Social conflict over access and transfer of land in Malawi: disjunctures between practice and land reform

Conflits autour de l'accès à la terre et des transferts fonciers au Malawi : disjonctions entre pratiques locales et cadre légal

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Abstract

Malawi, like other countries in Southern Africa, has a new land policy. Even before it is implemented, the policy is intensifying competition over land and related resources. The vast majority of rural and agricultural land in Malawi is legally under ‘customary’ tenure, inherited from the colonial era. The label ‘customary’, however, does not adequately describe the dynamic practices of obtaining, using, and transferring land, which are influenced by political, economic and social processes. Although sale of ‘customary’ land is not legal, both renting and (types of) sales occur and appear to be increasing. Are these best called ‘markets’ or do they reveal patterns inadequately described by ‘market’? The paper will identify some of the processes governing such transfers, and will discuss the effects of the public discussions of the new land policy and of the decentralization program on social relations of land. These include a new discourse about ‘original settlers’ and ‘strangers’, and political manoeuvring by ‘traditional authorities’ (amfumu or chiefs). Overall, there is greater competition and social conflict over land and the definition of rightful claims, just at the moment when the new land policy is designed to clarify and formalize the system.

Résumé

Comme d’autres pays en Afrique du Sud, Malawi a une nouvelle politique foncière. Même avant que cette politique ne soit mise en œuvre, elle commence à augmenter les conflits fonciers. La plus grande partie des terres rurales et agricoles au Malawi est gouvernée par le droit ‘coutumier’, un héritage colonial. Mais le mot ‘coutumier’ ne décrit pas bien les modes dynamiques de l’appropriation, de
l’usage, et du transfert de la terre, lesquels sont conditionnés par des médiations sociales, politiques, et économiques. Bien que la vente de la terre coutumière soit illégale, des contrats agraires (de loyers) et des ventes surviennent, et sont peut-être en train de s’accroître. Dans quelle mesure ces transferts correspondent-ils à l’émergence de véritables marchés fonciers? Cette communication identifie les conditions de ces transferts, et les effets sur les relations sociales foncières du débat public de la nouvelle politique foncière et de la politique de décentralisation administrative. La recherche révèle à la fois des manoeuvres politiques des chefs (amfumu), et des éléments d’un discours émergeant qui contraste les autochtones et les étrangers. Somme toute, les conflits sociaux concernant les terres ont intensifiés, amenant beaucoup de Malawiens à disputer le contenu des droits, au moment même que la nouvelle politique foncière s’adresse à éclaircir et formaliser les droits fonciers.
INTRODUCTION

Malawi is one of the poorest countries in the world, and its economy is highly dependent on agriculture (apart from foreign aid), exporting tobacco (which alone contributes over half of the value of exports), tea and sugar, along with a range of food crops. Most people live in rural areas (84%, down from 91% in 1977) and draw on land for their own consumption as well as for produce for sale. It is no surprise, then, that land is of central importance to a wide range of people. Since the end of the colonial period, land has increased steadily in value as population has risen, so reducing the relative availability of land, as new crops and crop varieties have been introduced, and, especially over the past two decades, as gaining a reasonable livelihood for most has become more difficult. The commercial value of land, both for its products and for non-agricultural uses (residences, tourism, market centers, etc), is highest within reach of markets, the main towns and roads, and access to international borders.

The country has experienced considerable policy and political change over the past decades. Dr Banda ruled the country autocratically and ruthlessly. Under his regime, the "dual" structure of agriculture was reinforced whereby estates retained the privileged right to produce the most valuable crops, while smallholders were required to sell their crops at lower prices to the marketing board. The result was a hidden subsidy to the estates because the surplus built up by the board was funnelled through banks as soft loans to Malawian estate owners (Kydd and Christiansen 1982). The supposed "market miracle" of Malawi, as it was celebrated through the 1970s, was a smoke and mirrors method to privilege a small elite. Banda’s regime came to an end in 1994 when the country entered the period of ‘multi-party politics’. This political change interacted with economic processes and the overly strong influence of donor aid on policy reform (Harrigan 2003). Great damage has been caused by the sudden shifts in policy approaches, and by the programs on structural adjustment and market liberalization put in place from 1981. These were too hastily done and premised on the mistaken assumption that a private market would emerge immediately. Instead, the results were a food crisis by 1987 (Sahn et al 1990; Harrigan 1988, 1997), and a failure of the private market to ensure adequate and affordable supplies of the staple maize in the food-deficit period, a failure that continues to the present.

A recent assessment of the ‘challenge for rural development’ in Malawi repeats the overall story of a rural population with a ‘narrow range of risky and low productivity activities … exacerbated by poor infrastructure, services and communications … low … education and literacy … and poor health exacerbated by the spread of HIV/AIDS’ [Dorward and Kydd 2004: 346]. The authors conclude that in the wake of structural adjustment and market liberalization programs, “private sector investment has not replaced the parastatal system that aspired to support rural investment” [pp.352-3]. They call for a more proactive and more accountable state that seeks to provide livelihood and investment supports to agriculture, the sector most likely to stimulate broad-based growth and poverty reduction among the majority rural population [Kydd et al 2004].
Interestingly, these lively discussions about appropriate directions for agricultural policies designed to reduce poverty and improve individual and national food security are not connected with those about the impending land policy reform. In practice, however, land tenure and agricultural development are tightly connected and, in face of mounting competition and conflict over land, may both be threatened.

LAND TENURE AND THE NEW LAND POLICY

After political independence from the British colonial administration was achieved by the early 1960s, Dr Banda turned away from his promises to reverse the dualistic economy that privileged estates towards a stance that did not differ much from the colonial views about customary tenure. In 1967 he stated in Parliament that, “our customs of holding land in this country, our methods of tilling the land … are entirely out of date and totally unsuitable for the economic development of the country. Under the present method of landholding and cultivation we can never hope to develop this country economically with agriculture as the backbone of our economic development” (quoted in Mbalanje 1986). This thinking was reflected in the Malawi Registered Land Act, “largely based on the Kenya Registered Land Act 1963”, and passed in 1967 (Mbalanje 1986). During the 1970s and 1980s, expansion of estates, most for the benefit of the political elite, withdrew land from the ‘customary’ sector. This caused disruption and unrest in several areas of the country although this was generally not known outside Malawi because of Banda’s tight control on the news media. It was not until a few years after the advent of ‘democracy’ that attention was directed towards the problems with land.

The new Malawi National Land Policy was published in January 2002 after a process described as “widely consultative [with] civil society groups and private sector stakeholders” (DFID 2004). Even after that date, the policy has continued to be a subject of public discussion. The stated purposes of the policy include: to clarify and strengthen ‘customary land rights’, and to formalize the role of ‘traditional authorities’ (chiefs and headmen) 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” (MNLP 4.7.2 c). The definition of a “customary estate” is given “to mean land vested in an individual, or corporate entity such as a family, clan or group where land rights depended on membership of the group” (section 5.11.2c).

In this approach to strengthening customary land rights, the new policy does not appear to depart significantly from earlier versions. According to a paper on land law in Malawi published in 1986, the Registered Land Act, which was enacted in 1967 and amended in 1970 and 1971,

1 In a paper published in 1986, the figure given was 85% (Mbalanje 1986).
“established a complete code of property law, which provides the machinery for registration as well as all that is considered necessary for the practical needs of land owners in regard to security and proof of title, and the creating and transfer of interest in land” (Mbalanje 1986). The first land registry established under the law and set up in 1972 dealt with the Lilongwe Land Development Program that was designed to rationalize customary tenure but that, according to subsequent studies, resulted in more conflict within and between families than had been the case before.

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). This, in turn, was and is assumed to increase security for landholders and, thereby, lead to investment and increased productivity. Research to date throws considerable doubt on this outcome from titling alone (see references in Peters 2004a). On the other hand, the considerable variation in actual practices around land formally under customary tenure, and the evidence of competing claims over land (discussed below), suggest that titling may provide a means of families securing their land, even though it may not prove to be suitable for collateral against a bank loan, or affect patterns of use and investment.

There are two areas where the new policy does strike out in a different and more activist direction. Because of concern about reports of discrimination against women in access to land, the policy provides for all children, irrespective of sex, to inherit land (and other property) from parents. This is likely to dispossess women of their existing rights in matrilineal-matrilocal areas. The policy also specifically identifies past failure of accountability and transparency in allocations and judgments on land by Traditional Authorities, as well as acts of appropriation of land by the central government. The Policy seeks both to recognize the longstanding authority of TAs but also to ensure more accountability by ‘formalizing’ the system of land administration. But the likely effect, as discussed below, is to increase rather than decrease the scope of authority of the TAs.

The case material discussed below will provide the basis for a critique of these provisions of the new land policy.

Contemporary land uses and struggles over land

The research drawn on for the paper is from two studies conducted mainly in Zomba district in the Southern Highlands.2 This is one of the most densely populated areas of the country, and home to the ‘twin-city’ of Blantyre-Limbe, one of the two largest manufacturing and commercial centers (the other is the capital, Lilongwe in the Central Region), as well as the medium-sized town of Zomba. Zomba was the colonial capital but now has almost no government offices remaining; it is the site of one of the constituent colleges of the University of Malawi, and it has a small manufacturing sector.

2 One is a longitudinal study conducted by the author in Zomba district, near River Thondwe, since 1986; the other is a study of small-scale irrigation conducted 2001-04 in Zomba and Machinga districts by Drs Wapu Mulwafu (University of Malawi), Anne Ferguson (Michigan State University), and myself, along with Mr Daimon Kambewa (doctoral student, U of Malawi).
Several rivers run through the area, most disgorging into Lake Chilwa, which, without an outlet, periodically dries in drought years but which, in years of decent rainfall, is a very rich source of fish. In general, agriculture dominates, and is practised by the large smallholder majority as well as by a number of small to medium sized estates. The latter grow flue-cured and burley tobacco as their principal crops though some also grow maize, other food crops, tree crops, and spices. The principal crops for smallholders are maize, root crops, legumes, rice (in the wetlands), and a wide range of vegetables, as well as tobacco (mostly burley with a little dark-fired) as the most valuable key cash crop. As in most of the country (and indeed, much of Africa), rural families depend heavily but not solely on agriculture, drawing income from off-farm sources of temporary waged jobs and from migrant remittances from family members working elsewhere.

Although land occupied and used by smallholder families is legally under customary tenure (as contrasted with private freehold or leasehold land and public land), in crowded areas such as those where the research took place, the existing situation more resembles what I’ve called family tenure (Peters 1997, 2002). In Zomba district, people practise matrilineal inheritance and succession (through the mothers) and matrilocal residence (where the husband moves to his wife’s village). One consequence of this situation (and one that distinguishes this area from many others in Malawi) is that most women are working land belonging to their own matrilineal group and most men are using land belonging to their wives.

This was shown in my research data for 1986, 1990, and 1997, collected from households in a longitudinal study. It is also how people describe their practices if asked about how land is transferred: they say “our daughters inherit land and our sons have to leave – they get land from their wives’ family”. In the few cases where a man is using land belonging to his own matrilineage, the reasons include that he is young or between marriages and thus considered to be needing ‘help’ until he marries and obtains land from his wife’s family; and/or that his matrilineal group has ample land relative to the ‘daughters’ (female matrilineal heirs) claiming the land. Over the years, I have found that in most of these cases, tension builds and finally the men are forced to give up their matrilineal land and move to their wives’ villages or elsewhere. Because a high proportion of marriages take place between people from the same district, often neighboring villages, distances between spouses’ natal homes/lands are often quite small.

In light of these findings, the aim of the land policy to shift inheritance from the lineal patterns to bilateral, that is, for all children irrespective of gender to inherit, will have the effect of dispossessing women of their land rights in the matrilin eal-matrilocal areas, such as that described here.

Virtually all people in the area are well aware of the general shortage of arable land and the competition over the available land. One indication of the latter is that most of the disputes recorded within matrilineal groups as well as between them in the villages turn on land. I have discussed this in detail elsewhere (1997, 2002), but the upshot is that there is net migration out of the area, with
sections of matrilineal families leaving in every generation. The disputes over land appear to be associated with deepening splits within matrilineages: in earlier generations, anthropologists (Marwick and Clyde Mitchell) described the major splits as between mother’s sister’s daughters (and their brothers) whereas my family histories show increasing splits between sister’s daughters.

Another indication of competition over land is the spread of practices of renting land, and of increases in the rents charged. There is, and probably long has been, quite a lot of borrowing of land by relatives and by friends. Such loans are almost always for a season at a time and without direct payment although small ‘gifts’ such as a small amount of a crop may be given after harvest. More often, these loans are parts of a wider and deeper set of relations between families such as helping each other in times of seasonal pressure such as harvesting, or of crisis such as a family illness. Increasingly, however, such transfers of land for a season are taking the form of renting. Some actually use the term rent (rendered in a Chinyanja-ized English as ‘renti’ or ‘lenti’), others use the Chinyanja term that means borrow and lend. The passing of money sometimes helps to clarify the usage. A more robust indication is that the amount of money being exchanged for transfers of land, whether these are referred to as ‘borrowing’ or ‘renting’, has been steadily increasing since 1986. The highest payments are for the valuable irrigated land – the streambank or wetland gardens, known as dimba – which are used for growing vegetables and maize for sale in the dry season and, since the early 1990s when smallholders were allowed to grow burley tobacco, used for the tobacco nurseries set up in September-October.

In the situation described here, where all arable land is under cultivation, the role of the village or higher level chiefs (all called amfumu in Chinyanja) is no longer or only rarely that of ‘allocator’ as stipulated in the conventional description of ‘customary’ tenure. In the few cases where fields are re-allocated, the user has left the village and there are no claimants on the fields. Most often, the village chief helps to resolve disputes over land within and between families. Over the past few decades, some of the chiefs, being asked for fields by newly formed households, claim back any fields that appear to be unused by existing holders. One recent example came to my attention in August 2005. A man who is in the top group of landholding size in my sample, told me that one of his fields had been confiscated by the chief because it was not being cultivated. The reason was that the man had been ill and had not been able to work it himself or arrange for workers to do so. He said the chief had reallocated it to someone else in the village who needed a field.

There are also examples of more self-interested acts by chiefs. In 2005, I was told by an elderly woman that her daughter and her family had had to leave the village a few years back, and that some of the fields had been taken by the village head, leaving the rest for the speaker and one of her grand-daughters (and the latter’s husband and young child). The chief required the family to leave because one of the sons (the speaker’s grandson) was a thief who, despite repeated warnings, continued to steal from villagers. They complained to the chief who finally decided to evict the entire family – they went to the husband’s village (presumably, though I have not yet been able to follow
them, his family has enough land for them).\(^3\) When I asked the old lady what the chief did with the confiscated fields, she gave a sigh and said he gave them to some of his own relatives.

In short, although the ‘customary’ norms of chief as ‘trustee’ and allocator of land remain in these relatively unusual instances, most of the time, fields are passed on through matrilineal inheritance, and the chief’s role is as judge or arbiter in dispute cases.

In other areas of Malawi where land is more plentiful (relatively speaking), chiefs have more land to allocate. Hence, some of the net migration out of my research area is of people who move to districts to the north seeking land. In most cases, they have a contact, either family or friend, in the area they move to and where they receive land from a chief. Some of this is given free, in exchange only for the recipients becoming ‘subjects’ of the chief and listed on the village tax register. Some chiefs, however, ask for money in exchange, and some are gossiped about as becoming ‘sellers’ of land. Evidence on the actual transfers is still hard to come by, most remaining in the shadowy world of gossip, with little rigorous and published research. Some evidence emerged from the research recently completed on small-scale irrigation in the Chilwa Basin.\(^4\)

As I explained above, Zomba district’s agricultural land is almost entirely under permanent cultivation. There is no woodland except around graveyards, along parts of rivers, and in some of the private estates, and the hills have long been stripped of vegetation. The dominant tree across the district is the mango with some blue gums and a few other fruit and flowering trees. Since the oldest residents of 1986 told me that they remember the eastern part of the research area as full of bush and trees when they were youngsters, an area that had not been cultivated and where game was hunted up to the late 1940s, the taming of the land and elimination of game had taken place over about 50 years. The newest type of land that has come under intensifying use and where research revealed increasing competition and conflict is the wetlands.

**Wetlands and irrigable lands\(^5\)**

In a region where there is only one rainfall season per year (and that subject to periodic failure of rains), agriculture is very vulnerable to climatic variability. Thus, irrigable land along streams and in seasonally wet areas has long been valued, and historians have documented the use of *dimba*, gardens cultivated in such lands, since at least the early 19\(^{th}\) century. These have become ever more valuable, for the reasons listed above. Up until about ten to twenty years ago, however, the large area of true wetlands surrounding Lake Chilwa was used only for seasonal grazing of livestock as well as catching birds and small animals. This has now changed.

Past research by biologists and others in the Chilwa Basin documenting land use change has shown a net increase in cultivation, including a conversion of wetlands to rice production, and in

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\(^3\) The son ended up in jail.

\(^4\) See note 2.

\(^5\) Information in the following sections comes mostly from the 2001-04 study on small-scale irrigation (note 2).
Despite tree planting associated with settlement, there has been a net loss in woods and wetlands. Like all other wetland areas of the country, livestock numbers have been decreasing (Jamu et al and, FAO 1996). The research on small-scale irrigation over the past three years in the Chilwa Basin has revealed intensification in use of stream-bank and wetland areas and a related increase in competition, and some conflict, over their control and use. Two dimensions of this situation are the rising value in the use of watered areas, and increasing numbers of people seeking to gain access to them, an increase due not only to population growth typical of the country but also to in-migration.

The main reasons for the recognition of increased value in the watered areas are the following. First, while watered land has long been recognized as an important strategy to improve family food security and income, it has gained even more value in people’s eyes in the wake of the droughts and floods in the past two decades. Secondly, the irrigation schemes established mainly in the 1970s significantly boosted rice production, revealing the attractions of the crop as food and cash crop. Thirdly, there has been an increasing response to the demand for foodstuffs by urban and peri-urban consumers as well as by buyers in local markets that is concomitant with an increasing diversification in family income strategies. Fourthly, several significant changes in policy direction have intensified interest in and concern over the valuable watered lands. These include, in particular, the growing conviction among government, donors, and NGOs about the appropriateness of small-scale irrigation as a direction for development, and the recent shift in government policy to hand over the smallholder irrigation schemes to farmers. These, along with public discussion about the new land policy as well as the continuing influence of multi-party politics, have served to generate and intensify competing claims over land and water.

The distribution of watered gardens is a product of several interacting processes – ecological and climatic, historical patterns of settlement, and current political and policy initiatives. The ecology of an area obviously has a determining role in the availability of watered areas. Villages settled along rivers and streams have a higher proportion of people with watered gardens than others. Similarly, villages settled in or near flood plains of lakes and rivers, or in low-lying land that becomes flooded in the rains, have more access to these gardens. Chilwa Basin is fairly well supplied with rivers, some of them perennial, and with wetlands in the lower-lying areas of rivers and around the lake itself, where the study sites are concentrated. On the other hand, the stony and eroded nature of river banks along parts of the rivers’ length make gardens infeasible, and villages further away from the watered areas have lower proportions of their populations with access to watered plots. In the upland areas of the Basin, the proportion of farmers with stream-bank gardens is much lower.

The research findings also remind us that ecological conditions are not given for all time. Oral histories described how the massive floods along the Likangala in 1949 broadened the river bed, tore

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6 The following paragraphs derive from a final report written by me on Informal Irrigation in Lake Chilwa Basin: Stream-bank and Wetland Gardens, summarizing research undertaken under the project mentioned in note 2.

down banks, and washed away dryland fields that had stretched to the rivers. After the floods abated, people discovered that soil had been spread over large areas abutting the river, so creating the possibility for stream-bank gardens. While there have not been such severe floods since then, the periodic rise of the rivers in seasons of heavy rainfall often realign stream-bank garden boundaries. Usually, as we were told, people from one village ‘follow’ their gardens to the other side of the river where the floods ended placing them. In many other instances, neighboring garden owners negotiate over garden boundaries reconstructed after floods. One result is that people do not necessarily have stream-bank gardens in the area controlled by their own village.

A second influence on who has access to watered areas is the historical pattern of settlement. There is a distinct pattern in the villages studied of long-term settlers and relatives of the village head’s lineage being more likely to have stream-bank gardens than others. This has also been found, though to a lesser extent, in studies in neighboring areas in Zomba (Peters) and Chiradzulu (Ngwira). The villages in the Chilwa Basin were settled by groups of Yao and Nyanja, some of them crossing Lake Chilwa from then Portuguese East Africa, and by Lomwe, all of whom came from the latter country. Most of the Ngoni who swept into the area from South Africa in the latter part of the nineteenth century, and who are recorded in village histories as causing mayhem, moved north. The village headships and chiefships are also divided among the three former groups, reflecting a history of considerable mobility of people for reasons of political divisions and war, resettlement for cultivation or trade, and in response to colonial rule.

These ecological and historical processes interact with more recent influences on the distribution of access to watered land. These include the establishment of formal irrigation schemes from the 1960s and ‘70s, which took land from individual families under the ‘customary’ tenure of village heads and higher level chiefs, though in most cases with compensation in the forms of money, allocation of scheme plots, and/or of other land on which to cultivate and build houses. Another influence derives from the attraction of Lake Chilwa for fishing and fish-trading, which appear to have increased steadily over the past fifty years, albeit fluctuating according to the level of the lake, which periodically dries up. This attraction is not just for those already living in the vicinity but also for people from as far away as the Lower Shire and Central Regions. Oral histories specifically identify the influx of people coming to fish and trade in fish, but who then marry and/or decide to settle in the area as another source of demand for watered land. In addition, the increasing value of such land has been a major driver for people to seek access either through asking village heads and chiefs or through renting from existing owners. People in the study villages report increases in both the incidence and the rates of rent over the past years, a phenomenon also documented in my own study along the Thondwe river. It is in the context of these more recent trends that the ability to pay is becoming as common a cause of access to watered land as ecological circumstance or historical settlement patterns.

Farmers using stream-bank gardens are unanimous in their opinions that these constitute the major source of cash income to their families, as well as contributing towards the family food supply.
The main reason for this importance is that the watered gardens enable people to grow crops in the dry season when sources of food, especially vegetables (used as accompaniment, *ndiwo*, to maize or other staples), are scarce and when, most significantly, prices for fresh produce are at their highest during the year. This is the reason for the constant refrain that stream-bank gardens are the main source of cash income for most people of the area. The main crops grown during the dry season in these gardens are sweet potatoes, tomatoes, water melons, maize to be sold ‘green’ (fresh) by the cob, pumpkins (whose leaves, *nkhwani*, are one of the most common accompaniments to the staple maize), and a wide range of vegetables such as onions, cabbage, eggplant, green leafy vegetables, and so on. A few respondents also said they used the gardens as nurseries for burley tobacco, a practice much more widespread in the upland areas of the Basin.

There is some variation in the relative importance of stream-bank gardens in supplying home food and cash income, however. The two main influences revealed by the research are ecological and weather conditions, and the winter TIP (Targeted Inputs Program) distribution. The farmers who put most emphasis on the ability to grow maize for home consumption in their stream-bank gardens were those who live in the areas downstream of the major rivers and along the floodplain of the lake. These reported that, in years of heavy rainfall, even their upland fields often become water-logged, thus reducing their maize harvest. In this case, the stream-bank gardens are useful for producing maize in the dry season, as well as for the production of rice in both rainy and dry seasons (depending on water availability). Many rice producers use some of their rice to exchange for maize, bag for bag, since maize is the preferred staple. This pattern of growing maize in stream-bank gardens for home consumption has been boosted, too, by the distribution of the winter TIP packages, especially in those areas just mentioned. In most years, however, allocation of these valuable sites for growing maize for home consumption, which requires letting the maize dry on the stalk, is not the most profitable use, and farmers normally prefer to grow higher-value crops (including selling maize as ‘green’ or fresh cobs), using the income generated to obtain household maize.

While most stream-bank gardens along the Likangala river appear to be family property, with village chiefs and their matrilineal relatives owning more than other villagers, a minority of village chiefs who have control over larger areas of stream-bank reportedly run a type of rental business in the gardens. Apart from such instances of a degree of monopoly, conflict derives more frequently from the classic ‘upstream-downstream’ competition in access and use of water in the Chilwa Basin. The main competitors over the use of river-flows for cultivation are stream-bank gardens, wetland gardens, irrigation schemes, and private estates. These are also listed in order of the numbers of people involved though not in the relative draw-down of water from the rivers, which is more difficult to assess. In addition to use of water for cultivation, other uses include excavation of sand and gravel from the river-beds, consumption by animals, drawing water for brick-making, household needs (bathing, washing clothes, food processing and cooking, some drinking), and fishing. Excavation of sand and gravel is done both by ‘locals’ who sell these to builders, many of them urban-based, and by
the latter themselves. Nearer the lake, the use of seasonally flooded grasslands for grazing cattle and goats becomes a more common competitor with cultivation and fishing, although, as noted, grazing has decreased over the years as cultivation has increased.

Most pressure on the rivers and streams comes from the mounting demand for watered lands for cultivation. While stream-bank gardens (*dimba*) have long been valuable to farmers, all evidence suggests that their value has increased over the past thirty years, and appears to have accelerated in value over the past decade. This is reflected in a mounting demand from farmers for access to such gardens. Similarly, the demand for cultivation plots in wetlands (*dambo*) has sharply increased over the past decade. Causes of the increased demand for watered land include: the increase in population and, with it, a decline in the average amount of cultivable land available to families; the attraction of watered lands and their ability to provide double (or more) harvests for both food security and cash income; the influence of the irrigation schemes with their intensification of rice production, showing non-scheme farmers the attractions of rice production (especially with the improved varieties and methods) for both food supply and cash sales; the specific clearing and tilling of wetlands downstream of the irrigation schemes by the implementers in the 1970s as a means of extending the capacity for rice production to farmers outside the scheme; and the option provided by the high value of watered gardens of owners being able to rent them out, a tendency that has increased in past years, along with an increase in levels of rents.

In addition to these localized uses, there is the use of water further upstream by Zomba town and its expanding peri-urban areas, as well as the negative downstream effects of high levels of pollution from several urban sources. There is also the environmental ‘need’ for water in terms of the health and diversity of ecological systems (GOM 2000a). Most over conflict, however, occurs among localized users, namely, the users of stream-bank and wetland gardens (*dimba*) and plot-holders in the irrigation schemes, and occasionally with the privately owned estates.

**Competition and conflict over water and watered land**

In the upland areas, which have been in use for generations and in permanent cultivation for over fifty years, most streambank gardens are, as described above, in the hands of matrilineal families and are transferred within the family. The increasing competition over the gardens has led to more of them being rented out and their rents increasing since at least the early 1990s. The wetlands, which are concentrated in the floodplains of Lake Chilwa, where the rivers flow into the lake, have come more recently under cultivation and their use is one source of more severe conflict. A second source derives from the government plan to hand over the formal irrigation schemes to the plot-holders.

As more people have sought plots in the wetlands for cultivation, particularly for rice though also for maize and vegetables, several consequences can be seen. The first is conflict between claimants who are being distinguished as ‘strangers’ or ‘latecomers’ (*obwera*, literally, those who have come) and those claiming status as ‘locals’ and first settlers/owners. People have long moved into the
Chilwa Basin for fishing, small game hunting, and cattle grazing. Some of these have married into those already resident (recall that this area is matrilocal), and some, already married and with a family they wish to settle, have managed in the past to obtain land for cultivation from chiefs. The formation of the irrigation schemes also attracted people looking to cultivate rice to come to the area. As already described, the increasing uses and rising value of the wetlands have produced competition and conflict. The tendency for these conflicts to be described as between ‘local residents’ and ‘strangers’ appears to be fairly new and, as in other parts of Africa, carries the danger of overt conflict. A particular twist in the Chilwa case is that in some of the cases of dispute over specific pieces of land, some of those said to be ‘newcomers’ are also described – in what is considered a great insult -- as ‘serfs’ (akopolo) since they are said to descend from people who were taken captive in small-scale wars, or given as pawns or sold into slavery by their own people.

Another, and related, source of conflict emerges from the ways in which chiefs treat wetlands and their allocation for gardens. Unlike the Likangala stream-bank gardens sample described above, where many of the garden owners were related to the village headmen, in the wetlands sample, less than a third were so related in the wetlands sample. This difference derives from two facts: first, wetlands, earlier used for grazing, have been converted to cultivation more recently than stream-bank gardens, and second, to the pattern of village headmen and superior chiefs allocating them to non-villagers. The second is related to the first in that the norms of customary tenure – concerning chiefs as trustees of land on behalf of their subjects – are much weaker over wetlands that in the past have been more akin to commons. The sampled wetland plot users were found to consist of those who had inherited plots from their matrilineal elders (sixty percent), and those who had received plots directly from a chief (forty percent). Quite unlike the situation with dryland fields or the stream-bank fields described above, some of the wetland plots were held on the basis of various conditions, especially that of giving the allocating chiefs annual ‘thanks’ or tribute. It was found that 44% of the sample had to pay tribute. Of those who had inherited the plot from their family, only 19% had to pay tribute compared with fully 82% of those whose plots had been allocated to them by chiefs.

The obligation to pay tribute, a word translating the Chinyanja word chothokoza, literally ‘thanks’, appears to be a modern version of an older tradition. In the past, those allocated plots by a village head or other chief would give a chicken and/or brew beer as a token of thanks. Today, in the densely populated Highlands area, this traditional token has long disappeared from the use of drylands and stream-bank gardens, almost all of which are inherited within families. Its use by the chiefs allocating wetlands plots against an annual payment has a very different connotation from the past token of respect and ‘thanks’. The payment to the allocating chiefs is almost always in the form of a bag of rice per plot since the plots are overwhelmingly used for growing that crop. The chiefs normally have a ‘committee’ of men, drawn from their advisers, relatives and friends, who collect the

8 Conducted as part of a doctoral research project and described in a pre-dissertation report by Daimon Kambewa (2004).
payments; they receive portions of the collected rice and, less often admitted, some is given to higher-level chiefs. In addition to these ‘thanks’ paid in rice, some respondents said that urban dwellers with access to cash (usually as wage or salary earners) often paid ‘up-front’ in cash to gain access to these plots. So far, we have far less information on these than on the local farmers’ payments of rice.

Are these payments indicative of a ‘rental market’ in wetland plots? In some ways, they resemble market rents. The payments appear to have increased over the past couple of decades as the value of plots has increased, reflecting the small ‘supply’ of plots relative to the ‘demand’ for them from both local residents and town dwellers. On the other hand, they are still referred to by many as payment of ‘thanks’ rather than a ‘rent’; some of the chiefs allow their relatives and close allies/friends to have plots without payment, and may also waive the payment for a user who becomes sick or suffers some family crisis. For others, however, these payments more resemble rents, albeit with the special modifications mentioned, than they do a token ‘thanks’ to the chief. Moreover, some chiefs denounce their peers for exacting payments, even in the name of ‘thanks’, arguing that to act so in the name of chieftaincy is an illegal act that goes against the role of chief as ‘guardian’. Yet even that stance is not clearcut. Some other chiefs told the researchers that, observing some of their peers gaining an income from exacting payments for wetland plots, especially in light of what they consider to be meagre allowances and salaries given them by government, they are considering starting such a practice.

In turn, this situation is profoundly affected by the current programs of ‘handing over’ the formal irrigation schemes to farmers, as well as by the discussions about the impending new land policy. I turn to these now.

As noted above, government managed the formal irrigation schemes in the Chilwa basin. Under the former regime of Dr Banda, who ruled the country from independence to the early 1990s, the schemes were described as being for ‘settlement’ and for training. Members of the Malawi Young Pioneers, a youth brigade of the then ruling party, Malawi Congress Party, were placed in the schemes, along with local residents who received plots as part of the ‘compensation’ of the government taking over customary land. These Pioneers acted as police to the scheme administration (managed by the Ministry of Agriculture) so that rules of planting times, crop choices, and water management were ruthlessly sanctioned. The coming of ‘democracy’ and ‘multi-party’ politics entailed the disbanding of the MYP (with some violence at first), and a broader breakdown in institutional and administrative systems. The irrigation schemes are an example. The schemes also suffered from a withdrawal of government resources and, through the 1990s, a decline in the overall national economy. The outcomes have been a deterioration of the irrigation infrastructure (canals, etc) and the failure of remaining authorities to be able to enforce rules. The schemes do vary; one of the

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9 The best-known examples are the failure of the farmer credit schemes, and the massive escalation in deforestation as the forestry department and other authorities have not had the resources or the will to enforce laws on the books.
schemes researched was riven with conflict among farmers because of the failure of some to follow rules of planting, opening and closing of water canals, etc. The other scheme had done better and still ran as a single scheme even though there was considerable inequality of distribution of plots and authority within the scheme.

It is in this context, that the government has decided, with the help of aid donors, to hand over the schemes to be managed by farmers. The rationales include one of privatization as well as of decentralized control. This is a complex story but here I concentrate on what the research found in respect of the land on which the schemes are set.

There are longstanding sources of conflict between farmers on the irrigation schemes and those surrounding the schemes. Most concern the movement of water: in dry years, the increased uptake of water in the schemes has led to complaints from non-scheme farmers depending on the flow of rivers coming out of the schemes for the use of their streambank gardens; and in reverse, in very wet years, the non-scheme farmers often find their gardens flooded by the scheme’s letting out more water than normal and usually without warning. As the government plans to hand over the schemes to the scheme farmers became known, however, conflict emerged over land.

As noted earlier, the schemes were originally established on land taken out of customary tenure and given to government. In the new policy of handover, the status of the land has become unclear and contested. Officials in the central ministries say that the land is to remain under the ownership of the government and the farmers’ associations (or ‘water user associations’) to be set up as part of the handover, will receive a lease for the scheme land. The research found, however, that many local government officials, scheme managers, and many farmers did not know this. Many farmers said they thought the land was going to revert to customary land, and some understood this as meaning that the plots would become their own (equivalent to the family property typical of the area, though formally under customary tenure). A smaller number thought the land would remain government’s, and even fewer said the new farmers’ associations would be the owner.

The responses from local chiefs were also varied but they had more immediate effect. Some chiefs of the surrounding villages insist that the land does not belong to government but to themselves -- the chiefs, and they have the right to allocate it as they see fit. One of the earliest indications of this was that, when the announcement was made that the schemes were to be ‘handed over’ to the plot users, one or two of the chiefs whose villages surround the schemes evicted users who were not members of their villages and reallocated the plots to their own villagers. The disputes resulting from these actions brought to the fore the kinds of differences in claims being made over the irrigation schemes.

One dimension echoes that of the conflicts emerging in the wetlands, namely, between locals and newcomers. “One of the most contentious debates relates to who will have rights to access plots in the schemes after handover. Is it people from surrounding villages, any person from Zomba or Machinga Districts, or any citizen of Malawi?” (Ferguson and Mulwafu, 2004: 10). The chiefs who
wish to reclaim the land of the irrigation schemes on the basis of its having been expropriated for the original settlement of the schemes do so partly in the name of ‘traditional’ claims but also in the name of ‘democracy’. Much of the political rhetoric that led to the fall of the Banda regime and to the coming of ‘multiparty’ politics is precisely in the name of ‘democracy’, ‘citizens’ rights’, and similar notions. Yet exactly the same ideas are taken as justifications by some of the scheme farmers to reject the stance of the chiefs who are trying to reassert their rights over the scheme land. Some say that the chiefs do not own the land but are trustees, and that the plots should belong to those who have cultivated them for years. Some say that the government owns the land but is lending it to the farmers on the scheme and chiefs should not be involved at all. Others, echoing the official government view, say that the land should belong to the new (to be formed) associations of users of the scheme plots.

Attempts by the local representatives of the Ministry of Agriculture, who still exercise authority over the schemes until the handover is completed, to have the situation of relative rights over land clarified and resolved by the senior chiefs (Traditional Authorities) and by the District Commissioners have failed. This is because the ‘rights’ of the cases are far from clear, and so produce differing interpretations, and because of political alliances and divisions among all involved.

In turn, this situation has been exacerbated by the discussions of the new land policy. 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” (2.42 and 4.18.2), and stresses that, “[h]olding land in trust for citizens does not make a Headperson, Chief, or any public official the owner of the land” (section 4.3.1). 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) will be elected in accordance with tradition to serve as members.” In addition, each district will have a Traditional Land Clerk “trained in land tenure issues and competent in basic map preparation … to maintain a record of land transactions occurring within the TA [Traditional Authority’s area]” (section 5.11).

Despite the fact that there has been clear recognition of many problems with ‘customary’ tenure, the policy remains at some remove from the actual practices around land revealed by the research. First, the role of the chiefs (from headmen to ‘traditional authority’) is more complex and contested than imagined. The situation is not merely one of illegal acts but one where such acts are entangled in struggles over legitimate authority over land. Research reveals different categories of the population drawing on elements of the ‘ideal’ image of customary tenure such as notions of trusteeship and entitlement based on family and locality, as well as on more commercial or market ideas. The issue is not simply that “fraudulent disposal … may deprive some holders of the right to land” but that, in a context where there is not enough (usable) land for everyone to have a viable amount, the social conflicts are over whose claims have priority over particular areas. Moreover,
policy shifts – particularly the handover of irrigation schemes to farmers, decentralization of government, the new land policy itself – have intensified competition over valuable lands and have provided new or reinvigorated rationales for supporting claims, particularly that of locality. The claims of ‘ancestral’ or clan land vie with those of citizenship, and people who moved to areas to take up new opportunities, often decades ago, find themselves (or their descendants) defined as strangers by those claiming more ancient local ties. Village headmen and chiefs also draw on ancestral ties in their claims over land but some also act as business entrepreneurs in renting out plots in the wetlands.

The implications for the reforms envisaged by the land policy are that the chiefs, at all levels, should not be seen as ‘neutral’ figures. While some may be able to maintain that stance, many are too embroiled in disputes over land with their own ‘subjects’ and those of other chiefs. Some too, as we saw, are involved in making a business out of their role as ‘trustee’ of land. In this case, to put the chiefs as chairpersons of the new land allocation committees seems misconceived. While the longstanding respect accorded to the role of chief (even if not always to the specific holders of the roles) suggests they should definitely be members of the new committees, it would be wiser not to give them even greater authority over decisions than they do today. In some earlier versions, the policy provided for the TA to be an ex officio member of the new land administration committee, but in its most recent form, it specifies that the TA be chairperson. The debate generated by the new land policy has led to an enormous amount of politicking around land and authority over land at all levels of society, including strong opposition by the most senior and vocal chiefs in the country against any perceived modification in their authority over land. For now, they seem to have won.

A second issue concerns the streambank gardens that are so valuable. The land policy documents do not distinguish that type of land from upland or dryland, which forms the majority of customary landholdings. Yet the increasing value of these lands means that the claims over them are particularly fraught. This omission is a particular challenge for the policy’s hope for more equitable distribution of land. A similar problem exists with reference to wetland gardens. The policy makes a few references to wetlands (dambo) that assume them to be “common access” or “public” land within the overall category of “customary” tenure. It states in the Summary (A3) and in section 4.2.4:

“In the case of customary land managed by Traditional Authorities, common access land reserved as dambos, community woodlots, etc, will be classified as public land exclusive to members of the Traditional Authority only …Within a Traditional Authority, the community’s public land will include all land within the boundaries of the TA not allocated exclusively to any group, individual or family. This designation applies in particularly to dambos, dry season communal grazing areas, etc. Such common access or unallocated customary land reserved for community woodlots are regarded as public only to members of that community and will be protected.”

Colloque international “Les frontières de la question foncière – At the frontier of land issues”, Montpellier, 2006
In turn, this assumption leads to the policy providing an option for privatizing wetlands by a group: “Any grouping of families and individuals living in a locality or having customary land rights in a defined area that seeks to protect their common property interest or ‘dambo’ shall be recognized and legally protected as common property” (section 5.6.1d).

The assumption here is that wetlands remain unallocated and are treated as common or public land for members of ‘community’, defined as residents in the area under a Traditional Authority. The premise is that the TA acts as trustee of such “common” lands. In fact, the situation in the wetlands, at least as found in the Chilwa Basin, is highly variable. In some areas, wetlands are treated in much the way other village lands are, namely, that village chiefs allocate plots to resident families, so resembling ‘common property’. In other areas, however, chiefs allocate plots (to both their own ‘subjects’ and outsiders) in return for a payment. As discussed above, this is a trend that is likely to increase in view of the other disputes over land in irrigation schemes and more broadly. Thus, rather than the policy’s assumption that, in the case of competing ‘interests’ in an area of wetlands (or other ‘common’ lands), “all existing rights and encumbrances” can be incorporated, the reality more often is that there are incompatibilities among existing uses and rights that will need far more detailed analysis and action than mere ‘demarcation’.

A final problem with the land policy is that there is no coordination or even mutual referencing between it and the new policies on water and irrigation, all of which affect the ways in which people gain access to and rights over different types of land and landed resources. Similarly, there is a lack of discussion of the interaction between the new land policy and that on decentralization. All of these affect how people interpret and act in relation to the promulgation of these new policies. As I have discussed above, these various policy initiatives have raised old tensions as well as created new ones, have led to people casting competition in terms that emphasise locality versus in-migration, even when the migration took place generations ago, and overall have sharpened and deepened tensions and conflict over land.
REFERENCES


