

**A HISTORY OF DIMINISHING RETURNS:
THE PARADOX OF WOMEN'S CUSTOMARY LAND RIGHTS IN SMALL
SCALE IRRIGATION SCHEME REFORMS IN MATRILINEAL SOCIETIES
IN SOUTHERN MALAWI**

Abstract

This dissertation examines how, through Malawi's uncritical implementation of 2 major international irrigation projects (supported at different times by both the West and the East), local and international patriarchal interests have merged (inadvertently or otherwise) and are destroying a vital part of the fabric of the country's customary life. That delicate fabric is held together by the special stewardship of women over land, successfully managed by them for centuries in matrilineal societies, Malawi's most common form of customary family life. Based on a wide range of data collected using several interactive gender-focused methodologies (especially the Women's Law Approach) the writer exposes the male bias inherent in 'man'-made Human Rights law (contained in various HR instruments some of which are binding on Malawi) which is blind to and destructive of women's matrilineal customary law land rights.

She finally suggests urgent legal and other reforms to restore Malawian women to their rightful place at the heart of their communities in order to prevent their country's continued slide into enslavement by international forces.

BY

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Dedication

To my late father John Bartholomew Mchaju Liwewe for believing in my ability to excel and nurturing my assertive empowered character. I know you would have loved to discuss my findings and helped shape my argument. You are greatly missed.

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List of Acronyms and Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
GDP	Gross Domestic Product
HIPC	Highly Indebted Poor Countries
IRLADP	Irrigation Rural Livelihood Agricultural Development Program
MYP	Malawi Young Pioneer
NGO	Non-Governmental Organisations
SAPs	Structural Adjustment Programmes
SASFs	Semi-autonomous Social Fields
Women's Protocol	Protocol to the African Charter on Human and Peoples Rights on the Rights of Women

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Human Rights Instruments

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979

Declaration on the Right to Development

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
2003

CEDAW/C/MWI/CO/5 Committee on the Elimination of Discrimination against Women 35th
Session of 15th May-2 June 2006 Concluding comments of the Committee on the Elimination of
Discrimination against Women: Malawi ADVANCED UNEDITED VERSION 2 June 2006,

National Legislation

Constitution of Malawi 2004

The Land Act 1965 Cap 57:01 of the Laws of Malawi

Customary Land Development Act 1967

Irrigation Act 2001

National Policies

National Gender Policy 2000

National Land Policy 2002

National Agriculture and Irrigation Policy 2000

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Preamble

This dissertation presents my initial steps in coming to terms with my short comings both at a professional and personal level, in understanding the matrilineal customary women's rights in the context of law. I describe it as a professional journey into the inner struggles I have endured during my 15 years work as a Gender Advisor to various international and national organisations on how to express and manage gender equality among the matrilineal communities. A memorable experience was when I participated in reviewing the Wills and Inheritance Act in Malawi and the issue of whether it would not be discrimination not to allow a husband to inherit his deceased wife's land in a uxori-local marriage. I had a "gut" feeling that the application of 'the gender equality clause' was problematic in this setting but did not have the conceptual base and tools to express the issue. Secondly, as a woman who comes from a matrilineal society, I needed to understand at a personal level the rights to women that my social heritage provides.

I had no idea that the study I was embarking on for my dissertation would address both of these conceptual gaps in my life. My initial intention was merely to interrogate the irrigation reform process using the women's human rights instruments and show case how matrilineal customary rights of women could be protected by both CEDAW and the Women's Protocol. I was amazed to discover that there was a theoretical gap in these human rights instruments that needed to be explored. My initial reaction was frustration because once more, I found myself in a situation where the only hope for harnessing matrilineal women's rights, namely, the international, regional and national legal provisions do not recognize their existence because customs and traditions have been branded as negative to women. Once more the matrilineal women's rights had no basis of protection rendering, so it seemed, women in these communities vulnerable to losing what custom provides for them.

I agonised over it for a long time not knowing what to do. I became obsessed by it and it clouded my preparations to my preliminary research findings presentations. I questioned my supervisor Professor Stewart as to whether my critique of the applicability of the 'equality clause' to matrilineal women's land rights made sense. It was only when she affirmed its validity that, I took the courage to express the dilemma I was facing in my preliminary research findings presentation. The positive reactions of Professor Anne Hellum (of the Institute of Women's Law, University of Oslo) and Dr. Ngeyi Kanyongolo who is a Malawian and of matrilineal heritage (a lecturer in the Faculty of Law, University of Malawi) made me optimistic for the possibility of rectification in the construction of the women's human rights provisions. They both acknowledged the fact that there was indeed a

theoretical gap in the ‘equality clauses’ articulated in the Women’s Convention and the Women’s Protocol as they relate to matrilineal societies and encouraged me to pursue the argument further. This dissertation, therefore is my initial attempt to further explore ‘my aha’ moment both at professional and personal levels.

CHAPTER 1

1.0 THE CONTEXT OF IRRIGATION REFORMS

1.1 Background to the Study

Agriculture is the mainstay of Malawi's economy as it contributes 37% of the Gross Domestic Product (GDP) and more than 90% of foreign exchange. The sector accounts for 64% of the total income and employs over 80% of the rural population (GOM, 2006 cited in Kambewa 2006). The sector is dominated by small holder farmers that engage in both cash crops and subsistence farming on customary land that covers about 70% of national land (Holden *et al* 2006 cited in Peters' *et al* 2007, p.8) most of which is held matrilineally. Men dominate the cash crop sub sector while women dominate the subsistence crop production in addition to providing most of the labour for the cash crop sub sector. The dominant means of production for the sector is rain-fed. However, irrigation farming is increasingly gaining prominence in response to drought, population growth and climatic changes.

To this end, like other countries in Southern Africa, Malawi has revised a number of critical legal provisions and policies which affect rural women and men's land tenure and agricultural production. These include: the 2002 Land Policy, the environmental and agricultural policies, and legislation. In addition to these since 1999 Parliament approved a new Irrigation Act No 16 of 2001, Irrigation Policy 2000 and Water Policy. These reforms will dramatically alter patterns of access to critical land and water resources in a country where the majority of women and men's livelihood is mostly attained through agricultural activities. It is the recognition of the importance of irrigation in the lives of women and men in Malawi and indeed to the development of the country in general that this dissertation examines the impact of failure to undertake a legal and human rights gendered analysis in planning small scale farmer irrigation schemes in Malawi.

This study was inspired by two research reports on irrigation reform in the Lake Chilwa Basin (Ferguson and Mulwafu 2004, Peters 2004) ¹ that looked at Domasi Irrigation scheme in Machinga and Likangala Irrigation Scheme in Zomba whose reform processes were rife with challenges that policy makers had not envisaged. This triggered thoughts of further challenges for women living in

¹ See Ferguson and Mulwafu 2004: Irrigation Reform in Lake Chilwa Basin, Malawi: Exploring Critical Land-Water Intersections and Livelihood Strategies; Pauline Peters 2004: Informal Irrigation in Malawi's Lake Chilwa Basin: Stream-Bank and Wetland Gardens. Final Research Reports of the BASIS CRSP: Project on Institutional Dimensions of Water Policy Reform in Malawi: Addressing Critical Land-Water Intersections in |Broadening Access to Key Factors of Production

the area and participating in the schemes. The mere fact that policy makers did not take into consideration the social dynamics at play in general made me wonder to whether any cognisance was taken of the matrilineal customary land rights of women in the area, which gives them special customary rights to participate in the schemes. This study outlines a history of diminishing returns for women as exemplified in the development of the Likangala Irrigation Scheme in Zomba with additional lessons from Domasi in Machinga district. Furthermore, an examination is conducted of the relevance of the international, regional and national legal provisions in protecting matrilineal women's customary land rights as these legal provisions are premised on the fact that custom always discriminates against women.

1.2 Introduction

State promoted irrigation schemes in Malawi began in the mid 1940s. They were immediate responses to the country's first major drought. The post colonial government improved on them by establishing settlement schemes under World Bank rural development projects that aimed at improving the living standards of the rural poor.

The main objectives of the project were to increase agricultural production, reduce rural poverty, and increase rural people's contribution to the national economy and the development of irrigation schemes was one of the components of this programme (Nkhoma 2005).

The language and order of priorities in the objectives indicate that the technology for increasing production as a means of reducing rural poverty supersedes the importance of regarding the rural people's needs and situations. How women and men would interact with the technology does not seem to be of any consequence. The rural population seem only to be mentioned as a means for increasing contribution to the national economy. Generally you get a sense of people being used for some higher goal which makes their personal needs and welfare invisible to the development planner. Attempts to develop communities without taking cognisance of their social organisation and values are problematic. This is echoed in a 1989 GTZ extension publication which says;

Agricultural development was assumed to be a question of supplying technically effective and economically beneficial innovations which the producers would automatically accept, with at the most a low level of support being required. An observation is made however to the effect that this assumption does not apply in the majority of agricultural producers who are small-holder farmers in the developing countries. The supply of pre-packaged solutions that do not realistically assess the situation on the ground have proved ineffective or has only served to exacerbate the problems *in rural communities*² (Hartmut Albrecht et al, 1989, p.21).

² My emphasis

The development of irrigation schemes in Domasi and Likangala took a similar stance. It was focussed on the technology and what the government sought to achieve and expected the people simply to comply.

Nkhoma (2005) has described the development of the irrigation schemes as an attempt by the state to promote capitalist production in rural areas of the country. The process Nkhoma argues worked towards the displacement of the rural communities from their ancestral land in order to make way for the construction of irrigation schemes. Furthermore, it brought peasants from the lake Chilwa Basin into the production of commercial farming at the expense of food crop production...and concludes that “the development of irrigation schemes brought more harm than good to the societies where they were established”(Nkhoma 2005 p.3). In agreement with Nkhoma, this dissertation concludes that the irrigation schemes placed women in a much worse situation. It did not just alienate them from their ancestral land, but also eroded their customary primary user land rights as provided by the matrilineal lineage. An attempt to redress the situation using human rights principles as espoused in CEDAW and the Women’s Protocol³ proves problematic because the principles of “gender equality” and “non discrimination” do not accommodate the principles of customary rights of women in matrilineal communities.

1.3 Statement of the Problem

Among the key problems that confront development and challenge poverty reduction strategies in Malawi is the fact that government planners do not effectively engage with communities they seek to develop. Customary rights are not taken into account in the formulation of development strategies especially those that give women significant power. There is rigid central planning, with donor driven economic development assumptions that do not match the lived realities of matrilineal communities. The pre-packaged development models tend to bring with them western patrilineal ideologies. The capitalist neo-liberal economic philosophies that inform development concepts have operational mechanisms that are not just problematic in matrilineal social organisations, but also negatively impinge on women’s customary rights. Consequently, uninformed development planning⁴ comes into conflict with the traditions and customs that give women specific rights, such as land rights. In addition, the international and national legal provisions are premised on the fact that culture is negative for women. In the context of Malawian matrilineal societies, however, custom provides

³ Women’s Protocol provision for “living in a positive culture does not clearly provide for defending womens’ significant higher rights in society because the tendency is to assume that culture is negative and problematic.

⁴ It is uninformed both from the matrilineal customary practices as well as from gaining from the community’s social organisational perspective.

significant land rights to women as compared to men. This presents challenges for defending women's rights and creates a dilemma in the application of the legal provisions, especially 'the equality clause', as it reverses the positive customary land rights of women and disempowers them even further.

1.4 Significance of the Study

The concept of matrilineality and its positive customary provisions for women has not been addressed by feminists, let alone law and development theorists. Similarly, international, regional and national legal provisions have also not considered the social formations of matrilineal communities. This study, among other things⁵, focuses on a theoretical perspective of the applicability of the "equality clause" in relation to matrilineal customary land rights provision for women in Malawi. A theoretical gap as a result of failing to take into account the matrilineal paradigm of women's rights has been identified in CEDAW, the Women's Protocol and the Constitution of Malawi. This provides scope for making an argument that these instruments are discriminatory, since matrilineal rights are in effect discriminated against and thus women entitled to those rights are essentially discriminated against. The argument for non-provision for women in matrilineal social organisations within the women's rights discourse is critical. The reason for this is that women in these social organisations are being prejudiced. As a result, this study seeks to contribute to the wider theoretical and academic debate on the universality of women's international and regional instruments in the specific context of regarding their relevance to women who may have more significant rights than men.

1.5 Objectives of the Study

The study seeks to;

Explain that historical and cultural customary land rights of women in matrilineal communities were disrupted by the irrigation development process in southern Malawi, where the social protection of land rights that women traditionally enjoyed continue to be eroded by the introduction of irrigation reforms.

⁵ Which include critiquing development ideologies and their and development planners violation of women's customary land rights.'

Critically analyse the applicability of some components of the international and national law provisions in women's land rights in a matrilineal society.

1.6 Research Assumptions

Four assumptions were made in conducting this research in order to contextualise it and achieve the above objectives.

1.6.1 That the establishment of irrigation schemes in southern Malawi did not take into consideration women's land rights as provided for by customary law.

1.6.2 Lack of recognition of the matrilineal customary rights to land for women in the irrigation scheme reform process indirectly discriminates against women who are meant to benefit from the irrigation scheme.

1.6.3 The operational practice of the Scheme Management Committees (SMCs) and the Water User Associations (WUA's) use patrilineal principles although they are in a matrilineal setting which further diminishes women's customary land rights.

1.6.4 That international, regional and national legal provisions inadequately protect or preserve women's positive customary land rights.

1.7 Research Questions

1.7.1 Did the establishment of irrigation schemes in Southern Malawi take into consideration women's land rights as provided for by customary law?

1.7.2 Are women being discriminated against by the operation of the irrigation schemes which do not recognising their matrilineal customary land rights?

1.7.3 Do the patrilineal operational principles being used by the Scheme and the WUA further diminish women's customary land rights in this matrilineal society?

- 1.7.4 Do the international, regional and national legal provisions adequately preserve and protect matrilineal women's customary land rights?

1.8 Organization of the Dissertation

Chapter two explores the theoretical and methodological perspectives that informed the study. It presents the manner in which the women's law approach in conjunction with grounded theory provided the main research methodology. This is followed by sex and gender analysis which exposed the diminishing customary land rights of women. Next, the human rights approach is analysed for its applicability and it questions the relevance of 'the equality clause' in addressing women's land rights in a matrilineal social organisation. The role of actors and structures and legal pluralism are explored as influencing factors for the diminution of women's customary land rights. In the research design section, an overview of the research sites is given followed by data collection methods which included individual interviews, focus group discussions, and individual profiles of some members of the society. The chapter ends with an assessment of the methodology used and limitations of the study.

Chapter three essentially reviews literature about women's matrilineal rights at custom. It further reviews literature on how women's customary land rights progressively began to diminish. This is followed by a brief discussion on development concepts and their implementation. Lack of meaningful engagement with the rural communities, it is argued, results in poor development strategies which negatively impact on women's rights in matrilineal communities.

Chapter four discusses a theoretical perspective of the applicability of legal provisions to matrilineal women's customary land rights. It interrogates CEDAW, Women's Protocol, and the Constitution of Malawi in that order, followed by a presentation of the Malawi Land Act (1967), and the Land Policy (2002) and National Gender Policy (2000-2005). It discusses the male comparator assumption upon which women's rights are premised as the key anomaly for incorporating women's positive rights. It also presents the situation of women's rights in matrilineal societies as a conundrum. The chapter ends with a question as to whether there exists a possibility for women's rights instruments to accommodate matrilineal customary rights.

Chapter five discusses findings and presents the conclusion and proposes recommendations on how to curb the progressively diminishing land rights of women through a rectification process

that the CEDAW Committee provides for. Suggestions are made as to how professional Malawian women, in collaboration with their sisters in the rural matrilineal communities, may help to develop provisions that would defend and protect women's customarily provided for rights.

CHAPTER TWO

2.0 RESEARCH METHODOLOGIES AND METHODS

2.1 Theoretical Perspectives that directed the Study

This chapter outlines the broad methodological framework used in the study to examine the diminishing land rights of women in Domasi and Likangala irrigation schemes. It first presents two theoretical and methodological perspectives namely, Women's Law Approach and the grounded theory. It outlines sex and gender analysis as the analytical tool that was used to decipher the data. The use of women's human rights instruments as an analytical tool resulted in identifying a theoretical gap in its application to customary rights in matrilineal societies. The discussion provides a basis for an analysis of the need to recognise positive customary rights of women. The chapter continues by exploring the actors and structures and their role in this area of study. Finally, the last sub-sections briefly discuss the research design and data collection methods that were employed such as interviews, focus group discussions and individual profiles.

2.1.1 The Women's Law Approach

This research conducted in order to establish the position of women in matrilineal society and their customary rights to land in Likangala irrigation scheme and Domasi Water User Association. The women's law theory provided the conceptual basis as it regards women as a starting point for analyzing the position of women in law and society and prompts empirical data on lived realities of women (Dahl, 1987). I set out to interrogate the irrigation reform process. I envisioned that gender neutral irrigation policy and reform processes would fail to meet the women's customary land rights in the plot allocations and irrigation development processes and lead to indirect discrimination of women and girls' participation in the scheme and diminish their customary land rights.

The women's law approach helped me to determine the extent to which the government's practice of allocation of irrigation plots impinged upon the traditional land rights of women. This approach was useful in understanding the lived realities of women as they cope with the challenges of participating in the schemes as beneficiaries and their customary duty to provide land not only to daughters but more recently to sons as well. Since empirical research is a critical element of women's law, it provided the starting point for describing the life experiences of women and their life histories which

presented a picture of a progressive erosion of their customary land rights. The narrated lived realities were an essential data gathering tool. I interviewed women and men as well as religious, political and local leaders in the community to explore the impact of the establishment and management of the irrigation scheme on women's customary land rights. Using this empirical data gathering method, the women's law approach, was also used as a strategy for giving women a voice. Through the narration of their experiences as members of the schemes they were able to articulate their own views and give voice to the multiple challenges which they faced as they attempted to manage their lives in a development programme that has given rise to some questionable benefits.

The women's law approach was the chosen methodology because it provided the research framework and analytical tools that helped describe current women's situations in the schemes. It also helped analyse the situations that led the process of revealing the diminishing customary land rights of women in this matrilineal society. In addition, the Women's law approach provided the framework for analyzing development concepts and its assumptions as well as how development is implemented which is true of the irrigation programme in these two schemes. Further, the women's law approach helped to question the efficacy and relevance of two women's human rights instruments namely CEDAW and Women's Protocol and Constitution of Malawi in defending women's matrilineal customary land rights. It also provided the premise for questioning the basic assumption of these legal provisions which is that customs and traditional practices are negative to women. The methodology revealed the gaps that exist in the development agenda, human rights and constitutional provisions as they do not take cognizance of the real life situations of women in matrilineal communities which provide customary land rights to women. All this was possible because the strength of the women's law approach lies with its inherent interaction with data, theory and lived realities of women which recognizes that perceptions and norms are constantly influencing each other (Bentzon, et al, 1998). For example, women's law approach was able to reveal that, from a matrilineal perspective under customary law, women enjoy greater land rights than men. It also revealed that this reality was not recognised in the development of irrigation schemes, when what was proposed was scrutinized from the women's perspective. As a result, the approach has helped contribute to legal science by revealing the fact that women's matrilineal customary rights need to be reflected in the international, regional and national legal provisions so as to be more responsive to positive women's rights at custom in such communities.

2.1.2 Grounded Theory

Grounded theory provided the core methodological framework for the research. The findings presented in chapter five were a result of the theorising that happened throughout the research process. The study started with a pre-visit to the research area to find out empirical sources of the assumptions and to test their efficacy. Because my initial assumptions were merely “sensing devices” (Giddens, 1984 as cited in Bentzon et al 1998, p.178), I started off the research with an open mind. Discussions were held with a focus group of ten people comprising one chief, members of the scheme management committee, women and men participating in the scheme and those with no plots in the scheme or those who had lost their plots through various means. From this first interview, a picture was already emerging of diminishing women’s land rights as more and more irrigation plots were found to belong to men. In this group alone, women had a maximum of two plots of 0.25 of an acre each, while men had a maximum of six plots of the same size. In order to obtain further insights this was followed by discussions with agricultural officers, irrigation officers and previous researchers in the area. This exercise informed the research design. The research plan was fine-tuned based on the preliminary findings and considering the distance involved, three other visits were planned to the scheme. It also informed the development of appropriate methods of data collection as deeper discussions on the historical background and experiences of women and men in this matrilineal community were pertinent to the study. It was only after data was collected from the women and men in the scheme that government policy makers were interviewed to find out their knowledge about what is happening on the ground and also to inform them what the women and men’s opinion of the “development” process was.

Grounded theory enabled me to keep the critical research concepts and questions on women’s customary land rights in matrilineal communities open for internal scrutiny and ongoing re-theorising as new information emerged. Initially my area of study was Likangala irrigation scheme based on the assumption that women are losing out in the participation in the irrigation scheme because the scheme is being run along patrilineal lines, while the community is organized matrilineally. While in the field I discovered that there were other factors at play in addition to the patrilineal ideological management of the scheme. There was rampant corruption within the scheme management committee. Traditional chiefs were grabbing scheme plots which are on government land as they were now claiming ancestral ties to the land⁶. This, I believed, would distort the picture of how women’s land rights are diminishing due to the irrigation scheme as a development programme. This prompted me to go to Domasi Water Users Association because grounded theory,

⁶ This will be fully discussed in the findings.

as an interactive research process, does not bind you to your initial assumptions nor your initial research site, because it is sensitive to the observation of the realities on the ground. I went to Domasi in order to find out whether what was happening in Likangala was also taking place in the Domasi Water User Association. I was prompted to do this since grounded theory allows a researcher to explore the continuous dialogue and interaction between initial theory and the empirical data collected and adjust one's theory accordingly. This was one of the first things about which I informed my supervisor during her supervisory trip. Upon hearing my reasons for including Domasi as my study area, my experienced supervisor first suggested that I retain Likangala as my main area because the events taking place there were in themselves important to women's lived realities as they further exacerbated their diminishing land rights. But after visiting Domasi with her, she suggested that I use lessons from Domasi to expand my findings. Domasi proved to operate on the same conceptual principles as Likangala as will be discussed in my findings. This finding helped to validate my assumptions because, although no plot grabbing is taking place there, women in Domasi are facing realities similar to those faced by women in Likangala.

Grounded theory also provided grounded lived realities that presented the basis for questioning the human rights provisions for positive customary provisions for women. When I began to analyse my data using a gendered human rights approach, I discovered that I could not apply "the equality clause" to address women's land rights in matrilineal social organisations. Grounded theory provided for further interrogation of the understanding of matrilineal customary land rights for women as described by chiefs, men and women which resulted in the redefinition of the research design. Consequently, instead of using 'the equality clause' to defend women's land rights as provided for at custom, the analysis ended up questioning the applicability of the human rights provision of "the equality clause" using the next question technique. Grounded theory, therefore, was also employed as the guiding analysis methodology for the findings. The dialogue between the theoretical generalization of the "equality clause" for example and the lived reality of women in the matrilineal communities led to the identification of a theoretical gap in the Women's Convention and the Women's Protocol. Although these two human rights instruments are dynamic it became apparent that *de jure* discrimination was an issue in the matrilineal women lived realities pertaining to their right to land under customary law. This led to the concept building of the existing lack of accommodation of positive customary rights of women in human rights instruments because the instruments are premised on the assumption that rural women are poor and powerless without engaging with the complexity of their lives in different social and economic contexts. Grounded theory, therefore, provided the premise for proposing a redefinition of human rights principles where women have positive customary rights that need to be recognised and defended.

2.1.3 Sex and Gender Analysis

Sex and gender analysis was used to establish which sex had primary land rights before the scheme was introduced, at the time the scheme was introduced and during the irrigation reform process which was in motion during the research⁷. Sex and gender analysis resulted in a methodological insight that demonstrated that, in matrilineal societies, sex is the basis of women's land rights and it vests in them because of their sex. Women are entitled to land because they are regarded as the root of the family as will be described later in chapter three. Gender dimensions, however, still play out and give rise to disadvantages to which women are forced to submit. From the gender angle, intra-household power relations prescribe that it is expected that married women relinquish their decision making power over their land to husbands. Gender analysis exposed the fact that government modelled irrigation plot management works in favour of men at the expense of women who are the rightful custodians of land rights in the community. Gender analysis also demonstrated that the irrigation scheme is slowly becoming an area of refuge for men who are not happy with matrilineal settlements as determined by custom, but want to be free from its demands as elaborated in chapter three. That men can pick and choose what is good for them was analysed from a gendered perspective and established the emerging patrilineal tendencies which are also being endorsed by the irrigation scheme reforms and general development agenda. Consequently, while physiologically the sex of a woman tends to put her at a disadvantage in relation to a man, matrilineal communities give special rights to women based specifically on their sex. This is an emerging issue that demands further research by Malawian feminists. There is a need to find out whether there are other areas where women are privileged as opposed to men based on their sex before such rights are overtaken by other influences that tend to be introduced by development programmes based on patrilineal ideologies.

2.1.4 The Human Rights Approach

The study initially intended to explore customary land rights of women in matrilineal social organisations. It sought to demonstrate how women's land rights are progressively diminishing due to government developmental policies and programmes using a gendered human rights analytical approach. However, complexities emerged as I became aware of gaps within the human rights framework that do not take cognisance of positive cultural rights of women. This realisation changed

⁷ Government of Malawi intends to shift away from public sector irrigation development and move towards private sector agricultural development and use irrigation as a tool for contributing to poverty reduction. Currently government is in a process of facilitating the rural communities to manage irrigation schemes as Water Users Associations. At the time of this research capacity building had not commenced in Likangala but had been completed in Domasi.

the focus of the research analysis. It became important to engage at a theoretical methodological level with the challenges of the application of ‘the equality clause’ principle when women have significant rights that the instruments do not recognise. The human rights approach resulted in the interrogation of the theoretical gap in CEDAW and the Women’s Protocol as their application to the matrilineal social order presents a paradox. Using “the equality clause” to defend women’s land rights in matrilineal societies further confuses the situation and in effect turns the tables on women who culturally have significant land rights that are protected by tradition. A dilemma is presented as to whether international, regional or national instruments are ideally placed to assist the position of women in matrilineal customary law. The universality of women’s rights is questionable given the unique circumstances that confront women in different environments, as is the case with the matrilineal women. For women in matrilineal societies the effect of the application of the ‘equality clause’ is negative, especially in relation to customary land rights. It was discovered that the application of ‘the equality clause’ in matrilineal social organisations needed to take into account the social context of uxorilocal marriages and the social value and significance given to land. Another critical factor is women’s responsibility to pass land on to daughters as well as the limiting factor of decision making in conjugal units that rests with husbands. Women’s customary land rights, it is argued, need to be protected in a situation that is increasingly becoming volatile as competing claims for land become sanctioned by government and donor policies. The male comparator premise for the ‘equality clause’ is challenged and its relevance in matrilineal societies questioned. A paradox emerges as to how best to address women’s customary land rights in economic and social development programmes that irrigation reforms seek to accomplish when their planning and implementation modalities seem to deny women their customary land rights in favour of men.

2.1.5 Influence of Actors and Structures

One of my assumptions was that “the operational practice of the Scheme Management Committees (SMCs) and the Water User Associations (WUA’s) use patrilineal principles although they are in a matrilineal setting which further diminishes women’s customary land rights”. My reasoning behind this assumption was as follows: now that schemes were being prepared for hand over, the remnants of the government-modelled scheme would still prevail to the disadvantage of women. To establish the facts on the ground I looked at actors like the Scheme Management Committee and Water Users Association Executive Committee to see whether they were managing the scheme and the Water User Association using matrilineal principles enshrined in their locally developed constitution. Since the local constitutional development was spearheaded by agriculture government officers with the help of a Non Governmental Organisation, a patrilineal model was adopted. Ferguson and Mulwafu

(2004) comment on how the government officials hurried the constitution development exercise in an effort to satisfy the triggers set for Malawi to reach the completion point of the Highly Indebted Poor Countries programme. The process for developing the constitution in itself overshadowed the lived realities as the main purpose for developing them was not necessarily to service the scheme management committees but rather to meet a government deadline. The actors and structures analysis revealed that scheme management committees and Water Users Associations are male dominated. It further helped me to interview key respondents such as traditional chiefs, local religious and political leaders as well as the District Commissioner, The Commission for Land, The Chairperson of the Human Rights Commission, the Chief Irrigation Officer and the Deputy Director for Gender Affairs just to mention a few.

Actors and Structures helped to investigate the officials' point of view both at custom and at government level and helped determine the factors at play at both levels. I was able through interviews to get an insight into whether the different government and NGO officials in their different capacities were aware of the importance of recognising matrilineal customary land rights of women in development programmes.

2.1.6 Legal Pluralism

My main assumption was “that the establishment of irrigation schemes in Southern Malawi, did not take into consideration women’s land rights as provided for by customary law.” Using experiential data on how development programmes tend to be designed and managed⁸, I assumed that, although Domasi and the Likangala irrigation schemes are located in matrilineal communities, it would be unlikely that the matrilineal rights to customary land for women were taken on board in the design of these schemes.

To begin with, customary land tenure is characterised by a complex mixture of rules of conduct, leadership codes and management principles relating to access to and control of land in a given society. The rules include the following:

- a. That by virtue of membership in a given community every individual has access to the land resources of that community in space and time,
- b. Access rights to which individuals are entitled are transmissible to designated heirs in perpetuity,

⁸ The tendency to have top down development approaches even when claims are made to involve people miss out on the complexity of community structures and specific details that inform general rules about control of resources. Policy makers who essentially tend to be men use patrilineal ideologies in matrilineal communities and are blind to the prescriptive or kinship rights that matrilineal communities accord to women.

- c. Except where chiefs and headmen have the power to allocate use rights to individuals or families, the land itself cannot be permanently alienated, and
- d. Non-community members cannot acquire prescriptive or other devastative (sic) rights in community land by long use. (The Presidential Commission of Inquiry on Land Policy Reform April 1998, p.46)

These general characteristics are true of the matrilineal social order that determines access to and control of land through women and girls in their communities. Malawi uses land laws which originate from the colonisation of the country. Although the country has a diversity of matrilineal and patrilineal cultures and the two operate in conflict with one another, the general land law does not clearly define their difference or what they entail.

Legal pluralism enabled me to interrogate the matrilineal customary laws and the Land Act in order to establish the impact they have on the lives of the women in accessing land comprising the irrigation schemes. Kambewa 2006 found that once irrigation plots were allocated they became private property for households and their lineages. The implication of this scenario is critical because once women lose out on the plot allocations it will be difficult for their daughters to access irrigation plots since women have the responsibility to pass on land to them. Legal pluralism enabled me to contrast the pros and cons of both customary and public land regimes for women and men in matrilineal communities participating in the irrigation schemes.

2.2 Research Design

2.2.1 Overview of Research Sites

Domasi and Likangala irrigation schemes are located in the Lake Chilwa basin in south-eastern Malawi. The basin is a wetland of international importance as it became a Ramsar Site in 1997 according to the Ramsar Convention (Nkhoma 2005 p5). It is a long plain that stretches within the borders of Lake Chilwa to the east and three mountains, namely, Zomba to the west, Chikala to the north and Mulanje to the south-east. It has a network of Phalombe, Domasi, Songani, Likangala, Naisi, Thondwe and Namadzi rivers as a catchment. It has an average annual rainfall of 950mm and covers three districts, Machinga, Phalombe and Zomba. The total area is 8,349km² 32% of which is in Mozambique and 68% is in Malawi. The people who live on the basin settled in the area between the 16th and 19th centuries and are predominantly of the Nyanja, Yao and Lomwe tribes all of whom are matrilineal in lineage ((Nkhoma 2005, p.4).

Map of Lake Chilwa Basin

Map of Malawi Showing the Area Under Study

Legend

- State (w)
- Dist. boundary
- Lake
- Area under study
- Dist. of origin of some people farming in Lake Chilwa
- International boundary

LEGEND

- Village
- Trading Centre
- Town
- Dist. road
- Main road
- Secondary road
- Tertiary road
- River
- International Boundary
- Rice Schemes
- Wetland Gardens
- Marsh
- Dimba garden
- Lake
- Dist. Boundary

Scale 1: 400,000

5 0 5 10 15 20 Km

26

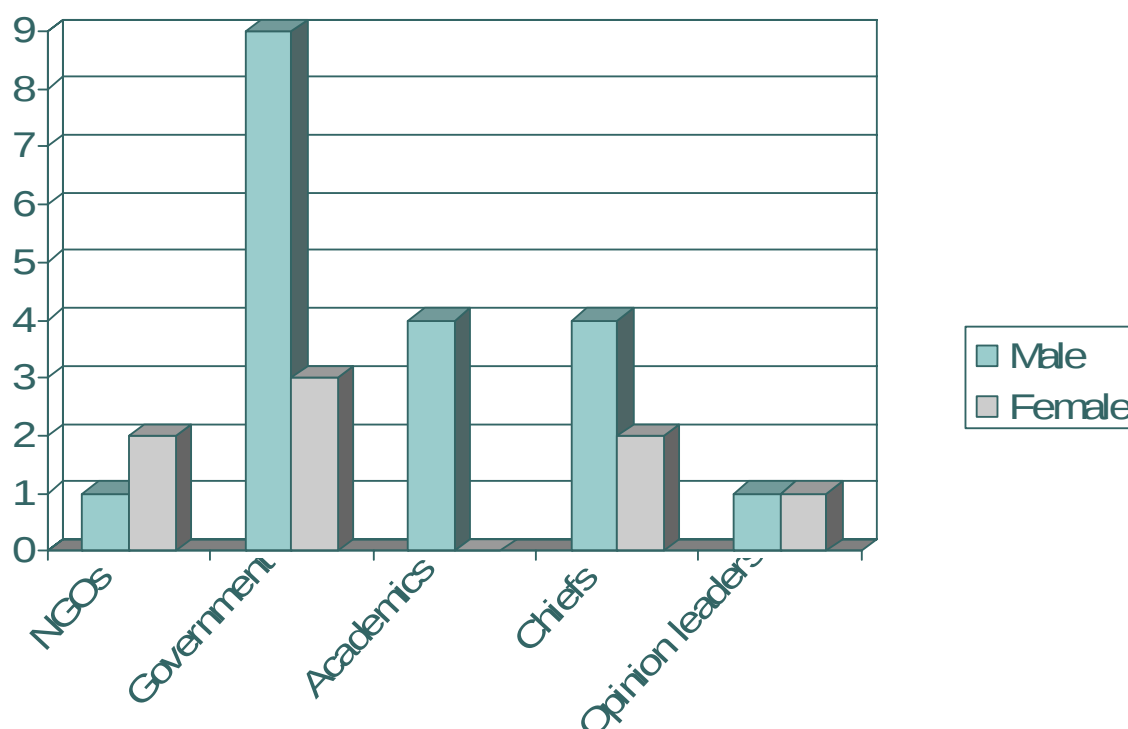
According to Nkhoma (2005) Domasi and Likangala were established over thirty years ago. They are the largest small-holder irrigation schemes in Malawi that are among the sixteen schemes established by government between 1969 and 1982. As a result of the 1990s irrigation reform, the state is in the process of finalising arrangements to hand over ownership and management to farmers in the scheme. On account of their size, history and matrilineal social organisation, I chose the two schemes as my area of study because they exemplify what is happening and what is yet to happen to women in matrilineal societies country wide especially if the proposed Land Bill will be passed into law. As pointed out earlier, this dissertation examines the legal and human rights gendered dimension in planning small scale farmer irrigation schemes in Malawi and explores Domasi and Likangala as a case study of diminishing returns for women’s customary land rights in matrilineal social organisations.

2.3 Data Collection Methods

2.3.1 Individual Interviews

Individual interviews were carried out with key respondents in government, NGO sector and within the communities as follows;

Graph 1: Respondents in key positions



Key government officials were selected based on their experience and knowledge of the irrigation scheme reforms and they included the following; Chief Irrigation Officer, Director for Extension Services, Deputy Director Gender Affairs, Principle Gender Officer, Commissioner for Lands, Chief Law Reform Officer, Zomba District Commissioner, District Irrigation Officer, Chief Crops Officer (Liwonde ADD) and one Extension Officer in Likangala Irrigation the Scheme. Two human rights officials and two officials working for the donor agency that is facilitating the hand over of irrigation schemes to communities were also interviewed. Focus was on the implication of the irrigation reforms on women's customary land rights. The nature and design of the questions allowed for professional opinion and expression of their personal views on women's lived realities in order to identify gaps between policy direction and development agendas in relation to local realities of people among whom development is meant to benefit.

At community level, two female chiefs, one in Domasi and one Likangala, and two male chiefs respectively were interviewed for their customary law knowledge and observation of the living customary law as it relates to women's customary land rights in view of the irrigation scheme management and proposed reforms. Two local opinion leaders⁹, a woman and a man, were also interviewed in Likangala to express their opinion on the scheme management as it relates to women's land rights. In addition to the focus of the research, new issues emerged such as the irrigation scheme constitution's provisions that denied chiefs their role in dispute resolution, the centralised power of the Scheme Management Committee and its independence were highlighted. This information was triangulated in the subsequent focus group discussions with committee members present and interrogated its impact on women's customary land rights.

⁹ One of these informants was a local political governor and the other was a religious leader.

Figure 2: Mixed-Sex Focus Group in Likangala



Table: 1 Types and Numbers of Focus Group Discussions Conducted

FOCUS GROUP DISCUSSIONS CONDUCTED							
Domasi				Likangala			
Interviewed	Female	Male	Total Number	Interviewed	Female	Male	Total Number
Mixed FGD'S				Mixed FGD'S			
First	1	8	9	First	5	8	13
Second	12	30	42	Second	8	10	18
Female only	10	0	10	Female only	15	3 ¹⁰	18
Male only	0	8	8	Male only	13	0	13
Grand Total	23	46	69		41	21	62

Present in this Women's Focus Group Discussion is Lady Chief Lorensi seated.

¹⁰ In Likangala the government Scheme Manager and the Extension officer including the Chief Extension Supervisor were always present at all interviews and were active participants as they chipped in comments once in a while.

Figure: 3 Women's Focus Group Discussion Domasi



Three types of focus group discussions were conducted, a total of 44 women and 62 men participated in these group discussions. First were two groups of women's only focus group discussions one in Domasi Water Users Association and another in Likangala irrigation scheme. These included women who had plots in the irrigation schemes and those who had lost plots as well as committee members at various levels of the scheme management. Information was sought on how they obtained irrigation plots and on the intra-household power relations with their husbands in relation to irrigation plots management and ownership. Discussions focussed on their position and situation as women participating in the irrigation schemes and of their knowledge of the irrigation reform process. Women were open to talk about issues that concerned them as irrigation scheme members and their situation versus that of men. This method was engaged for two reasons, first as a data gathering tool but secondly as a conscientisation process where the questions posed enabled women to critique the irrigation reform process and interrogate realities that threatened their continued participation in the irrigations schemes as a group. They debated on how to ensure meaningful participation by securing leadership positions in the schemes. It also provided a forum for women to share their experiences on how to manage resources in the home as married women although this was not part of the research focus.

Figure: 4 Men's Focus Group Discussion Domasi WUA



The second type of focus group discussions were men's only groups numbering 45 persons¹¹ one in Domasi and another in Likangala numbering. Men's only groups provided a forum for men to discuss what they perceived to be the women's position in the scheme as compared to themselves. Men were able to boast of their privileged positions as well as freely express how they are progressively dominating the scheme. As a group it was easy to curb exaggerations because other group members would argue against it. In Likangala, the group was composed of those who had plots in the irrigation schemes and those that had lost plots. While in Domasi all men had plots and most of them were in leadership positions at various levels. Discussions focussed on how they obtained plots and how these were being managed bearing in mind the intra-household power relations. Just like in the women's group the focus group discussion's objective was two pronged, first to help collect data as well as to sensitise men on gender issues in relation to the irrigation reforms and scheme management.

Four mixed sex focus group discussions were conducted to triangulate areas that were of great concern for both specific gender groups. In Domasi the first group that was organised only had one

¹¹ The research plan was to have an equal number of women and men but since irrigation schemes especially in Domasi tends to have a lot of activities that only participate in such as milling rice more men joined out of curiosity.

woman attending the meeting and there were eight men. The next meeting was when I took advantage of a general meeting of all sub committees at the Water User Association which resulted in a large group of 20 men and 15 women.

In Likangala the first focus group was comprised of five women and seven men while the second group was comprised of ten men and eight women. Most significantly it provided a forum for women to hear for themselves what men had made provisions for in the local constitution which women knew nothing about. In Likangala, women were shocked to hear for the first time that their plots would have to be divided into half upon divorce. For women this provision was viewed as uncharacteristic of the matrilineal setting. Mixed group discussions also provided an opportunity for both men and women to identify areas of common concern in the irrigation reform process and thrash out gender related issues especially those related to leadership and participation in the executive committee management. As men and women sat in two separate sections opposite each other in the group they were able to debate at length which added value and depth to local understanding of issues relating to women's land rights and how men are using the irrigation schemes to sabotage this special right that women possess.

2.4 Assessment of Methodology

The data collection methods used proved effective as they were customized to the particular target groups in question. Questions asked sourced information that was within the interviewed person's knowledge or the knowledge was expected to be within their grasp. I started interviewing and conducting discussions with the local women and men before I interviewed government officials and the NGO officials, which proved useful as I was able to present the situations on the ground to the officials in the interviewing process which also served as a triangulation and conscious raising technique of what is happening on the ground.

The women and men in Likangala saw hope in my interest in their land issues because of the challenging contestations they are experiencing with chiefs who have resorted to "land grabbing" of the government owned property and asked me to inform the District Commissioner of the magnitude of their problem. Men in Domasi wanted me to inform government about the incomplete

rehabilitation work on the scheme. I was able to do so and hear the government version of the story while informing officials of the challenges on the ground that needed their attention¹².

Women in both Domasi and Likangala wanted more interaction and discussions with me as the research methodology gave them an opportunity to face up to the painful experiences that were disempowering them as their plot allocations' continued to shrink in number in the irrigation schemes and yet they are expected to distribute them to their daughters. Some immediate action plans were developed on how to manage their participation more effectively in the executive committee and ensure that they are adequately represented. Whether they will actually do that is what remains to be seen.

Group discussions among men were also used as a conscientisation process that interrogated the power relations between men and women in the village, home and in the scheme. They informed me that for the first time they appreciated what the gender equality movement is seeking to achieve and what the gender equity issues are all about. In Domasi they went into a heated discussion of how marriage is robbing women of their rights and gave specific examples of some women who have fared badly and concluded that with the way marriages are being managed in their community women are better off single and gave examples of women who are doing well because they are not married.

The government officials were quick in realising how they are short circuiting women's matrilineal land rights. Some blamed it on the donor driven development agendas and reforms while others were honest enough to identify their own shortcomings in addressing issues of land and women. A few claimed that a seed had been planted as a result of my interviews to prioritise women land issues as was the case with the Deputy Director for Gender Affairs in the Ministry of Women and Child Development. Academicians were more coherent as they were able to explain gendered development shortcomings and said there was a forum that was being organised to challenge the current Land Bill as it is not reflecting the issues on the ground.

The methodology also unearthed a lot more information than could be dealt with within the parameters of this research. Nevertheless the information helped contextualise the findings as some of it explained why the situation was as it is at the moment while others are areas for further research.

¹² I was informed that government officials visited Likangala and a meeting was held on the challenges faced in scheme soon after my research visits.

Despite the above mentioned strengths, however, the methodology works better when there is more than one person where one should concentrate on interviewing and another takes notes. An attempt was made to tape some of the discussions but due to technological failure this was not possible. The methodology also demands a lot of quality time with the respondents and only two interviews could be scheduled in a day. Only one focus group discussion could be held in a day as the exciting discussions under a tree on a hot day could be very tiring. All in all the methodology taught me a lot about the social dynamics as they pertain to land and the social economic status of men and women in the matrilineal communities I visited.

2.5 Study Limitations.

Getting official permission from the District Commissioner to begin research in the research sites was a challenge for some reason. I just had to start the interviews without the official permit by simply using the SEARCWL letter of introduction. Another challenge was failure to get an audience with key respondents such as Dr. Mulwafu a historian and an accomplished researcher in Domasi Likangala irrigation schemes. I strongly believe that his input would have added value to the findings.

Getting institutional documents also proved difficult. Some documents were regarded as not meant for public consumption although they greatly influenced the development of events that were happening in the research sites. Irrigation Rural Livelihood Agricultural Development Program (IRLADP) a World Bank supported project refused to give the terms of references that they had given to a consultancy firm that was going to build the capacity of Likangala Scheme members in preparation for the hand over exercise. I was instead given a paper that articulated the participatory approach method that they follow. Both the Chief Irrigation Officer and the IRLADP officer were unable to give me a gender training manual that they said had been developed for training the irrigation scheme members in preparation for the government hand over of the schemes to Water Users Associations.

CHAPTER THREE

3.0 MATRILINEAL CUSTOMARY RIGHTS OF WOMEN AND THEIR HISTORICAL DIMINUTION EXACERBATED BY DEVELOPMENT TRENDS

This chapter describes the customary rights of women in matrilineal communities and how they have been negatively impacted by specific historical events over the years. The premise upon which development ideologies and development programmes are based further propels the loss of women's land rights in matrilineal societies. It is argued that because 'development' is informed by neo-liberal economic policies it is bound to violate the rights of the people it professes to develop especially women in matrilineal communities.

3.1 Women's Rights at Custom!

"Malawi's ethnic groups are predominantly matrilineal. Most of the central region is matrilineal, with the exception of Kasungu, Ntcheu, and Dedza where pockets of patrilineal systems exist. The Southern Region, except Nsanje, parts of Mwanza and parts of Chikwawa, is matrilineal. Three areas in Nkhatabay, in the Northern Region, are also matrilineal. These are areas under Traditional Authorities Malenganzoma, Fukamapiri and Timbiri" (*The Presidential Commission of Inquiry on Land Policy Reform April 1998.p62*)

Women in matrilineal societies are looked upon as the root of the lineage (*tsinde*). The basic unit of organization within the matrilineal system is sorority of the nuclear family units that are based on matrilineal decent (Hirschman and Vaughan, 1984; Mitchell 1949, 1956; Phiri, 1997). Women born of the same mother and their children formed the sorority which was referred to as "*mbumba*"¹³. Thus as explained by Davison 1992 cited by Linda Semu 2007(a), matrilineal households in Malawi centre on the woman who has primary rights to land through her lineage. Semu observes that the matrilineal social organisation acts as a levelling mechanism in gender relations, as it awards women direct land rights and ensures their autonomy.

"Matrilineal rules give women rights of ownership to land, and residence is commonly uxorilocal. While female children can inherit land, male children in principle have only user rights". (Stein Holden et al. 2006, p.70).

The customary right to land by women in matrilineal social systems is emphasised by the fact that "a woman's daughter may force out her maternal uncle from land he may have shared with their mother because he would be considered a usurper" (Peters 19997:2005 quoted by Kishindo 2005 and Holden et al 2006). The social power and claim over land by women in matrilineal systems is significant

¹³ The term *mbumba* refers to traditional relationship between women who form a sorority and their male guardian who can be a brother or uncle from the mother's side (Nkhoswe). The Nkhoswe is responsible for allocation of land to his sisters and their daughters, arbitration of disputes among them, represents them when they have dispute with others and for arrangement of marriages for women in sorority see Chirwa, 1995; Hirschman, 1997 .

because land is not only a source of livelihood for rural residents, it also determines status and provides a sense of identity and belonging within a locality or village (Shipton, 1994; Awafong, 1999; Agarwal, 2002; Peters, 2002). The important privileges that women have by being accorded the right to land at custom entails that all daughters have an equal claim to their mother's share of land regardless of whether they are born within or outside marriage (Kishindo 1993 as cited by Semu 2002).

“Since land is passed down through the female line, men access land through marriage. Upon marriage a man relocates to wife's village where he is referred to as **“mkamwini”** and the practice is called **“chikamwini”**¹⁴ Together with his wife and their offspring the form **“banja”**, a nuclear household within the **“mbumba”** matrilineage. **“Banja”** and **“chikamwini”** are the key determinants in women's productive potential, with most of the labour being provided by the **“mkamwini”**...The matrilineal system therefore accorded women access to land and through marriage, access to male labour. This provided women with social, economic and support systems (Hirschman & Vaughan 1984 as cited by Linda Semu 2007)

In addition to the right to land and uxorilocality women in matrilineal systems were also accorded other rights such as the right of “ownership” of offspring of a marriage, the right to remarry after divorce or at husband's death and they exercised considerable influence in decision making in the community especially in the selection of chiefs and other leaders (Aguilar and Aguilar 1999 as cited by Semu 2002).

Options for men to request their wives to relocate to the man's village **Chitengwa** demands that a gift to the maternal uncle or brother be given called **Chiongo**. It is only allowed after the man would have first lived in his wife's village and after her matrilin were satisfied that their kinswoman was to be adequately looked after in her husband village. Originally this practice was reserved for **mwini mbumba** a brother in a clan of sisters or a maternal uncle in a clan of daughters of a sister, who oversees the clan. It was to enable him to stay close to the clan. **Chitengwa** gives a man temporary rights to land in his maternal village because upon his death the land reverts back to his sisters. His children and widow are required to leave the village and return to the widow's village where her land would still be available for her. Semu (2007a) emphasises that the matrilineal system granted women some freedom and dignity *and this was grounded in their connection to land which is their major source of power.*¹⁵ Men tend to have social structures that favour their lives which include social attitudes and conditions which are balanced out in matrilineal social organisation by giving women higher rights to land.

¹⁴ Semu 2007 defines mkamwini to literally mean somebody else's child (son) who has come to marry and live in his wife's matrilineage.

¹⁵ My emphasis

3.2 A Historical Perspective of the Diminution of Matrilineal Women's Rights

The intrusion into matrilineal women's rights in Malawi is closely related to the history of the invasion of the country by the outside forces. It began with the different tribal wars and slave trade and later with missionaries' misconceptions of the women's position in society. This was followed by the colonial government interventions and later interventions of an independent government whose development policies and programmes were conceived from a technology point of view and did not consider the people as a starting point. Although Linda Semu (2002) traces a historical erosion of the matrilineal status of Chewa women the factors that contributed to their diminishing status is true of the Lomwe, Yao and Nyanja women in Likangala and Domasi irrigation schemes. In chronological order Semu identifies four factors that influenced the distortions that led to the diminution of matrilineal women's rights and these are: "the introduction of slavery from 1810, the coming of patrilineal societies in the country from the early 1870's, the introduction of Christianity and colonisation and the introduction of the money economy (Phiri 1997:40 as cited in Semu 2002). Slavery reduced women's value and led to loss of their control over their sexuality as they could only be valued for the children they bore their masters. Patrilineal ideologies such as payment of bride wealth that ensured control over the women and their children were adopted by men in matrilineal communities as introduced by the patrilineal groups. The male dominated Christian religion crushed anything that was not compatible with it *including the matrilineal system*¹⁶ (Phiri 1997: 40-43 as cited by Semu 2002). Christian missions were established in Malawi between 1860 and 1870. One of their objectives was to stamp out the slave trade. In their quest to do so they changed anything that did not conform to their religious ideology and social values including family structures and systems in matrilineal communities.

"All the missionaries (Dutch Reformed Church, Anglican and Presbyterian) stuck to the Pauline view that the husband is the head of the nuclear family unit and that this authority, therefore, had to precede that of his wife or wife's guardian (Phiri 1983:208 cited in Holden *et al* 2006, p.61)

The Christian teaching overtime led to the redefinition of marriage which underlined the need for husbands' authority.¹⁷ This was reinforced by the preference of only educating the boy child. The practice increased numbers of young men who were able to get paid jobs and took their wives to their duty stations away from home and from their matrilineal support structure.

¹⁶ My emphasis

¹⁷ This could have been the beginning of the institutionalisation of "*ulemu wa m'banja*" because the manifestations of "this respect for marriage" concept is not congruent with the power women seem to have had in matrilineal societies. Neither is it congruent with the fact that both women and men in matrilineal societies are loyal to blood relations than they are with spouses. The concept of Ulemu wa m'banja needs to be interrogated further as it is an emerging issue here.

This process resulted in a redefinition of male and female roles and responsibilities in the household. With the male assuming the role as “household head” he was also expected to assume larger responsibilities. According to Peters, “by the first decades of the 20th Century, the monogamous ‘male headed’ nuclear family had become a mark of the tiny elite of mission-educated Africans (Peters 1997:193 cited in Holden *et al* 2006 p.61)

By only educating the male child missionaries developed a social class system that elevated men above women and further consolidated men’s position in matrilineal communities to the disadvantage of women.

Colonisation as an immediate follow up to Christianity further distorted women’s rights by imposing an economic regime that was to service the “hut tax”.

“The explicit intention was to make African men work in the cash economy, providing labour for the European estates in the Shire Highlands, and later extending this (predominantly male) labour market to agricultural and mining enterprises in the present day Zambia, Zimbabwe and South Africa (Phiri, 1983, Englund, 2002).

Education of men and their movement in labour migration resulted in the marginalisation of women’s role and position in matrilineal communities as they could not meet the standards of the “modern world”. This introduction of Christianity and colonialism brought with them different ideologies and patriarchal social systems that have greatly undermined the matrilineal social order and the position of women. Accompanying these new systems are the values of a capitalist economic order that emphasises the success of the individual rather than the community.

“The penetration of the market economy has weakened the kinship systems by transforming the economic basis of most communities. And the entry of colonialism and capitalism was through forces that offered greater economic opportunities to men than women. The process is supported by institutions of the law which give support to individualist values which together with opportunistic behaviour lead to flagrant violations of women’s property and inheritance rights” ***including women’s customary land rights***¹⁸. (Naomi Ngwira, 2002, p.69).

The market economy is what has been driving the development theories over the years and continue to do so right now. The section below discusses how the different development perspectives have among other things helped erode the matrilineal women’s customary land rights as they are oppressive in nature.

¹⁸ My emphasis

3.3 Perspectives of development where do women fit?

Todaro (2003) defines development as a multidimensional concept which involves a transformation of economic, political, social and cultural aspects for the better. On the other hand Tucker (1999) explains that:

The development process is part of an imperial process whereby other peoples are appropriated and turned into objects. It is an essential part of the process whereby the “developed” countries manage, control and even create the Third World economically, politically, sociologically and culturally. It is a process whereby the lives of some peoples, their plans, their hopes, their imaginations, are shaped by others who frequently share neither their lifestyles, nor their hopes nor their values. (Vincent Tucker 1999, P.1)

Tuckers assertion shows how social systems and cultural practices are affected by development ideologies imposed by outsiders who do not share the values and lifestyles of communities they seek to develop. Escobar (1995) shares Tuckers assertions in his description of development as he says it mirrors the ideological hegemony of industrialized countries in the North. Further, it is said to be a “tale of domination” which has been imposed on the global South as a post Second World War phenomenon. Silungwe quotes Adelman and Paliwala (1993) as having suggested that development has an inherent imperialism in its construction as it emphasises the liberal world view, liberal legality and jurisprudence. Shivji (1989) contends that imperialism is a violation of human rights which makes development theories inherently prone to violate the rights of the people they work with especially those of women in matrilineal societies whose customary rights are not recognised. In addition development has been informed by various theories of modernization which have culminated into neo-liberalism. Aldelma and Paliwala (1993:9 cited in Silungwe 2005 p7) contend that the amorphous nature of development theory both results from and promotes a tendency towards the colonization of meaning...and asserts binaries of “the modern” and “the traditional”, the “rational” and “the irrational”, “the civilised” and the “uncivilised” have been colonized by the historical domination of Western capitalism.

In addition, feminists have noted that capitalism institutes a class system which causes women’s oppression. This is due to the fact that the means of production are owned by the few who are mostly male. The premise for the development ideology, therefore, is generally oppressive to women, more so women in matrilineal communities. By the same token industrialized countries’ development stand is not just oppressive to the third world; it also exacerbates the erosion of matrilineal women’s rights. This is emphasised by Anne Stewart who has observed that the present debate on globalisation has undermined the legal scholarship to rights approach to development as it has become an ‘illusion of inclusion’. She describes neo-liberal development approaches as draconian (Stewart, 1996). Nonetheless, the third world is forced to accept this stand because the West is

assumed to possess the expertise, technology and management skills which are lacking elsewhere but are needed to bolster development (Escobar, 1995:47-8 cited in Silungwe. 2005, p.7). Third world development therefore is overshadowed by the West and its economic ideologies which in turn overshadow matrilineal societies' cultural values and customary women's rights as they tend to be managed on Western conceptualisation.

Aung San Suu Kyi on the other hand, contends that,

“The true development of human beings involves much more than mere economic growth. At its heart there must be a sense of empowerment and inner fulfilment. This alone will ensure that human and cultural values remain paramount...When this is achieved, culture and development will naturally coalesce to create an environment in which all are valued, and every kind of human potential can be realized.”
(Aung San Suu Kyi. 1995, p.18 as cited by Nnaemeka. 2003, p.370)

In this regard, if matrilineal customary land rights of women's were recognized and harnessed, they would result in women's potential being realized and this would result in sustainable development. This fact is emphasised by Nnaemeka who argues that culture should not be dismissed as a negative or neutral factor in development; rather, attempts should be made to find out in what ways culture is a positive force that can serve development well. Nnaemeka continues by once more quoting the compelling argument of Aung San Suu Kyi that;

“man should not be an economic tool for development: When economics is regarded as the most important key to every lock of every door it is only natural that the worth of man should come to be decided largely, even wholly, by his effectiveness as an economic tool. This is at variance with the vision of a world where economic, political, and social institutions work to serve man instead of the other way round; where culture and development coalesce to create an environment in which human potential can be realized to the full”(Aung San Suu Kyi. 1995, p.13)

Development discourse and practice, therefore, stand to gain from the development of each individual person who is involved in the process. Aung San Suu Kyi continues to argue that until development assumes an individual and a human face instead of anonymity of the collective (the poor, the needy) it will remain an unrealized goal in the “third world”. On the other hand, development as a goal will be accomplished through an honest effort to humanize the development process. It should not be assumed that economic growth will guarantee development, the thinking behind the objectives that were put forward by the World Bank driven rural development programme that resulted in the development of irrigation schemes in Malawi in the late 60's. Kyi points out that “the truth of the matter is that people in need are complex beings like most other people are and to strip them of their complexity is to deny them their humanity”. Denying women in matrilineal

communities of their humanity, their lived reality, is tantamount to violating their right to dignity as provided for in article 3 (1) of the Women's Protocol¹⁹.

Nnaemeka concludes that due to lack of cultural practices and customs appreciation, propelled by humanistic considerations, philanthropic organizations and development agencies, well intentioned for the most part, dehumanize in their attempt to humanize.

Policy makers and development agents in Malawi tend to impose development programmes and management styles that are not congruent with the traditions and customs of the people whose lives they seek to develop. Social organisations and customary rights are relegated to the background instead of relating with them in ways that are meaningful to the communities. This may result in the creation of conflicts such as is the case in Likangala. The scheme has ended up disrupting the social order of the matrilineal society and women have become seriously disadvantaged.

Nnaemeka observes that the greatest problem arises from the fact that imperialists and colonialists never learn from the colonized:

They teach them. They do not ask them. They manufacture answers in search of questions...border crossing should entail learning from the other but "learning from" others requires a high dose of humility tinged with civility. "Learning about" often produces arrogant interrogators: learning from requires humble listeners.

In such situations policy makers and managers of development can be likened to behave like the imperialist and colonialist as they also go to the communities with made-up answers to unasked questions and call it development.

"But anyone who keeps an open mind as he become familiar with a rural area discovers many things to respect and value: distinct personalities, forms of land use and settlement *such as matrilineal customary land rights for women*²⁰ which are admirably adapted to the conditions of the location, intelligent and varied sequences of activity over the course of the year, allocation of social duties and social conventions, ceremonies...open mindedness should be accompanied with practical considerations by first looking at local ideas"(Hartmut Albrecht et al 1989, p.22).

For development to be meaningful and sustainable in Malawi its philosophy and strategies need to be tailored to local realities including the recognition of the implications of matrilineal social organisations. In addition, one of the most important facets of development is to ensure that women realise and actualise their potential as individuals, members of the community and citizens of their country. Development planning therefore has to take them on board in very concrete ways which

¹⁹ Article 3 (1) of the Women's Protocol says: Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human legal rights;

²⁰ My emphasis

respect and protect customary land rights of women in matrilineal societies. This is pertinently described in the quotation below;

Tenure is the normative and structural parameter which explains how individuals and communities relate to the land and the natural resources upon which both historical and contemporary social settings. The reorganisation of tenure arrangements therefore requires careful considerations and design. Experience in Malawi and elsewhere in the region suggests that interventionist approaches which are not sensitive to culture and technology have little chances of success. There is also evidence that such approaches may reverse evolutionary trends towards the emergence of more appropriate regimes, for example, by re-entrenching sub-optimal production practices and creating antagonism towards any further attempts at social and economic reform". (The Presidential Commission of Inquiry on Land Policy Reform April 19, p.58)

In conclusion it is critical to take cognisance of matrilineal customary land rights because they have implications not just on development interventions but also on other rights for women in their daily lives and their social heritage. It determines their marriage regimes and land succession. Mc Auslan as cited by Silungwe (2005) contends that the folly of land reform in Africa (which includes irrigation reforms²¹) as advocated by the World Bank has been to look at land merely as an economic entity removed from its social setting. Notwithstanding, it is the social setting that determines the economic viability of the land as it dictates who needs to be targeted based on who is given primary user rights. Unfortunately, the architects of the Land Policy and Law in Malawi have adopted the World Bank view and continue to take the position that cultural aspects of land access are insignificant. Nonetheless, land in 'traditional' societies is part of "the social relations between people and society" (Silungwe. 2005, p.27). As a result, the resilience of women's customary rights in matrilineal societies point to the fact that there has always been continued relevance of customary rights to land, regardless of the different land reforms and development theories and agendas that seek to alter them. Yngstrom gives the conceptual tools:

In terms of institutional arrangement regarding rights and responsibilities in land and production, the conjugal unit needs to be understood in the context of wider sets of relationships among groups organized on the basis of descent and gender ideologies implied therein. As landholding systems have been integrated into wider economic systems, women and men have worked both within and around the constraints of these institutions in order to exercise claims both on land and on each other for means to work it" (Pottier 2005, p.69).

Unless this fact is acknowledged development programmes and legal provisions will in themselves result in the continued violation of matrilineal women's land rights, as will be demonstrated in the following chapter.

²¹ My emphasis

CHAPTER FOUR

4.0 ARE HUMAN RIGHTS AND LEGAL PROVISIONS APPLICABLE TO MATRILINEAL WOMEN'S CUSTOMARY LAND RIGHTS?

The chapter presents a theoretical perspective of the applicability of the legal provision to matrilineal women's customary land rights premised on the research findings. It demonstrates how the lack of provision for positive customary women's rights makes it difficult to defend matrilineal women's rights. It begins by interrogating CEDAW, Women's Protocol, and the Constitution of Malawi in that order, followed by a presentation of the Malawi Land Act (1967), the Land Policy (2002) and National Gender Policy (2000-2005). It also discusses 'the male comparator' assumption upon which women's rights are premised and presents women's rights in matrilineal societies as a conundrum due the failure to acknowledge them in the construction of women's rights principles. It ends with a question that explores whether the rights discourse can be improved by taking on board matrilineal customary rights of women.

4.1 A Theoretical Perspective

Human Rights frameworks give overall direction on policy and legal provisions concerning women, most specifically the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which is also known as the Women's Convention. CEDAW is also described as the bill of rights of women because it is a very versatile women's rights instrument. It detects and flags broad issues that challenge women's lives and indicates broad measures for eliminating them which tends to work in most situations. However, its characteristic broadness and recognition that it mostly reflected experiences of women in developed countries called for a special protocol for African women namely, "Protocol to the African Charter on Human and people's Rights on the Rights of Women in Africa" (the African Protocol on Women's Rights). Nonetheless, CEDAW and the Women's Protocol are premised on the same key principles, namely "equality" and "non discrimination" that form the basis for the promotion of gender equality and equity. This is evident in Article 2 (a) of the Protocol which embraces CEDAW's principle of equality between women and men including its demand for States parties to ensure its effective enforcement. States parties are obliged to domesticate these principles in their national constitutions. As a result of this major similarity these instruments, CEDAW and the Women's Protocol are interrogated on a theoretical perspective for their applicability and relevance where women at custom have more significant rights than men, as is the case in matrilineal societies. This is in agreement with Charlesworth who contends that women's international human rights law depends on a monolithic, essentialized view

of women and cannot take into account the great differences among women worldwide (Charlesworth,1994,p.60).

4.1.1 CEDAW

The provisions in CEDAW Article 14 (1) obliges states to take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families. This provision also covers women's work in the non-monetised sectors of the economy, and requires that states should take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. Further, subsection (2) deals with the elimination of discrimination against women in rural areas in order to ensure, on the basis of equality of men and women, that they participate in and benefit from rural development and outlines seven areas that are of particular interest to this study, namely;

(a) the participation in the elaboration and implementation of development planning at all levels. Article 14 (2) can be summarised that it seeks to provide for women's right into agriculture, social systems, business... and identifies women as critical in addressing poverty and development..(Cook 1994)

Another subsection that is of great relevance to this study is Article 14 (2)(g) which calls for "equal treatment in land and agrarian reform as well as in land resettlement schemes" (Human Rights Instruments Handbook, p.80)²². The subsection is of relevance because, while it offers solutions for patrilineal communities where men have primary land rights, its application is problematic in matrilineal communities where women are the ones who have primary land rights.²³ The shortfall comes about because CEDAW takes a liberal feminist approach where men are the standard. As a result, the 'equality clause' limits women's rights where they have a differential advantage such as the customary land rights accorded to them by matrilineal social arrangements. By structuring equality around the male comparator, the assumption is made that there are no situations where women could have more rights than men. It is also assumed that all customary land rights favour men which is not always the case, as proven in the matrilineal customary land rights of women in Malawi.

²² This is the Human Rights Instruments Handbook for Southern and Eastern African Regional Centre for Women's Law - University of Zimbabwe.

²³ An observation can however, be made here to the effect that one needs to look at the negative aspects of achieved equality where both sides of the equation are reduced to the same lowest common denominator- in this case the lowest common denominator would have to be the male rights- at least theoretically. One needs to be careful though because the male rights denominator could miss out on essential aspects that could form the lowest denominator if viewed from the woman's perspective. The question one would ask is that, does the male denominator meet all the dimensions that women's rights would like to envision as rights? Doesn't the male denominator limit women's rights because women are different?

The concluding comments of the Committee on the Elimination of Discrimination against Women on Malawi's report in 2006 stated the following;

33. The Committee is concerned that widespread poverty among women and poor socio-economic conditions are among the causes of the violation of women's human rights and discrimination against women. The Committee is especially concerned about the situation of rural women, particularly in view of their precarious living conditions and lack of access to justice, health care, ownership of land and inheritance, education, credit facilities and community services.

34. The committee urges the State party to make the promotion of gender equality an explicit component of its national development plans and policies, in particular those aimed at poverty alleviation and sustainable development. It urges the State party to pay special attention to the needs of rural women, ensuring that they participate in decision-making processes and have full access to justice, education, health services and credit facilities. The Committee also urges the State party to take appropriate measures to eliminate all forms of discrimination against women with respect to ownership and inheritance of land. The Committee invites the State party to place emphasis on women's human rights in all development cooperation programmes with international organizations and bilateral donors, so as to address the socio-economic causes of discrimination against women, including those impacting women in rural areas, through all available resources of support.”²⁴

Little did the committee know that part of the answer to reducing women's poverty and ensuring their access to land for the majority of the women who live in matrilineal communities lies in defending and protecting their customary land rights since 95% of Malawian women are matrilineal in lineage.

4.1.2 The Women's Protocol

The most applicable sections of the Women's Protocol according to this study is Article 19 subsections (a), (b), (c) and (f) which make provisions for women's right to sustainable development. Subsection (a) urges States Parties to introduce a gender perspective in the national development planning procedure; and (b) demands States Parties to ensure participation of women at all levels in the conceptualisation, decision making, implementation and evaluation of development policies and programmes. Finally, subsection 19(f) urges States Parties to ensure that the negative effects of globalisation and any other adverse effects of the implementation of trade and economic policies and programmes are reduced to a minimum for women.

²⁴ CEDAW/C/MWI/CO/5 Committee on the Elimination of Discrimination against Women 35th Session of 15th May-2 June 2006 Concluding comments of the Committee on the Elimination of Discrimination against Women: Malawi ADVANCED UNEDITED VERSION 2 June 2006, section 33 and 34 p7-8.

Although the Women's Protocol provisions cited above, look good on the surface, they are inherently problematic because of the assumptions on which they are premised. As discussed earlier in chapter three, the conceptualisation of development and the economic principles that inform it as well as what it entails are in themselves oppressive to women. The Women's Protocol provisions on the other hand assume that development as a concept is positive to women which reveals a conceptual gap. This gap is exacerbated by the fact that the manner in which development is introduced and implemented in Malawi does not accommodate women's rights because they are assumed not to have them due to the patrilineal ideologies that inform the policy makers. As already pointed out, this is a result of the fact that policy makers and development agents in Malawi arrogate to themselves the moral responsibility to intervene and impose development programmes on communities without meaningfully consulting the communities.

Although, the Women's Protocol in general raises issues pertinent to the lived realities of African women such as the right to live in a positive cultural context, it does not provide for defending, restoring and protecting such positive cultural rights as the extant customary right to land among women in matrilineal communities. Instead, just like CEDAW, it assumes that culture puts women in a much worse situation than men. In addition, although the Women's Protocol obliges states to use a gender perspective in national development planning, it has not interrogated the inherent negative attributes of what is termed to be development.

In conclusion, observing the challenges that women in matrilineal social organisation are facing as they struggle to participate in the irrigation schemes in Domasi and Likangala, one notes that their legal and social position is very complex. This is exacerbated by the interaction of human rights, customary law and practices as well as national laws which result in confusion. This is because they cannot all be experienced in absolute terms because their formulation and basis work against each other. As a result, the alignment of national law with international provisions, if not customised to local situations, becomes problematic, since it carries with it the deficiencies inbuilt in the international human rights provisions as will be explained in the next section.

4.1.3 The Constitution of Malawi

Government of Malawi as the primary duty bearer of rights ensured that it took steps to domesticate the rights of women in its Constitution provisions. In conformity with the women's rights principles the Constitution of Malawi specifically promotes equality in Chapter IV 20 (1), (2) and section 24 (1) a, (i), (ii). Section 20 and 24 of the Constitution facilitates equality before the law and prohibits

discrimination based on culture and custom and renders such practices punishable by the courts. However, there is no mention as to what should happen to positive customary law. Lack of specific mention of the protection of positive customary law in the constitution is a major gap that presents a legal void for their protection. Subsection 30(1) of the Constitution provides for the right to development and enjoyment of economic, social, cultural and political development and women are to be given special consideration in the application of this right. How the special consideration will be manifested in the realisation of this right for women, however, depends on a proactive judge since the low status and condition of women is so entrenched among both women and men that it requires a conscious deliberate effort to deal with their oppression and marginalisation. The system is such that it is easy to perpetuate the prevailing inequalities as will later be demonstrated in Kathleen Mahoney's argument where she suggests that due to the Aristotelian definition of equality and the male domination of the interpreters and implementers of law, women are bound to get a raw deal. Although the constitution of Malawi recognises positive customary laws it does not define what they entail, which in essence denies the preservation of such customs as they are left to the interpretation of presiding officers.

The challenge, therefore, lies in transforming the socio- cultural norms that provide matrilineal customary land rights to women into defensible and protected rights. First, however, there should be recognition and acceptance that there are customs that are positive to women in both international and regional human right instruments. This in turn should be translated into national Constitutional provisions for effective monitoring and implementation. Instead of using the gender "equality clause" and "the non discrimination" principle what women in matrilineal communities need is a legal provision that helps them to retain and maintain their customary land rights. Specific legislation that restores and protects women's greater rights to land in matrilineal social organisation is essential in order for women in these communities to benefit from the irrigation reforms and land reform. Unfortunately, the current Land Act and Land Policy as well as the National Gender Policy all fail to recognise women's customary land rights. This makes it difficult for women to have their rights protected and they end up being exposed to various conflicts as the next section demonstrates.

4.1.4 The Land Act and Relevant Policies

The Constitutional void in addressing women's customary land rights in matrilineal societies is, regrettably, also reflected in the Land Act 1967. Although the Act defines customary land, it does not define women's customary land rights in matrilineal societies and this is also true of all policies in Malawi.

Under section 2 of the Land Act 1967, Customary Land is defined as land under customary law but does not include public land. Under section 25 of the Land Act customary land is the property of the people of Malawi but vested in perpetuity in the President. In section 27 the Minister of Lands has power to convert customary land into public land. Further the Minister can also convert public land into private land thus a lease with terms not more than 99 years.

“The practice even resulted in converting some customary communal land to freehold without adequate consultation with customary owners” (Malawi National Land Policy 2002 p.22).

The Land Act, however, does not incorporate the matrilineal dynamics. It could be assumed that the *lacunae* in the law, is deliberate due to the fact that it would deem women powerful. Although the truth of the matter is that men in matrilineal society access land through women, as wives, mothers, sisters or sister in-laws, the law which was drafted by men does not acknowledge it.

This lack of recognition of women’s customary land rights in matrilineal societies was once more reflected in a land titling programme among the Chewa in Lilongwe. Masangano et al (2001) as cited in Kambewa (2006) found that land titling programme brought conflicts among the Chewa who are matrilineal in 1970s.

“The land tenure system change instituted in this programme was from customary to freehold and the land was registered in the man’s name contrary to matrilineal system of the Chewa where the sister or the sister’s brother has customary authority, titling led to a woman’s husband being recognised at the title holder. In some cases the sister’s brother sold the land” *because the system enabled him to have title in his wife’s village and he was greedy enough to deprive the sister of the land. This directly resulted from government having not taken into account the matrilineal customary land rights of women (my emphasis).*

This was also observed by the Presidential Commission Inquiry on land policy reform. Commenting on the failure of the land titling programme (commonly known as the Ndunda System) which was a pilot project on titling customary land in Lilongwe, the Commission said that the programme could not be replicated in other parts of Malawi because it erodes the customary social values and institutions especially matrilineal societies which are dominant in Malawi (The Presidential Commission Inquiry on land policy reform Preliminary report 1998.p50.) Ironically, even with such recognition, the Commission did not fully engage with the matrilineal social organisation. This is because the Commission did not come out clearly and mention the fact that the erosion of social values had to do with women losing their customary land rights. Kambewa (2006) mentions that “women are rarely recognised as controllers of land *by policy makers and government officials*” (*my emphasis*). This is evidenced by the silence in the Malawi National Land Policy (2002) which has not engaged with the realities of the matrilineal customary rights of women, despite the importance attached to it by the Presidential Commission Inquiry on Land Policy reform that informed the

National Land Policy development. It is important to note, however, that much as policy has decided not to recognise matrilineal land rights of women, this does not translate into the obliteration of custom or how it governs the social relations of matrilineal land rights of women. Instead, it results in increased conflicts between the policy and custom and, in turn, conflicts between women and men in matrilineal communities. This conflict is compounded by the normative legal framework of received law which is regarded to be superior to customary law (Silungwe. 2005, p.28)²⁵.

It is notable that the National Gender Policy (2000-2005) is also silent on the matrilineal land rights of women. The standing taken by the National Gender Policy to overlook prioritising the issue of land for women, let alone protecting matrilineal land rights of women, makes it unlikely for other institutions and policy makers to consider it in their development planning²⁶.

The conceptual gap in protecting women's customary rights found in CEDAW, the Women's Protocol, the Constitution of Malawi as well as the Land Act and the Land Policy, is argued to have emanated from the perspectives of their construction. All the above discussed legal and policy provisions speak to men's situations and regard women as having a secondary status to men. It would be difficult for such a premise to recognise contemporaneously women's positive customary rights as it is argued in the following section.

4.2 Dubious Assumption of Women's Rights Discourse

4.2.1 From whose Perspective?

The lack of recognition of women's customary land rights in matrilineal societies in the legal provisions and policies in Malawi could be a result of regarding women as holding a secondary status to men as assumed by human rights frameworks. This is because feminists have argued that women's Human Rights Frameworks, theory and practice tends to speak to men's experiences and the male's world view. This point of view overshadows the females' experiences and perceptions of equality and equity. The male comparator principle promotes equality on the same terms as men without recognising the fact that women are different and experience life differently. The language used is also organised along male lines which can be oppressive to women. Matrilineal social organisation presents a good example for such a scenario. Essentially, if gender equality principles

²⁵ The standard 'recognition clause' in relation to the application of customary law is entrenched in section 15 of the Malawi (Constitution), Order in Council, 1961;section 15 of the Malawi Independence Order, 1964;section 15 of the Republic of Malawi Constitution Act,1966; and section 200 of the Constitution of the Republic of Malawi, 1994.

²⁶ There seems to be a tendency of national gender policies being modelled on other policies within the region especially because donors who fund their development tend to identify consultants from other countries. This results in missing out on country specific salient issues such as the consideration of the matrilineal social order as is the case in Malawi.

are applied without taking into account the contextual differences of women and men's lived realities in matrilineal communities it happens to work against women. In Malawi a woman in matrilineal society by custom owns land. This is because custom demands that it is the husband who relocates to live in his wife's village, as already pointed out in chapter three.

The mismatch that 'the equality clause' poses in its application to matrilineal women's customary land rights is similar to Kathleen Mahoney's criticism of the "similarity and difference" model of discrimination. Kathleen Mahoney (1994) proposes a test of disadvantage rather than that of a comparator male in order to ensure that women's human rights instruments do not end up working against the women they are supposed to protect. Alternatively, she proposes a redefinition of the concept of "discrimination" in a manner that takes care of the systemic abuse and deprivation of power that women experience in the sexual hierarchy by using the disadvantage test. Mahoney is of the view that the disadvantaged test for discrimination which essentially looks at the systemic discrimination or inequality of condition which is the most damaging form of discrimination cannot be addressed via the rule-based sameness of treatment approach. Indeed, the use of this model virtually makes systemic disadvantage invisible and exposes women to further oppression if the only yardstick applied is the equality principle. The principles of the matrilineal context and cultural practice that give women primary land rights is premised on the cultural status women have as the root of the family. It also recognises the obligations that women have in their communities as distributors of land to their daughters. It also needs to be viewed from the limitations that came with Christianity that recognises men as head of households and robs women of the decision making power over their land once they get married. As a result Mahoney's proposition of redefining discrimination by taking into account systemic deprivation of power is a possible means of capturing such salient cultural issues. Whether this is the first step to finding a way to include matrilineal women's rights in the international and human rights provisions, however, remains to be seen as outline in the next section.

4.3 Matrilineal Women's Rights: A Conundrum, is there an answer?

The provisions in CEDAW and the Women's Protocol have been found incapable of accommodating the social institutions of matrilineal communities. It has also been pointed out that it is not enough to bring the national law into compliance with the international human rights principle because that brings with it the deficiencies inherent in the instruments. In addition there are a whole range of other intra-household power relations as factors that need to be considered in relation to women's land

rights and the application of 'the equality clause'. These include norms and behaviours upon which social systems have been built. Hence it has been argued that the monolithic, essentialized view of women in the international and national human rights provisions work against women in matrilineal communities in favour of men. The question that needs to be answered, nonetheless, is whether there is an answer to the current seemingly challenging situation for matrilineal women's land rights which have everything working against them and nothing working for them. The matrilineal communities demand a *defence* of women's existing customarily provided for land rights which development policies and management are eroding. Such a defence, Abdullahi An-Na'im argues, can only be obtained if international human rights instruments align themselves to positive cultures and traditions of the countries that domesticate them. An-Na'im is of the view that, unless international human rights have sufficient legitimacy within particular cultures and traditions, their implementation will be thwarted, particularly at the domestic level. Without cultural legitimacy, An-Na'im contends, it will be nearly impossible to improve the status of women through the law or other agents of social change.

Instead of seeking cultural legitimacy, Article 5 (a) of CEDAW calls for a modification of social and cultural patterns of conduct of men and women. The intention of the cultural modification is the elimination of prejudices, customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. The challenge is that such a modification would first have to be understood from the cultural practices' historical genesis and philosophical basis. This is because it will not just be the cultural practice that will be modified but the contextual dimension too for it to continue to be of meaning to the community it seeks to serve. This is particularly important due to the fact that, as pointed out in chapter three, the notions of male superiority in matrilineal communities were introduced by missionaries, so what seems to be a negative cultural practice, did not originate within the African traditions. As a result, instead of simply modifying the culture, what needs to be done is a re-negotiation of the status of women. This would involve unlearning the prevailing practice and reviving the old values, while at the time taking into account the changes that have happened over the years. It is a very complicated process that demands political will and commitment by both policy makers and communities because it is likely to be resisted by those benefiting from the status quo. Nevertheless, such a process may be what would in the end assist matrilineal women, because their situation demands an historical amendment.

Although, Article 5 (a) of CEDAW, as it currently stands, may not deprive women of their rights, the assumptions by the interpreters who are too deeply entrenched in the anti-patriarchal rhetoric

override the customary realities. It is this fact that demonstrates that the existing women's rights models do not work for matrilineal women's customary rights. As a result CEDAW continues to be deficient in providing for the restoration, protection and defence of women's customary rights that are significantly higher than those of men. It is this deficiency that points to the need for a rectification in this Women's Convention, which is also true of the Women's Protocol and the Constitution of Malawi.

In addition, for human rights to have cultural legitimacy, Mahoney (1994) points to the fact that 'equality', as a terminology in the rights discourse, has had interpretative challenges that have worked against women. Mahoney is of the view that "barriers to the achievement of gender equality for women are created by theories of equality that do not work and by gender bias in judicial decisions". She quotes Noreen Burrows who said;

the struggle for women's rights has been a struggle to eliminate discrimination, to achieve a place for women in a man's world, to develop a set of legislative reforms in order to place women in the same place as men...It has not been a struggle to define the rights of women in relation to their special place in the societal structure and in relation to the biological distinction between the two sexes (Mahoney 1994 p436).

Noreen Burrows observation is significant because her assertion is only valid where defining the rights of women in relation to their special place in the societal structure and in relation to their biological distinction does not conflict with patriarchal views. However, where women do not seem to fit the norm, such a definition can be problematic as is the case with matrilineal women's rights. It is the biological distinction of women and men in matrilineal societies that give women specific customary rights based on their sex. The challenge of defining women's rights that do not conform to patriarchal ideologies becomes more pronounced in defining the term 'equality' as expressed by Justice Rosalie Abella of the Ontario Court of Appeal who defined the term equality as follows:

Equality is evolutionary, in process as in substance, it is cumulative, it is contextual, and it is persistent. Equality is, at the very least freedom from adverse discrimination. But what constitutes adverse discrimination changes with time, with information, with experience and with insight. What we tolerated as a society 100, 50 or even 10 years ago is no longer necessarily tolerable. Equality is thus a process, a process of constant and flexible examination, of vigilant introspection, and of aggressive open-mindedness. If in this on-going process we are not always sure what "equality" means, most of us have a good understanding of what is fair" (Mahoney 1994 in Cook ed.1994)

If equality is meant to be a process of constant and flexible examination and of vigilant introspection and of aggressive open-mindedness then CEDAW and the Women's Protocol are both incapable of facilitating this dynamic. Mahoney explains this gap in her assertion, that women's rights principles serve men's interests by design because the human rights prototypes on which the two instruments

are based were formulated by men with men in mind. Women have barely been visible in systems that create, interpret, and apply laws²⁷.

For women to achieve both legal and social equality they have to be visible in the international norms conceptualisation and also in the arena that interprets law. Their continued 'invisibility' in these fora gives rise to the dilemma in the use of the "equality clause" and the principle of non discrimination in the matrilineal social order that gives women' customary land rights to the exclusion of men.

The danger of "the equality clause" is that it is not just given primary emphasis in all human rights instruments which includes both CEDAW and the Women's Protocol, but that as already pointed out earlier, the provisions require women to be treated the same as hypothetical men in similar situations. Mahoney suggests, read as a whole, the concept of equality in CEDAW clearly extends beyond formal *de jure* equality to address unintentional, systemic forms of discrimination and equality of result. Mahoney summarises the intention of the Women's Convention as follows:

in order to achieve gender equality, a multifaceted approach is required. In some instances, equality requires that women cannot be denied opportunities and benefits enjoyed by men. In others, women must be empowered to determine their own destinies, defined by their own priorities and needs. States have been given a crucial proactive role to play if gender equality is to be achieved. She concludes that very few states have either accepted or performed this role (Mahoney, 1994, p.442).

The question is why have they not done so? Is it not because men dominate the institutions that govern countries, make policies and those that implement them? Is not the lack of political will an indication that since women's rights are not men's concerns, they cannot be seen as general human concerns? And since the majority of the decision makers and law interpreters are men, are they not likely to misinterpret the "equality clause" and "the non discrimination principle" to mean that men should also have equal access to land in matrilineal communities without looking at the issue of the gender dynamics in these communities as a whole? Would the identification of culture and the use of stereotypes, customs and norms not be used to justify men's concerns?²⁸ Mahoney observes that "male-centred conceptualisations of rights have tended to ignore or diminish women's experiences in the application and interpretation of human rights in the courts and other decision making bodies"²⁹ Literature on judicial decisions tends to demonstrate how results of judicial decisions are often

²⁷ Mahoney quotes Laura Brenda 1981 and Margaret Schuller ed(1986)

²⁸ According to Mahoney reasons for abysmal progress in the improvement the global status of women can be found in Charlotte Bunch's "Women Rights as Human Rights: Towards a Re-Vision of Human Rights" Hum. Rts. Q. 12 (1990):486; Charlesworth, Chinkin, and Wright, "Feminist Approaches", note.4. both of which I was unable to find.

²⁹ Mahoney quotes Rebecca Cook, "International Human Rights Law Concerning Women: Case Notes and Comments", Vand. J Transnat'l L. 23 (1990): 779-818.

discriminatory and harmful to women, especially in cases of inheritance and divorce in Malawi. This is indeed true of other parts of the world, where women's rights have also not been considered.

4.4 Can the rights discourse be improved by taking on board the matrilineal customary rights of women?

According Mahoney (1994), the equality clause needs a principle base that is clear, with unequivocal purpose to eliminate disadvantage and reliance on unjustified stereotypes which relegate women to second class status from the outset. The current "Aristotelian sense of equality"³⁰ will not work for women in matrilineal societies and has not worked for women generally because their social reality consists of systemic deprivation of power, resources and respect. "Even in matrilineal society where men do not have land rights, they "do not experience long-term, widespread social conditioning in systemic subordination as women do. Most often the second class citizenship women endure ensures their difference from men, so it makes no sense to require them to be the "same" as socially advantaged men in order to be entitled to be treated equally." The sameness/difference model is also questioned by Mahoney because it does not interrogate the way in which law has maintained and constructed what is disadvantageous to women, nor does it allow for an examination of the extent to which the law is male-defined and built on male conceptions of problems and of harmful effects (Mahoney 1994 p442). This shortfall does not permit effective implementation of equality rights when their infringement arises from female-specific circumstances" (for emphasis Mahoney refers to CEDAW article 15). Examples are given of legal treatment of sexual offences, sexual harassment, sex work, sexual assault, reproductive choice and pornography which cannot be characterised or questioned as sex equality issues because the male comparators have no comparable disadvantage or need in these sex-specific areas.

The equality clause is also problematic because according to Mahoney it is the concept of equality that is made to be 'the norm' and that from time to time, autonomous individuals are discriminated against while systemic, persistent disadvantage is not contemplated. The Aristotelian model of equality is incapable of proposing or restructuring or even identifying systemic discrimination in matrilineal communities where, although women have customary land rights, they are supposed to portray or give *ulemu wa m'banja*³¹ to their husbands which disempowers them (the women) of the right to make decisions on what to grow on their land and how to utilise resources accrued from that

³⁰ Mahoney defines Aristotelian sense of equality to mean likes be treated alike and permit unlikes to be treated differently. That equality law is a law of sameness and difference.

³¹ *Ulemu wa m'banja* is the principle gender dimension that play out and creates disadvantages among married women as it demands submission in all areas including their right to decision making on their land.

land. The universalistic, gender-neutral approach of “the equality clause” does not recognise that institutional structures may impinge differently on men and women. Such an interpretation of discrimination cannot provide women with the systemic remedies they need to defend and protect their customary land rights in matrilineal social organisations. Instead, its application appears to work to their disadvantage. Mahoney concludes that “despite its superficial attractiveness and historical longevity, in practice ‘the equality clause’ is more likely to perpetuate rather than eradicate inequality because its use by legislators, policy makers, development officer and courts obstructs the achievement of equality for women. The substance, intent, and spirit of CEDAW and the Women’s Protocol and indeed the Constitution of Malawi that mandate gender equality can only be attained if the Aristotelian model is rejected and replaced with a more effective principled approach which will accommodate the matrilineal land rights of women. A test of disadvantage as proposed by Mahoney could be a more realistic alternative. Disadvantage is determined contextually by examining the social, economic, legal and political reality of women, i.e., the entire lived reality of women. It confronts the reality and the systemic abuse and deprivation of power women experience because of their place in the sexual hierarchy.

The application of the disadvantage test is result-oriented and takes on a contextual view of equality. It has an effects-based approach which would open doors for growth and development where women have significant advantages such as the customary land rights in matrilineal communities. It would be able to recognise and take on board these positive rights of women. Ik Dahl puts this succinctly in her assertion for property rights considerations, as she says;

“People’s lives form the basis for acquisition of rights and these lives are affected by culturally, religious and locally determined gender roles. The reality of people’s lives must be considered when deciding upon the interpretation of property rights if one wants to achieve a non-discriminatory result. Considering the fundamental role of property rights in ensuring the realization of several human rights, it is essential that the protection of property rights is carried out in a non-discriminatory manner.” (Ik Dahl.2007, p.278)

Recognition of the diversity of cultural rights related to land and ways in which matrilineal societies give primary land rights to women can open up space for factoring in positive cultural rights provisions in women’s rights discourses.

In conclusion, the interrogation of women’s rights as protected and established by the matrilineal societies’ remains a grey area in CEDAW and the Women’s Protocol. The identified theoretical gap needs to be given serious attention, as many women in matrilineal communities are disadvantaged instead of benefiting from these international provisions that inform national law. Failure to do so will continue to result in the internationally and regionally sanctioned reversal of women’s rights in

these communities. An appeal to matrilineal values that elevate and respect the woman are absolutely essential in the rights discourse. The solution to the defence of matrilineal customary women's rights remains a conundrum because of the premise used for the construction of human rights. The Aristotelian interpretation of 'the equality clause' works in favour of men. Men also tend to be greatly privileged because they are more represented than women in critical areas of life which gives them a social and interpretive capital that women do not have. This social and interpretive capital is evident in the thinking of policy makers, the development officers as well as the legal officers' the majority of whom are men. In addition the social reality and conditions are also skewed in favour of men due to their expectation of women to demonstrate *ulemu wa m'banja*. All these conditions point to the fact that there cannot be any 'equality' unless the playing field is levelled in all aspects of life. There has to be systemic equal representation in the composition of policy makers, development officers, legal officers, as well as in men also demonstrating *their* share of *ulemu wa m'banja* or revamping this concept all together. The current inequality in all institutions and the social expectations of women and their operation make the application of 'the equality clause' across the board problematic for women.

CHAPTER FIVE

5.0 IRRIGATION REFORMS AND THE PLACE OF WOMEN IN MATRILINEAL COMMUNITIES

This chapter presents the research findings. It covers the impact of a combination of development ideologies and their political underpinnings as they pertain to the events that led to the diminishing land rights of women due to the development of irrigation schemes in Domasi and Likangala. The last section is a conclusion and assessment of the findings with a proposed model for interrogating customary rights that is designed to uncover the lived realities of, inter alia, women and women's rights entitlements.

5.1 Were Matrilineal Women's Land Rights Considered in Irrigation Development?

Kambewa (2006) in his research findings in the Lake Chilwa basin which also covers Likangala and Domasi irrigation schemes found out that 68% of household land allocations were made by mothers. This finding however, does not indicate whether the land was allocated to sons or daughters. What the study proves nevertheless is that women in matrilineal societies have significant customary land rights in comparison to men. The question that needs to be answered is whether the land rights of women were factored into the conceptualisation, design and implementation of the irrigation development.

The available literature, demonstrates that an attempt was made by the colonial government to make informed decisions on how to develop the irrigation scheme in Zomba. A study was commissioned which engaged a sociologist by the name of Mitchell (1949). In his preliminary investigation on the development of the schemes Mitchell advised His Majesty's Government of Nyasaland not to neglect the important principle,

“that in general in any of these communities the women are residentially stable and that a man's rights in a village are held through his wife, i.e. when he has married uxorilocally. As a rule it is safer to record the women rather than their husbands as the hut and garden owners, for the simple reason that men are usually birds of the very fast passage...he warned that if the policy ignored the system it would cause some suffering and hard feeling. However, the government may recognize the system and attempt to modify the development programmes to be harmonious with the cultural practice of women owning land. If this latter course is adopted it seems self-evident that unless the women are co-opted and won over, the scheme is bound to fail...before the scheme is started it should be clear both in the minds of the Administration and the African, where and in what way the rights to the benefits of the scheme are to be held. But if a system of individual rights is considered it should not be

forgotten that the people are still bound most rigidly by their kinship obligations which they may not easily forego. (Mitchell 1949.p.45)

In his conclusion Mitchell gives very pertinent advice:

“It is clear that the task of development is enormously complex and difficult. The technical aspects of the problem in development may be difficult enough but may be solved by a process of designed experiment. But the difficult problem when the technicalities are solved is the political one of persuading the people to accept the innovation. In doing this one runs against a way of living and a related type of social organisation which together form a harmonious and stable system consistent with an economic technology which does not need planning beyond one harvest to another. Since the parts of the system are interrelated and interdependent, the repercussion of an action at one point spreads widely and in unexpected directions. Thus the solution of any apparently simple problem such as increasing the yield of an acre of land, may lie partly in tackling so ostensibly disparate a problem as the conjugal relationships of a man and a wife.” (Mitchell 1949.p46)

Mitchell’s assertion validates the importance of conjugal units in matrilineal societies as highlighted by Phiri 1997, Semu 2002 and Holden 2006. Likewise, the likelihood of cultural and customary principles being ignored by policy makers and development planners presented in chapter three explains why Mitchell’s advice was not taken seriously by the administrator. Mitchell, as an anthropologist was aware of this possibility, hence, his disclaimer to the administrator that it was up to him to take on board the advice given or to ignore it. Mitchell in his research report gave a detailed account of the matrilineal lineage as best as he could with diagrammatic depictions in an attempt to demonstrate as clearly as possible a system that was alien to the colonial masters. It was a bold effort to make patrilineal-oriented colonial masters understand and appreciate a different order, but to no avail³².

One would have expected the post colonial government to have been more inclined to appreciate the customary land rights of women. Unfortunately, it would appear that this was not the case. Based on the recollection of both men and women, land was appropriated from the people without seeking their consent because the government simply felt entitled to do so because it presumed to know better.

Answering the question on the process that was followed by government when taking over the land, discussions with a mixed sex group of women and men revealed that:

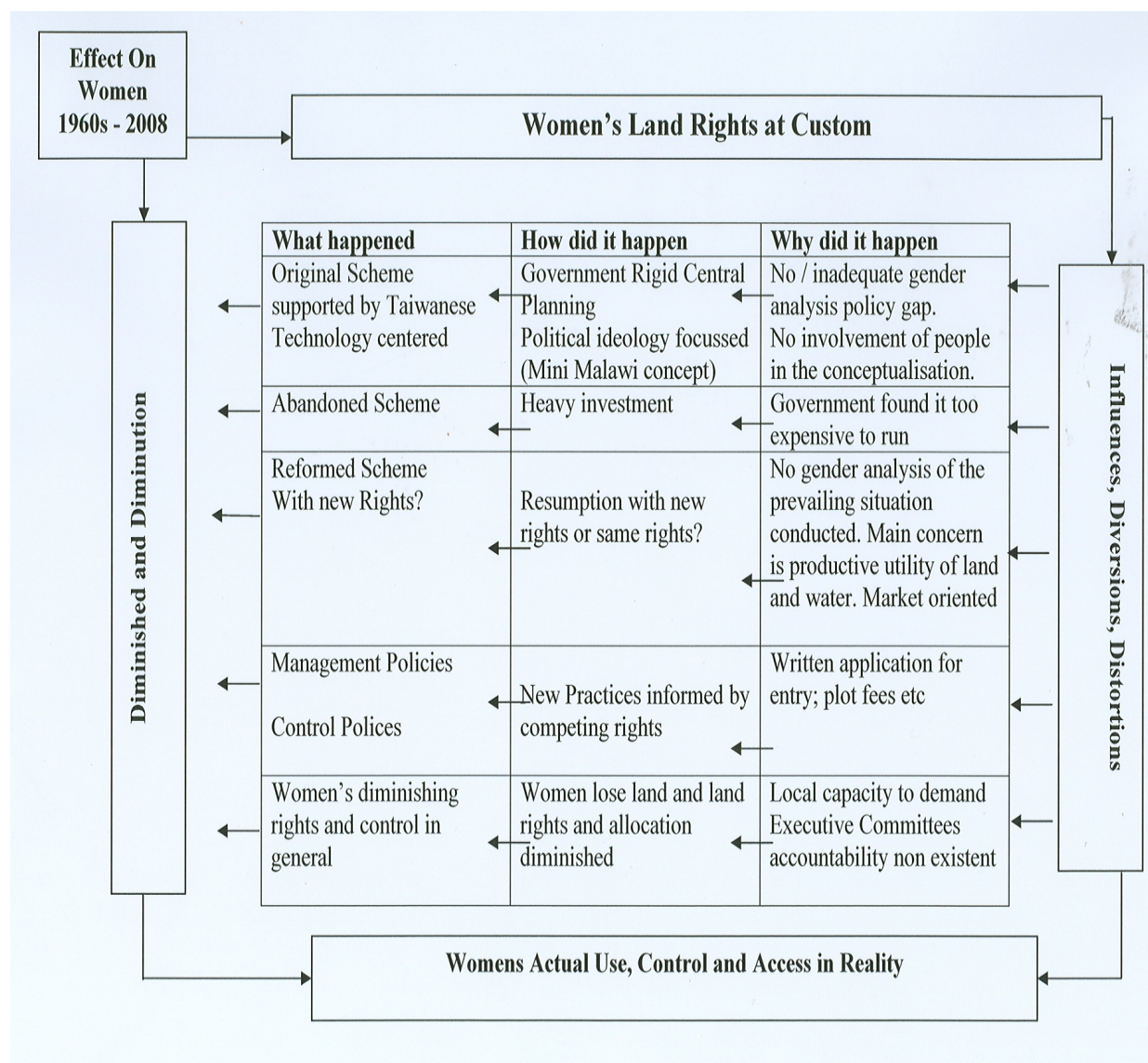
³² This could have been due to the Christian missionary interventions that had put in motion a process of redefining matrilineal social values including family structures and systems in matrilineal communities. The administrator, who probably had the same background as the missionaries, could thus, have taken it upon himself to influence change in the social patterns of this community by ignoring Mitchell’s advice which was based on lived realities.

Chiefs were made aware of governments intentions. Traditional Authority Mwambo was informed and so was the Group Village Headman Mbalu. Chiefs tried to argue but government was powerful and they just started to measure and demarcate the land. (Likangala Focus Group Discussions 17/10/07)

Various factors were at play in the appropriation of land by government which led to a total distortion of the social values in this matrilineal community. To begin with, the development programme was to become a measure for modernising peasant agriculture in the country. They were exposed to Taiwanese style of rice growing technologies (Nkhoma 2005). Secondly, Kamuzu Banda (the first State President of Malawi) had a special political agenda. He had a vision to showcase an ideal Malawian society by creating a nation without tribal connections (mini-Malawi) where a cross-section of different ethnic communities was to live together (Meliczeck 1977). In an effort to achieve the two goals, rural communities were displaced from their ancestral land to make way for the construction of irrigation schemes which became public land. ‘Malawi Young Pioneers’ from all over the country were asked to settle on the irrigation schemes. The matrilineal communities were suddenly faced with an alien institution. The schemes operated with different norms and changed the criteria for accessing the newly constructed irrigation plots from the matrilineal norm that gives women primary user rights, to allowing anyone who applied for land in the scheme.

Figure: 5 below entitled ‘women’s land rights at custom’ summaries the inter-relationship between women’s use, control and access to land as this is impacted upon by historical decisions in the introduction of irrigation schemes. It sketches what prompted the decisions and how those decisions were implemented and unwittingly (?) set in motion a process of women’s diminishing land rights.

Figure 5: Graphical presentation of the influences of the diminution of customary land rights of Women.³³



³³ Women's land rights at custom were disrupted by the introduction of irrigation schemes and how they were managed between 1969 and 2008. The main influencing factors for the distortion of what traditional custom had provided for women in these matrilineal societies included government central planning that was not based on gender analysis, the political ideology that was not sensitive to customary land rights implications and structural Adjustment Programmes that led to the abandonment of the schemes by government. The resumption of government assistance has only been to implement irrigation reforms that will result in communities managing the schemes as associations. Once more this process has not conducted a gender analysis so as to take into account the women's land rights implications that these reforms will permanently institute. The effect of all these has been a diminution of women's land rights in the Domasi and Likangala irrigation schemes which is having adverse effects on women's poverty reduction attempts exacerbated by social gendered dimensions of submission.

The development of the irrigation schemes and the political ideology that accompanied it disempowered women as they had to compete for land rights not just with men in their communities but also with people that came from other areas. To this end one elderly female chief recollected how women in her area had feared even applying for irrigation plots which further diminished their land rights. She noted that,

The introduction of the Malawi young Pioneer's participation in the scheme scared off women from applying for plots because they were afraid of what government could do next. In addition there were compulsory loans for all who participated in the scheme. Failure to pay back the loans resulted in losing household items and the little property that they had acquired before their joining the scheme. (Chief Mwanyumbu interviewed on 13/11/07)

The customary land rights of women were further eroded by the implementation of the economic Structural Adjustment Programme (SAPs) that emphasised the liberalisation of the economy and entailed privatisation of irrigation schemes in the mid 1990s. The enthusiasm of the new democratic government to conform to global trends and approaches to development using Structure Adjustment Programmes resulted in irrigation schemes being weaned away from government over twenty years after their establishment. The concept of irrigation management transfer was adopted against a background of poor performance of irrigation schemes and the unsustainability of the cost involved. The heavy investment in the settlement programmes in the schemes entailed building houses, schools, dispensaries or markets including basic structures for safe drinking water and access roads. Settlers were also provided with seeds, fertilisers and insecticides on short term credit to be repaid after harvest at twelve and half percent interest. Moreover, the farmers were not expected to make any direct contribution to the investment and recurring costs, as they were envisaged to have been indirectly collected through taxes. Thus all expenses for administration and capital costs were met from a United Kingdom/ Malawi loan, Taiwan technical assistance and the Christian Service Committee of Malawi while the regular expenditures were met by the government budget (Meliczeck, 1977, p.59).

The impact of the SAPs on the Likangala irrigation scheme was summed up in what was mentioned during the group discussions which were conducted. The group noted that they had been abandoned for ten years covering the entire period of the United Democratic Party rule. However, one good thing about the new democratic government was that it brought 'new rights'. Freedom of expression led people to the realisation and assertion of their rights. Exercising their rights meant that people could now begin to reclaim whatever was thought to have been wrongly taken away from them. Access to irrigation plots in Likangala began to be contested on the basis of ancestral origins. All the

Malawi Young Pioneer settlers were asked to leave, followed by those that had come from the neighbouring villages. Only women and men from Traditional Authority Mwambo were eligible to participate in the scheme (Ferguson and Mulwafu 2005). The concept of giving back irrigation scheme management to the community through the formation of Water User Associations is also being contested by some chiefs and their citizens who are grabbing irrigation plots in the scheme. Notably it is only men that are grabbing plots.

5.2 Is the Matrilineal Social Order being reversed?

The disruption of the matrilineal land rights which came with the establishment of irrigation schemes has resulted in the transfer of land rights to men. Information gathered during interviews revealed that more and more women are beginning to access irrigation plots through their husbands when according to customary land rights of matrilineal society, men are the ones who are supposed to access irrigation plots through their wives. One of these women is Zione Matewere who said that,

I do not have land in my own right. The four plots we have belong to my husband. I tried to apply on my own but failed to get a plot and I have been on the waiting list for years. It is only those women who have connections with members of the executive committee that easily get plots.

The reversing of the social order was partly set in motion by government imposed criteria for plot allocation. Both Domasi and Likangala irrigation scheme demand that men and women have to apply for irrigation plots as individuals based on their ability to fully utilise the plots. Eligible applicants are to have a minimum age of 15 in Domasi and 18 years in Likangala³⁴, they are to be mature and physically fit, with a reputation as efficient farmers and hard working, and should be willing to work in a group since they have to manage the equitable flow of water to all plots. These criteria seem to work for men better than for women because of the stereotypical tendency to think men are better placed to manage irrigation plots. This is validated by how women are treated when their husbands die. The experiences presented below of two women in Likangala bears testimony to what other women in their position face.

Mrs Paundi said that she joined the scheme in 1979 and was given eight plots³⁵ (2 acres) after she got married her husband managed to get an extra acre (4 plots) from the scheme. He died in 1999 and the scheme management took away two plots from her. She later gave two other plots to her two children a boy and a girl.

³⁴ Previously upon introduction of the scheme the minimum age was set at 20 years.

³⁵ One plot is 0.25 of an acre.

Fatuma Gonyole was born in 1985 she began to help her parents to work in the irrigation plots in 2000 both her parents died of AIDS when she was 18 years old. That prompted her to drop out of school. She was in standard 6 and had to stay with her auntie but soon got married and now has two children. She is the Likangala Scheme Managements President's niece³⁶. Her uncle however, grabbed two plots and gave them to his son and left her and her three siblings with only one plot.

Despite the fact that women are regarded by management as not capable of managing irrigation plots, men in general said women were better managers of irrigation plots. Male only focus groups both in Domasi and Likangala were full of praise for women's work in the scheme. In Domasi the men told a story of a single woman who has become reasonably rich by village standards and that she was in the process of having her house connected to electricity as a result of her rice production in the scheme. They said women work hard all day during the rainy season in the plots. This was in agreement with what women said about themselves too. Women gave a lot of examples of married women who work very hard while their husbands pretend to be fishermen and business men only to appear during harvesting time and cash in on their labour. This information, however, does not tally with how women are treated once their husbands die by members of the executive committees. Both Domasi and Likangala executive committee members said the women's ability to manage the plots is assessed and some of the plots are given to the deceased relatives, as was the case with Mrs Paundi while some are grabbed by the management committee. When women die, however, husbands are not assessed but are assumed to have the ability to manage them although men confessed that they greatly depend on their wives labour if they can not afford to pay for extra labour in the plots. This validates what Professor Paul Kishindo said, that women have become labourers on the schemes to the benefit of their husbands.

Regrettably, this apparent reversal of the matrilineal social order has not reversed expectations that women should continue to apportion land. Although women are not thought of as needing to be treated differently, their plot sizes continue to diminish because they are still expected to give land to their daughters which has been made worse by the new development of giving land to sons too, as more and more young men opt to take *chitengwa* Mai Saidi in Domasi said;

I used to have four plots in the scheme but I have given them all to my two daughters and one son. I gave a plot each to my daughters and two plots to my son. I now have to rent plots in the scheme every year.

The diminishing plot numbers of women is a result of the fact that no assessment was made of existing positions of women and their social obligations as land rights holders. Since the irrigation schemes are on public land, all customary rights cease to apply which conflicts with the persisting

³⁶ One would have expected the uncle to protect his niece and look after her in addition to ensuring that she retains the number of plots with her two brothers and a sister, but he grabbed his mbumba's plots and gave them to his sons'

social obligations. This fragments the few plots that they possess even further as their children come of age. This was validated by the comment made by the president of the Domasi Water User Association who said;

Once initial allocation of plots has been done individuals seem to have the prerogative to re-demarcate and share them with their families although they could still be registered in the first person's name. All they have to do is ensure that they pay the plot fees and utilise the land to its maximum potential as long as the land is tilled every year whether one is making profit or not is no longer an issue as was the case at the conceptualisation and initial government managed scheme process. (Mr Chapita President of Domasi Water User Association interviewed on 22/10/07)

Thus, although the irrigation plots are on public land, both women and men treat them as customary land and use customary land allocation principle. This is exacerbated by the fact that more and more sons are claiming land from their mothers. Out of the five men interviewed during the first focus group discussion, four had received irrigation plots from their mothers and only one man had got land from his father. This could have been due the fact that his father was a chief. Asked to comment on why this is the case, the women in Domasi said the custom is slowly changing as more and more men opt to live in their mother's villages, especially if the mother has plots in the irrigation schemes. It is a change they have come to accept and they cannot deny their sons a livelihood.

Figure: 6 A boy playing on a stack of rice bags³⁷.



³⁷ The young boy plays at the rice mill as he watches older men processing rice. The boy has not just become a contender for land which initially was his sister's right but is also learning by observation how to keep women away from benefiting from the rice proceeds as rice milling and selling becomes an exclusive men's activity.

In addition, the fact that rice is a cash crop makes it more of a man's crop than a woman's crop. This dimension seems to indicate that in addition to government policies being insensitive to women's land rights, the nature of the agricultural production and its perception by the community will lead to women losing their customary land rights. A heated debate, however, erupted during the discussions on whether giving land to sons should be the way to go. Although most women were of the opinion that the practice is denying girls their customary given inheritance, some women said their sons are resorting to force and are demanding to be given irrigation plots on the same basis as their sisters. This information validated Professor Paul Kishindo's sentiments to the effect that irrigation schemes are becoming a place of refuge for men who do not appreciate uxorilocal marriages.

Figure: 7 Men off to market rice in Domasi WUA³⁸



Men are also using every stratagem in their favour to consolidate power over the irrigation schemes. In their focus group discussions they revealed that one of the mechanisms they use to gain power over their wife's irrigation plots, in addition to the demand for *ulemu wa m'banja*, was having the plots registered in their name upon marriage. They said a sign of being "properly married" entailed having the wives registering their personal plots in their husband's name. This is another stratagem men use for dispossessing women of their irrigation plots as exemplified by Mrs Salima's story.

³⁸ Women in Domasi said the rice mill has become an exclusive men's club where they winnow (ordinarily winnowing is a woman's gender activity which men have taken up in a desperate attempt to exclude women from the rice proceeds) the rice and take it to markets and that women do not know the number of bags men sale because the men have devised a system that ensures that women should not know.

Mrs Salima got two acres (8 plots) in 1974 and acquired an extra acre in 1989 through marriage which was taken away from her by her late husband's family when her husband died in fact they wanted to grab all her land had it not been that the scheme records showed that they initially belonged to her mother before she got married and registered them in her husbands name (tracing ownership through records saved the situation). She later failed to manage all the plots so four plots were taken away from her by management she is a 57 years old single woman who never had children but apportion one plot out of her four remaining plots to her nephew.

When the scheme management takes over the irrigation plots chances of it being allocated to men is high because in Likangala reallocation of such plots costs a lot of money³⁹.

5.3 Are Women Benefiting from their Participation in the Irrigation Schemes?

Figure: 8. Mrs. L. Mhango in Domasi standing next to her plot⁴⁰.



The challenges women face in retaining their matrilineal land rights in the irrigation schemes is compounded by their intra-household power relations and inadequate participation in decision

³⁹ While the normal plot fee is K100 (about 80US cents) per agricultural calendar a plot obtained through corrupt means costs K3,000.00 (just under 30 USD's)per agricultural calendar.

⁴⁰ The picture shows a happy woman who is participating in the irrigation scheme. She also happens to be a committee member but such women are getting fewer as their land rights are progressively diminishing.

making in running the schemes. These two factors make it difficult for them to benefit from their involvement in the schemes. The intra household challenges manifest themselves in husbands' economic and labour abuse of their wives.

Both women and men interviewed recounted stories of abuse by husbands after harvest. The men boasted of squandering money soon after harvest as they go to *Kuchapa Matope*⁴¹. The men and Chief Matope observed that between the months of June and August there are a lot of marital problems and divorces among families that have plots in the scheme. The men in their focus group discussion openly acknowledged that their wives are better at soliciting good prices for the rice and that if prices are poor women would wait and not sell their rice until prices improve. They said good prices are not a priority for men, because all they want is to have cash in their pockets. They also said, once they get the cash it is readily squandered as that is the macho thing to do regardless of whether their families had food or not. Commenting on male behaviour a lady Chief in Domasi said she knew of an elderly woman who had to retrieve her plots from her daughter who was married to an abusive husband because she could not tolerate the cash squandering behaviour. Another woman in the women's focus group discussion told of a story of her mother who chased away her son-in-law from the village and forced her daughter to divorce him as a result of economic mismanagement and abuse of his wife's labour in the rice field. His wife lived in poverty despite her hard work and yearly good harvest. This finding demonstrates three major issues. First, although men are targeted for development initiatives they are unlikely to move out of poverty unless their cash management is brought under control. Secondly, women are more careful with cash and would therefore be the best group to be targeted for poverty reduction initiatives hence the need to restore and protect their customary land rights. Thirdly, although women generally lack of decision making power in their families there is a generational phenomenon because older women are more assertive and forthright. The mothers have the prerogative to drive away abusive son-in-laws in an attempt to empower their daughters. This strengthens the argument as to the importance of matrilineal rights and its power bases for women which need to be legally defended.

One of the major experiences for women is that men usually leave them for other women after harvest or after having saved enough money as was the case with Anita.

Mrs Anita Kamoto nee Chiwanda Started with 10 plots and registered them in her husband's name. They worked hard together but at the end of each harvest the husband would tell her that he would go bank the money. After a number of years she was tipped that her husband was building a very good house for another woman in the

⁴¹ *Kuchapa Matope* literally means cleansing themselves of the paddy mud but the expression is used for getting drunk with the money realised from rice production.

neighbouring village while her own house had not even been renovated. She was outraged and dumped him and when her two sons became of age (older son was born in 1973 and the last born in 1979) she gave them two plots each and is now left with two plots because after divorce the scheme management took away four plots because they kept lying idle for two years.

In addition to diminishing land rights and economic abuse of women in intra-household power relations, women are not adequately participating in the decision making positions in the management of the irrigation schemes.

In the Domasi Water Users Association which has received capacity building for handover, the percentages of women in leadership positions indicate that it is only at the lower levels in the secondary canals where their numbers are slightly higher as presented in chart 1 below⁴². It is only in the health committee where women compose 24% of the committee membership. This is because the committee is involved in ensuring that there is good sanitation in the scheme to avoid cholera outbreaks, which is regarded as women's work. The usual reasons were given as to why women cannot be found in key leadership positions. Women in both Domasi WUA and Likangala irrigation scheme were of the opinion that high education qualification were a prerequisite for key leadership positions. Another common reason was the fact that women do not propose each others names as they favour men, while most men said that women shy away from positions of power. Ernest Edwards consultants (2004) observed that there was no strategy for ensuring that women get leadership positions as their election was on an ad hoc basis. This was verified by both women and men who, upon further discussions, thought there is a need to have a deliberate strategy to improve the situation. Men suggested a number of ways that women could be encouraged to take up leadership positions. In Domasi the men identified the fact that the timing of meetings is not gender sensitive as meetings start late and end late which results in many women dropping out of leadership positions. In Likangala the men said as husbands they would begin to encourage wives to take up leadership positions and would be the first to nominate women. Women's reflections resulted in their realisation that they ought to be more assertive. They said leadership is a skill that can be learned and they can only learn by taking up positions. Both the Domasi and Likangala women said they would encourage each other and ensure that they are adequately represented in all committees in the scheme. They said they will no longer shy away from being elected.

Since there are few women in key leadership positions it makes it difficult for them to consolidate their rights as they are outnumbered. In addition the few that are there are not effective because they

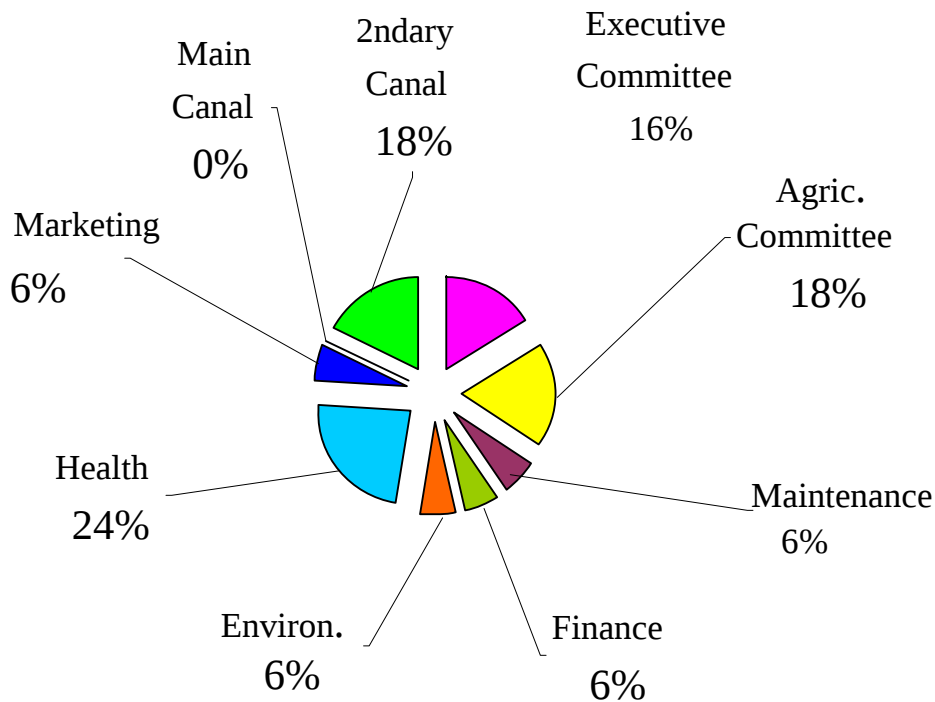
⁴² This is despite their being told to ensure that there is a minimum of 30% women in all decision making positions during their capacity building training.

are socially trained to respect male leadership. The women treasurers (for that is the position they normally get) said they find it difficult to assert themselves once they are in leadership positions because they do not have the skills to do so and most of the capacity building goes to male leaders who hold higher positions than them. The woman treasurer in Likangala said she is not aware of the other financial transactions the chairperson and the other male leaders involve themselves in. She only collects annual plot fees and membership fees while the men go to inspect idle plots and re-allocate them without her knowledge. It was evident that corruption was prevalent in Likangala. This was validated by the District Commissioner, who said the major reason for Traditional Chiefs to resort to irrigation plot grabbing and reclaiming their land was due to the fact that they were aware that the executive committee members were making a lot of money through corrupt practices.

From what has been said so far, women are facing a number of challenges that are progressively dispossessing them of their customary land rights. The genesis of their diminishing land rights was government led interventions. It is expected therefore, that the solution to their problems can only be initiated by government as the primary duty bearer to their land rights. The reality, however, is such that government is oblivious to women's land rights as demonstrated in the lack of provision in the Land Act and national policies. Key government respondents also testified to this fact in the interviews conducted.

Chart:1 Women in Leadership positions in Domasi WUA

Women's Participation in Domasi Water Users Association Management



This chart presents percentages of women in decision making position in Domasi WUA. It indicates that women are fewer in critical decision making positions that would make a difference to their land rights such as being members of the executive and finance committees. They enjoy slightly more representation in committees that demand hands-on activities such as the health and agriculture committees and secondary canal committees.

5.3 Are the Policy Makers Aware of what is happening?

Asked what role the Ministry of Women and Child Development has played in ensuring women's customary land rights, Christobel Chakwana, Deputy Director for Gender Affairs in the Ministry confessed that land has never been prioritised as an issue that needed attention, beginning with the National Action Plan on the Beijing Platform for Action followed by the National Gender Policy . Both documents instead prioritised Agriculture, Food Security and Economic Empowerment. She said

“I realise now talking to you how critical the issue of land is to improved agricultural production and economic empowerment for women. Unfortunately as a Ministry we missed an opportunity to influence the framing of the new Land Bill because the person who represented the Ministry on the Land Commission was an administrator in the Ministry and not a gender expert. It would also appear that only a person with gender and human rights training like you have could have picked the challenges women in matrilineal societies are facing, but the Ministry is not just short of staff but lacks capacity too. (Christobel Chakwana 12/01/08)

Commenting on the issue of matrilineal customary land rights, Dorothy Nyasulu, Chairperson of the Malawi Human Rights Commission, observed that most of the domestic violence that women faced and were brought to the attention of the Human Rights Commission relate to land. She said the Commission has been trying to solve the problems on an individual basis but had not considered looking at land ownership of women as a critical human rights issue to tackle. To this effect the Commission has never included women's land rights in the human rights violation reports submitted to government. This gap once more led to a missed opportunity for informing the newly drafted Land Bill. Asked to comment on why the matrilineal customary land rights of women are not recognised in the Land Policy 2002 and proposed Land Bill, the Commissioner for Lands Mr. Majankano (who admitted coming from a matrilineal society) observed that due to government interventions Malawi has become a hybrid of different legal practices that tend to favour men. This has been exacerbated by modern living standards that have adopted patrilineal standards. Another factor he pointed to was the influence of the English Law that informs the Malawi legal system which is patriarchal in nature. He went on to say that there is a problem of ensuring that new living standards co-exist with prevailing traditional practices due to the challenge of always wanting to meet donor deadlines before local situations are fully understood and taken care of. He challenged gender experts to be proactive in ensuring that women's customary land rights are taken on board. He was of the opinion that the gender specialists who had participated in giving input to the newly drafted Land Bill did not present an accurate picture of women living in matrilineal communities. They missed out on harnessing women's rights in matrilineal societies by concentrating on dealing with the decision

making power of men over the women's land once the women get married. He went on to say that attempts to jointly register land in the name of husband and wife in the new World Bank funded *Kugula Malo Project*⁴³ has already demonstrated the challenges of its un-workability. This echoes what Professor Kishindo a sociologist who categorically declared that joint ownership of land in the matrilineal rural setting does not make sense because culture has its own inheritance patterns that would not readily accommodate such notions. The notions being referred to here could be what Mitchell alluded to when he described men as 'birds of the very fast passage'. Semu (2007a) also says that one of the characteristics of matrilineal societies is that blood relations are stronger than marital relationships and that divorce in these communities is very common because women can also choose to divorce their husbands. This makes it difficult to assume that joint land ownership in a society where serial marriages are the norm could be an answer. Once more policy makers have failed to factor in lived realities in their implementation of the land ownership programme. The significant power of women in relationships is once more not acknowledged despite its existence and resilience in matrilineal societies.

5.4 Conclusion and Assessment

All in all the study has presented a human rights based gendered analysis of irrigation reforms in matrilineal communities and argues that matrilineal women's customary land rights have been progressively eroded over the years. The study has demonstrated that the dominant international pressures and trends such as the neo-liberal models of development that World Bank is imposing on Malawi as regards irrigation is problematic to women's land rights in matrilineal communities. The process of government giving secure tenure to groups and individuals as they decentralise and democratise irrigation scheme management will result in further marginalisation of women and lead to a loss of their land rights because of the patrilineal principles that inform the process in these matrilineal communities. The Malawi government's assumption that internationally directed policies will meet with local informal institutions, practices and power relations is problematic, especially because they do not seem to learn from past failures, as was the case in the Lilongwe land tenure project. Both government and donor assumptions that women and men in these matrilineal communities will reposition themselves and take advantage of the new irrigation institutions and new rules and norms have been proven wrong because of the contestations in Likangala over land. The loss of women's land rights calls for an understanding of the history and customs of the local actors before development programmes are initiated as contended by Kambewa (2006).

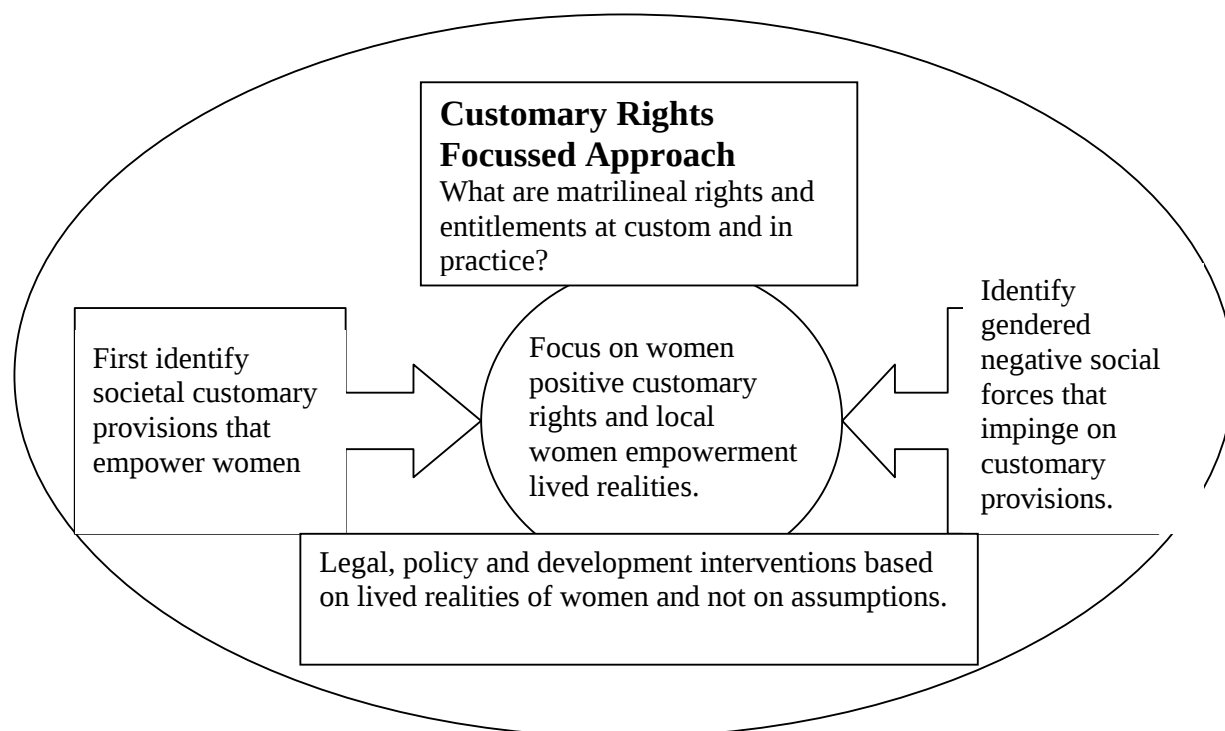
⁴³ Kugula Malo is a resettlement project for families without land funded by World Bank both Professor Kishindo who is an adviser to the project and Mr. Majankono Commissioner for Lands said the project does not respect the customary land rights of matrilineal women and is already rife with problems but World Bank implementers are refusing to read the writing on the wall that the project is created more problems than providing solutions.

Using the international and regional human rights obligations that Malawi has ratified and national legal provisions has also proved deficient because none of them recognise the fact that women have matrilineal land rights. This makes these provisions incapable of restoring, defending and protecting women's customary land rights and leaves women in a vulnerable position as their land rights continue to diminish. This situation in turn works against attempts to move women out of poverty and achieve the Malawi Growth and Development Strategy goal of wealth creation. It has been argued that development should be rooted in the reality and spirit of communities that it seeks to serve. The irrigation schemes were based on conceptual models of development that sought to align with international capitalist models and missed the opportunity to embrace the matrilineal societal norms that recognise women's primary user land rights. Therefore, by choosing to conform to outside development standards the state failed to meet the needs of the people and even further ended up violating the very rights of women that it was and is supposed to protect. Government ended up by setting in motion a history of diminishing returns for women's land rights which the irrigation reforms are progressively enforcing and men are increasingly exploiting to their advantage.

Thus the background presented in this dissertation and what is currently happening in the schemes demonstrate the fact that customary land rights of women in matrilineal societies may never be recognised if no special measures are put in place. The situation is further exacerbated by the fact that both the national gender policy and human rights commission have not yet prioritised land as an essential resource for women that needs attention. Secondly, the situation may not be addressed by applying the international and national legal provisions as they, too, do not accommodate the protection and preservation of women's positive customary land rights. This calls for a legal framework with enough flexibility to permit the development of a theory of equality that will advance women's interests, identify and recognise violations of their rights, and lead to effective remedies. Such a legal framework should be able to interrogate customary rights of women and be able to uncover the lived realities and women's rights entitlements. A suggested model is presented in chart 2 below. The chart depicts a situation where women's positive customary rights should be deliberately identified by isolating social dynamics that support women and recognise women's special positive position. Questions should be devised that will lead to the exploration of positive realities of women at custom and uncover their rights and entitlement therein. It should only be after these have been uncovered that their challenges and areas of difficulty should be exposed. This is important because, by beginning with assumptions that demonstrate the powerlessness of women, women's existing power structures become pushed into the background where they are 'disappeared'. By not focussing on women's strengths at custom both legal and policy makers

detonate a process of diminishing prevailing rights as is the current situation with the matrilineal communities in Malawi. Finally, women's positive customary rights need a positive anti-stereotypical framework that does not first see men as the standard but views women as the standard in their own right after which their situation can be contrasted with that of men. Based on the women's law approach matrilineal Malawian communities are providing the model that needs to be further explored. Below is a tentative presentation of how matrilineal societies could become a model. The model demands that, instead of always beginning with the negative position of women in society, it becomes imperative that women's position of strength should first be identified and acknowledged by legal drafters and policy makers at all levels. This should be done using locally available resources and knowledge of local women empowerment from both the men's and women's perspective so as to have a holistic picture of what the women's rights entail. It should only be after the women's rights have been identified that the negative gendered perspective should be factored in. This process would lead to a strong point of departure for working out how best to strengthen the women's existing rights and not be seen to be claiming them from scratch even where they already exist as is the case with the application of CEDAW and the Women's Protocol to matrilineal societies land rights.

Chart: 2 Model for interrogating women's positive customary provisions



Starting from a positive perspective of what rights women already possess at custom or in any situation would help to prevent feminists from feeling overwhelmed by the magnitude of the

challenge of attaining gender equality. Further skills that are needed, therefore, would be how to strengthen the existing positive rights and bring them to bear in the attainment of the gender equality movement. In addition to identifying areas of women's disempowerment, this exercise would be more proactive because it would add positively to the challenge of the whole gender equality movement.

The current reality in the matrilineal land rights of women in Domasi and Likangala irrigation schemes, however, calls for a forum for interrogating the implications of women's loss of customary land rights in terms of legitimacy and justice. It demands that government policy makers interrogate the implications of any type of development and the economic principles that inform it from a gendered perspective as well as from the women's customary rights perspective. The way to go would be to question and challenge both development and land reform ideologies that entrench this anomaly at the conceptual level without being emotive at the family, community, national or international levels. The main methodology would engage men as secondary duty bearers in their different positions as clan heads, chiefs, husband, brothers and policy makers in a dialogue that would enable them to recognise legally women's customary rights and have them protected. This recognition needs to be disseminated using a multi-sectoral approach involving the media, educational, religious and legal institutions.

Women too as rights holders have a major responsibility in ensuring that their customary land rights are legally accepted, restored and protected. As such women in Malawi and other matrilineal communities in the world need to explore the potential of an individual complaints procedure under the Women's Convention to highlight the need for developing provisions to protect women's customary land rights. Of great importance is ensuring that the women's voice on their customary land rights finds a public audience and is factored into the current irrigation reforms and Land Bill.

Instead of always looking north for answers and developmental models let Africans look within their cultures and develop their own with own standards and levels. Africa needs to harness the diversity of values and perceptions relevant to the continent while at the same time it needs to be sensitive to differences that give women rights within specific cultural settings. The basic parameters of the development model need to be radically rethought by Africans and where applicable simply improve what can easily be adopted and adapted.

An appeal to African values that elevate and respect the women's land rights is absolutely essential in this dialogue. Another key factor would be to harness group power by ensuring that groups of

women and other like minded organisations are taken on board in any process of dialogue so that it is viewed as a general concern rather an issue of a few disgruntled women nuanced by various factors.

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APPENDICES: Respondents consulted

Appendix (i) DOMASI WUA

NAME	DESIGNATION	ORGAINIZATION
Mr. A.G. Chapita	President	Domasi WUA
Mr. E.B Ng'anima	Vice President	Domasi WUA
Dunstan Mtambo	Marketing secretary	Domasi WUA
Mr. C. Kandaya	Environment President	Domasi WUA
Mr. A.M. Mwazamba	Executive Committee Member	Domasi WUA
Mr. D. Evance	Health Committee	Domasi WUA
Mr. S. Muhapali	Environment Committee	Domasi WUA
Mr. H. Mphetah	Agriculture Committee	Domasi WUA
Mr. H. Mitanga	Finance Committee	Domasi WUA
Mr.S. Patanda	Health Committee	Domasi WUA
Unisi. Mitanga	Audit Committee	Domasi WUA Block B
Grace Kabuya	Environment Committee	Domasi WUA
Mrs L. Mhango	Committee Member	Domasi WUA
Esme Chikonda	Committee Member Main Canal	Domasi WUA Block K
M. Chapweteka	Finance Committe Chairman	Domasi WUA
Hackson Mtambo	Vice Secretary	Domasi WUA
Esitere Gopole	Vice Secretary Secondary Canal	Domasi WUA Block G
Idesi Nampulu	Member	Domasi WUA Block A
Winnie Gondwe	Secretary Secondary Canal	Domasi WUA Block D
Margaret Mwangala	Secretary of Block GF	Domasi WUA
Lucie Mangochi	Treasurer Block J	Domasi WUA
Elinala Mlonya	Chairperson Block I	Domasi WUA
Meria Usi	Vice Chairperson Block I	Domasi WUA
Ela Utembe	Member Block H	Domasi WUA
Catherine Tengule	Lady Chief Lorensi and Member	Domasi WUA
Madalitso Chapweteka	Chairman- Finance	Domasi WUA
Wyson Zembani	Member	Domasi WUA
Panganani Piasi:	Operations And Maintenance Chair	Domasi WUA
Fisher Robert	Operations and Maintenance Committee member	Domasi WUA
Baird Ngalawa	Board of Trustees	Domasi WUA
Leonard Kamanga	Member	Domasi WUA
Macfare Zagwa	Member	Domasi WUA

Appendix (ii) LIKANGALA IRRIGATION SCHEME

NAME	DESIGNATION	ORGAINIZATION
Emmie Tandwe	Member	Likangala Irrigation Scheme
Fainess Phomuphomu	Member	Likangala Irrigation Scheme
Linnet Zauma	Member	Likangala Irrigation Scheme
Joyce Tembo	Member	Likangala Irrigation Scheme
Fatuma Gonyole	Member	Likangala Irrigation Scheme
Julita Khamula	Member	Likangala Irrigation Scheme
Eda Paundi	Member	Likangala Irrigation Scheme
Faresi Belo	Member	Likangala Irrigation Scheme
Anita Kamoto (nee Chiwanda)	Member	Likangala Irrigation Scheme
Rosby Malija	Member	Likangala Irrigation Scheme
Faines Mazungwi	Member	Likangala Irrigation Scheme
Dorica Salima	Member	Likangala Irrigation Scheme
Janet Stande	Member	Likangala Irrigation Scheme
Emmie Tandwe	Member	Likangala Irrigation Scheme
Winnie Kaiwe	Member	Likangala Irrigation Scheme
Zione Matewere	Member	Likangala Irrigation Scheme
Chief Matope	Member	Likangala Irrigation Scheme
Lady Chief Mwanyumbu	Member	Likangala Irrigation Scheme
Chief Sumani	Executive Committee Member	Likangala Irrigation Scheme
Mai Lamusi	Committee Member	Likangala Irrigation Scheme
Dyna Nansenga	Committee Member	Likangala Irrigation Scheme
Mai Kambewa	Committee Member	Likangala Irrigation Scheme
Medford Mnyalape	Committee Member	Likangala Irrigation Scheme
Banet Taombe	Committee Member	Likangala Irrigation Scheme

This is not a comprehensive list since the list of men could not be retrieved in a damaged flash disk and the paper on which the names had been written was discarded. Some of the men appear in figure 2 on page 28.

Appendix (iii) Government, NGO and Academicians Consulted

NAME	DESIGNATION	ORGAINIZATION
Mrs. Mapanje	Assistant District Agriculture Development Officer	Ministry of Agriculture and Food Security
Mr Chirimbiro	Zomba District Irrigation Officer.	Ministry of Agriculture and Food Security
Mr Chiwaya	Scheme Manager	Likangala Irrigation Scheme
Mr Chikolosa	Agriculture Extension District Coordinator (AEDC)	Zomba
Paul Kambona	Extension Officer	Likangala Irrigation Scheme
Mr. Chibwana	Zomba District Commissioner	Ministry of Local Government
Mr. Chirwa	Crops Officer	Liwonde Agricultural Development Division
Mr. Geoffrey Mwepa	Chief Irrigation Officer	Ministry of Water and Irrigation
Mr Francis Majankono	Commissioner for Lands	Ministry of Lands and Natural Resources
Dr. Grace Malindi	Director Agriculture Extension Services	Ministry of Agriculture and Food Security
Mrs. Christobel Chakwana	Director for Gender Affairs	Ministry of Women and Child Development.
Mrs. Regina Kananji	Principle Women's Programmes Officer	Ministry of Women and Child Development
Mr. Joseph Magoya	Advocacy and Training Officer	Training Support Programme for Community Based Natural Resources in Management in Malawi (NGO)
Mrs Mercy Makhambera	Capacity Development Manager	Malawi Human Rights Resource Centre.
Mrs. Getrude Hiwa	Legal Practitioner	Ernest Edwards Consultants
Mrs. Dorothy Nyasulu	Chairperson	Malawi Human Rights Commission
Mr. Dixie Kampani	National Coordinator	Irrigation Rural Livelihoods Agricultural Development
Mr. Tolani	Social Development Programme Officer	Irrigation Rural Livelihoods Agricultural Development
Mr. Necton Mhura	Head of Department	Faculty of Law, University of Malawi
Professor Paul Kishindo	Head of Sociology	Faculty of Social Science University of Malawi
Dr. Daimon Kambewa	Rural Extension Lecturer	Bunda College, University of Malawi
Mr. Bryson Nkhoma	History Lecturer	Faculty of Education, Mzuzu University.