a difficult time accepting registration of land. He explains, “The implication of registration of land is that it now becomes private property, and the general belief in rural Malawi is that land doesn’t belong to an individual, it belongs to a group.” The concern among key informants is that the sections of the act which are rejected by local people will be difficult to enforce and will likely appear only on the books and not on the ground. Our focus groups support the suggestion that communities will continue with their customary land tenure practices, regardless of national legislation. A woman from a matrilineal community explained, “There will be no equal inheritance of land. The women will still inherit a big piece of the land.”

A second key academic informant concurred that customary tenure practices remain robust and explained the local reaction to policies that do not reflect social reality at the village level:

When they are deliberating, you get comments of “those are in the books, you are talking about things in the books, but the way we are doing things here is like this.” Meaning, “Yes, the policy might say this or the radio might say this, but as far as we’re concerned we don’t recognize things that we hear. We want to do things the way we want to do them.”

He argues that the policy is too broad in its aspects, as it recommends one solution for both matrilineal and patrilineal societies. If the policy’s concept of equal inheritance is implemented, it is likely to cause problems in matrilineal communities, as it diverges significantly from how things are done on the ground. According to the informant, conflicts will arise when men try to gain ownership of land. He questions whether existing institutions are prepared to deal with the conflicts brought about by the National Land Policy. He also shows concern over the National Land Policy’s omission of the “matrilineal uncle,” who helps to ensure land is kept within the lineage and helps to solve disputes regarding land ownership:

The Land Policy thinks land is only in the hands of the village headmen, it doesn't recognize these dynamics. But the village headman comes in as an appeal process. He comes in on the appeal process. The uncle in this case, they call him mwini mbumba. That's the name they give to the uncle, the owner of the lineage.

As it stands, the policy does not acknowledge the uncle or the role he plays in land management within the matrilineage. The informant argues that the institution of the family, which plays an important role in land administration, has been omitted from the Land Policy.

Public Policy and the Role of Traditional Authorities

In terms of the National Land Policy, a key informant explained that in the beginning traditional authorities were not well informed of the policy or its implications. This changed when an NGO began running consultations on the policy with traditional leaders. The leaders felt that the policy was attempting to take away their power to administer land at the local level. Informants explained that this concern reflects the way chiefs define their responsibilities in relation to land management. Under the Land Act, chiefs are considered "custodians" of the land (Government of Malawi 1965, pt. V sec. 26). However, one academic informant indicated that in reality some chiefs have come to see themselves as owners of the land and therefore free to make unilateral decisions:

The Land Policy is trying to do away with these arbitrary decisions. Now the chiefs are saying, "No, we have always been in control of . . . we own the land," that's what they say. I don't believe that they own the land. God gave us this land. There is nowhere in the Bible where the good Lord gave land to any Malawian chief; anyway, they believe that they own the land.

However, another informant who helped lead the NGO consultations argues that eventually chiefs realized that the Land Policy would legitimize their powers rather than diminish them, as their role is strengthened in the National Land Policy in comparison with the Land Act of 1965 in which power over customary land was vested in the minister.

The importance of the chief in Malawian public policy should not be underestimated. Many research informants explained that the enactment of the new Land Act had stalled because it lacked sufficient support from the traditional authorities (see also Peters and Kambewa 2007). An academic informant explained, "The chiefs are capable of causing havoc to any policy on the ground." Chiefs play an important role in Malawian politics, as their position is like that of an intermediary between the government and the rural populations. The chiefs have the respect of the local people and are highly influential in rural areas. A key informant expressed that most chiefs value their status over the income they receive from the government and have stronger allegiance to their communities and customary traditions than to their role as a civil servant. Concerns that the National Land Policy may diminish chiefs' powers over customary land would likely make it difficult to implement. However, a limitation of the present project is that we did not speak with chiefs about their experience working with national policy development or implementation. Future research should examine chiefs' experiences vis-à-vis land policies.

DISCUSSION

Our results suggest that in Malawi, discussions about equal inheritance are far more likely to occur in the policy realm than at the village level. In focus group discussions with women, we witnessed the conversation on equal inheritance in the community sphere. Perspectives on the desirability of equal inheritance differed notably between women from patrilineal and matrilineal communities. Female research participants in patrilineal communities supported the idea of equal inheritance while those in matrilineal communities opposed it. Desirability of equal inheritance was closely related to the tenure security of women in each context. Women who access land through relationships with male heirs have less tenure security than women who are themselves legitimate heirs. Equal inheritance, if properly enforced, has the potential to increase women's tenure security in patrilineal areas. However, the gains afforded to women in patrilineal areas through equal inheritance would likely be offset by the loss of tenure security for women in matrilineal regions. This has important implications, as in 2008, the three largest ethnic groups—63.7% of the population of Malawi—were matrilineal (Berge et al. 2014). Our research supports previous work which suggests that equal inheritance will not improve women's access to land in matrilineal matrilocal communities (Peters 2010; Tschirhart, Kabanga, and Nichols 2016).

While the idea of equal inheritance may be desirable to some, focus group participants and key informants were unanimous that it is not feasible. Our research complements previous literature that suggests that customary tenure systems in Malawi are robust (Berge et al. 2014). Equal inheritance may not be feasible, given the primacy of customary tenure systems in rural Malawi that privilege inheritance to either men or women. The results further indicate that national policies may not be perceived as legitimate or applicable at the village level. There is a discord between national land policies and the rural reality, which would make implementing equal inheritance challenging if not impossible. Beyond legitimacy, equal inheritance in the context of existing land shortages may not be practical, as land would be further divided into smaller and smaller plots. Given the land scarcity and the challenges that women in patrilineal communities have with tenure security, we argue that there is a need to further research and consider alternative income sources for women that are not directly dependent on land (Tschirhart, Kabanga, and Nichols 2016).

This article utilizes data collected during fieldwork in Malawi in 2008 and refers to the stipulations in the 2002 National Land Policy. However, the debate on land tenure remains current. In 2013 parliament passed the new principal Land Bill that was not assented into law due to reservations from civil society organizations (MacDonald 2015). From 2013 to 2015 there were discussions about other bills including the Customary Land Bill. In 2016 parliament passed the new Land Law encompassing 10 bills. The president assented four of these bills in September 2016 (Chilunga 2016). The outstanding six bills were passed by parliament in December 2016 and assented by the president on February 6, 2017. At the time this article was written, the Land Law had not yet been gazetted, and subsequently the date that the law would take effect had not yet been announced.

Ongoing research is very important in establishing implications for women's access to land following the implementation of a new land law. Further research should attend more to the perspectives of traditional leaders and rural women from customary areas. Other issues, such as the impact of outmigration to cities, either temporarily or permanently, need to be considered.

Land tenure can be complex, and some of the rights associated with land (e.g., to firewood, grazing, and fruit harvests) may also be impacted by national policies. If the law comes into force, the impact of land registration should also be monitored. Researchers in Malawi now have an opportunity to collect benchmark data in both patrilineal and matrilineal communities.

Beyond Malawi, there are wider considerations from this article for gender and development. In applying gender equity policies to improve women's situation, we often assume that the underlying condition is one of patriarchy and thus by enforcing equality, women's situation will be improved. The matrilineal example serves as an anomaly that suggests that this is not always the case. Thinking about gender, equity, and access to land is like peeling an onion; one must peel back the layers to uncover the underlying situation before imposing a policy to improve "equitable" access to land. Field studies like this one can help to consider how a national policy with the intent to achieve gender equality might actually be received at the community level.

CONCLUSION

In the context of Malawi's 2002 National Land Policy, equal inheritance aims to provide equality for men and women. However, we found that there is a disconnect between national policy discussions and the rural reality of land tenure in customary areas. Our findings suggest that equal inheritance is not always beneficial for women. While equal inheritance might be positive for women living in patrilineal communities, it would not be advantageous for women living in matrilineal areas. Furthermore, customary systems remain strong, and national equal inheritance policies may not be feasibly implemented in Malawi's rural areas.

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