

LAND RIGHTS FOR UNMARRIED, DIVORCED AND CHILDLESS WOMEN IN PATRILINEAL TRIBES IN MALAWI: PROSPECTS AND CHALLENGES

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Abstract

Women's ownership, access, use, and control of land and natural resources is essential for economic, social, and political opportunities. For instance, ownership and control that is accompanied with access to and economic utilisation of land and natural resources such as water or forests leads to wellbeing, improved livelihoods, and self-reliance. These benefits further lead to increased women's agency, household productivity and income, responsible spending, and food security. In patrilineal societies, a woman accesses land through her husband or sons. Unmarried, divorced, and childless women are, therefore, excluded from such access to land. The Customary Land Act of 2016 advocates for the individualisation and formalisation of customary land even for such women. It prohibits discrimination based on gender and guarantees women's access to land regardless of their marital status or whether they have children. Guaranteeing these land rights under legislation to previously excluded women is just the first step to economic empowerment. It must be accompanied with access to, economic utilisation of land, and control of benefits. Patriarchal structures and norms must be changed to ensure that women do, in fact, have ownership, control, and access to resources to derive benefit from production on the land. Through an appreciative inquiry, this paper will first identify the positives through best practices of how to maximise women's land ownership, access, and control. It will then identify and address challenges that act as obstacles to women's economic empowerment even when they own land.

Key Words: customary, economic utilisation, household, land access, land rights, land tenure, livelihood, matrilineal obstacles, patrilineal

Introduction

Women's access to and control over land can potentially lead to gender equality alongside addressing material deprivation that undermines women's equal participation in society (Rao, 2011; Pallas, 2011). Land is a source of security, status, and recognition in society besides being a productive asset and a source of material wealth. Ownership and control that is accompanied with access to and economic utilisation of land and natural resources

such as water or forests leads to wellbeing, improved livelihoods, and self-reliance (Deere et al., 2012; Ali et al., 2014, 2019). These benefits further lead to increased women's agency, household productivity and income, responsible spending, and food security. However, according to the UNDP (2016), only three per cent of Malawian women are registered owners of commercial land, despite the fact that they constitute 70% of the agricultural workforce. Land is the primary resource in household livelihoods

and food security in rural Malawi where customary tenure systems predominate (De Satgé, 2021).

Malawi has matrilineal and patrilineal customary ownership systems. In patrilineal societies, access to land is through a woman's husband or sons. Unmarried, divorced, and childless women are, therefore, excluded with far-reaching implications for their well-being and ability to take advantage of economic opportunities (Deininger et al., 2021). This paper investigates women's economic empowerment in patrilineal societies with the aim of identifying the advances and challenges in ensuring land ownership, access, and control by women.

The paper will provide an answer to the following main research question: *'what are the best practices that can contribute to women's economic empowerment from land ownership for unmarried, divorced, and childless women in patrilineal societies?'* The research question will be answered by relying on a social legal appreciative inquiry methodology. Besides analysing the law, the research will rely on secondary empirical research and academic literature to identify both positives and challenges in legal and other mechanisms to ensure women's economic empowerment (WEE) through land rights.

This paper is divided into six sections. The first section introduces the study. The second section provides conceptual clarity on land rights, gender, and how to achieve women economic empowerment (WEE). The third section presents the situational analysis of customary land tenure for unmarried, divorced, and childless women in patrilineal societies. This is followed by the fourth section on the legal and policy framework addressing the customary land rights for unmarried, divorced, and childless women in patrilineal societies. The fifth section offers an analytical evaluation of best practices to ensure WEE is a reality. Finally, the last section concludes the paper.

Land, Gender and Women's Economic Empowerment

Land has been identified in literature as an enabler for women's economic empowerment, as it offers many benefits to women (Meinzen-Dick et al., 2019). This section highlights specific benefits derived from formalised land rights. Goldstein et al. (2018; Lovo, 2016) indicate that formalised individual land ownership provides an incentive for investment and reduces expropriation risk as it is easier to formally enforce claims. Slavchevska et al. (2021) have also identified increased bargaining power for women in the household, better family welfare, and protection from domestic violence. Kaarhus (2010) also identifies the formalisation of informal land rights as a means towards both poverty reduction and the empowerment of disempowered people. Deininger (2019) finds that land registration strengthens women's land rights which exist within a broad dimension related to the security of tenure. There are five rights regarding land, which may be bundled together into what is commonly referred to as ownership. These rights are access or right to enter property; withdrawal or right to remove things from the property; management (the right to change the property); and alienation (the right to transfer the property rights to others, through sale, bequest, or gift) (Schlager & Ostrom, 1992). The documented ownership can be distinguished from 'effective ownership' which resides in the person who ultimately has the power to make decisions over the land (Dossa et al., 2015).

According to Dossa et al. (2015), this is more closely associated with management control than it is with documented ownership. Slavchevska et al. (2021, p.6) argue that *"it is wrong to conflate land rights with formal land ownership as this may not be the most important dimension to land rights in a given context"*. They state that *"although documented ownership is most relevant for land sale, resolving disputes, and access to credit, this may be of no use where there is poor governance, inadequate land institutions, or knowledge about land rights"*.

Meinzen-Dick et al (2019, p.77) also argue that “there is no evidence that formal land rights automatically translate into access to credit as this is dependent on well-functioning credit markets, banking systems that accept land as collateral, and legal systems that effectively adjudicate cases where land is used as collateral”. Furthermore, Goldman et al. (2016, p.777) argue that “documented ownership does not protect from the increased loss of land to large-scale land grabs as initially presumed”. They state that “it is based on strong private property rights within the neoliberal strategy of governance, which has no regard to the contestations between control versus ownership, private versus communal tenure, and statutory versus customary legal systems” (Goldman et al., 2016, p.778).


Where there is discrimination and exclusion, guarantees of land ownership, through documentation, are merely one aspect among others towards ensuring land rights and economic development that goes beyond market considerations (Higgins, 2018). Effective ownership should be the focus. Johnson et al. (2016) argue that, from a gender perspective, land rights must be conceptualised in terms of use rights, involving the ability or permission to employ an asset, control rights that indicate the power of management, and documented ownership. Thus, legislative guarantees of women’s land rights or formal land titles are mere tools towards economic empowerment which requires that women are actually able to use, manage, and control benefits derived from owned land.

Verman (2007) posits that one must interrogate the hidden power or locus of power within patriarchal structures when women, previously excluded and disadvantaged, gain land. Verman goes on to state that it is through the ‘patriarchal bargain’, the strategies that women use to exert power and shape gendered outcomes through accessing, using, and controlling land and other productive resources that empowerment is activated. Abbot (2017) states that empowerment is about giving women choice and agency and enabling them to participate in society on

an equal basis, contrary to patriarchal cultural values. Legislative measures may guarantee women land; however, empowerment will require enabling factors to catalyse agency to exercise the land rights and ensure achievement of freedom and choice (Kabeer, 2005, 2016; Cornwall, 2016, p. 342).

There are several specific aspects necessary to ensure gender equality and women’s economic empowerment based on land within a patriarchal society. Firstly, formal property rights in land are necessary, especially to legal or documented ownership for those previously excluded. Goldman

In summary, for WEE, land rights must be accompanied with a real opportunity to exercise agency and choice through access, use, control and benefits from the land.



et al. (2016, p. 782) regard this as “being right-based access”. According to Makarungomwa (2021, p.14), “the right-based access stage is not complete unless there is awareness-raising in communities about the formal land rights, especially as regards women’s land; the relation of customary law and statutory law; about principles of non-discrimination, gender equality and justice”. Women must be legally aware of their guaranteed land rights just as the communities should be, too. Secondly, there must be a focus on ensuring the ability to derive benefit. The ability to benefit is mediated through appropriate mechanisms to ensure the use of the land, through the right knowledge, authority, and resources. Structural and

relational barriers may impede a legal owner from using the land (Goldman et al., 2016). There must be, for instance, capacity in terms of knowledge, skills and decision-making power. As pointed out by Mukarugomwa (2021, p.18), *“new land clearing and decision-making regarding land use are tasks reserved for men in patriarchal societies”*. Gendered division of labour is at the centre of the problem. If this aspect is not redressed, the men would continue to exercise power over women and lay claim to the land, regardless of the formal title.

Goldman et al (2016) state that there must be access to customary authority or power to make decisions about resources. They identify participation in village-based governance structures as an opportunity to enhance individual and collective agency in negotiating, claiming, or defending the exercise of authority over land. Through experiences of women in their research in Tanzania, they found that such platforms created opportunities to learn and gain voice while exercising agency. Regular meetings and equal gender representation as a requirement for constituting the platforms for land rights, management and related matters are key (Mukarugomwa, 2021, p.18).

There must also be *“material support to women to ensure productive use of the land as another strategy identified in ensuring use by the women landowners”* as evidenced in a Food and Agriculture Organisation project in Rwanda (Mukarugomwa, 2021, p.18). Non-governmental organisations must work together with the government as well as key stakeholders such as chiefs at national and local levels to ensure that there is a conducive social economic environment for women to use their land productively. Finally, there is control of output or benefit. The focus here is the *“wider range of social relationships that can constrain or enable people to benefit from resources”* (Ribot & Peluso, 2003, p. 154). It is *“the ultimate evidence of empowerment, the culmination of all on-going processes, both personal and societal”* (Goldman, 2016, p. 777). These processes include challenging patriarchal gender norms through

sensitisation, negotiations, claims, demands to legal rights, the enhancement of individual and political agency of women, redressing disadvantage through the distribution of resources, and opportunities including participation, and collective agency within the community. Through these strategies, land rights of previously discriminated categories and subordinated women become a basis for *“women to gain control over land”* and *“gain the independence necessary to exercise their agency, confront injustice and inequality and pursue productive livelihoods”* (Kelkar, 2011, p. 60).

In summary, for WEE, land rights must be accompanied with a real opportunity to exercise agency and choice through access, use, control and benefits from the land. This requires that legislative and other types of measures recognise discriminated women's rights to land ownership and redress disadvantages, but also challenge and transform cultural institutions that act as barriers to gender equality and economic empowerment, as these two concepts cannot be regarded as separate goals.

Context: Customary Land Rights for Unmarried, Divorced, and Childless women in Patrilineal Societies

Land law in Malawi has developed under both formal and customary law.

Nature of Customary Land in Malawi

Customary land is governed by customary law. Customary law constitutes the unwritten traditional norm or rules and practices that determine who is able to hold, use, or transfer land. Customary land tenure stems from a traditional land tenure system that is derived from the aspirations and customs of the people. The customs are based on accepted practices and principles underlying those practices (Chikhwenda, 2002). Under customary land tenure concepts, land is regarded as communal, that is,

claimed by the community as a unit but is vested in the head of the community such as a traditional authority, a chief, or family leader who holds it for the benefit of the whole community (Makarungomwa, 2021). Sub-groups or individuals can be apportioned and allocated land only to be occupied and used. As such, customary land tenure is based on relationships that exist between the members of a particular community by virtue of their occupation and use of land (Jere, 2012).

There are several distinct features of the customary land tenure system. Firstly, members of the community can only be bestowed restrictive rights to the land and do not get ownership of the land itself. Secondly, the customary land tenure system aims at strengthening group unity, interdependence, and solidarity as land is seen as a communal commodity and not individualised. Thirdly, the rights that individuals have to the use of the land cannot be sold as these are only usufructuary in nature. Fourthly, the title to any customary land is vested in community leaders on behalf of their constituents. Any dispute as regards the use of the land is resolved by the community leaders and, in other cases, by national legal systems (Jere, 2012). In the past, community leaders played a big role in customary land allocations. The situation is now changing since most traditional land is already allocated to families. Today, family heads have the important role of allocating land within their families.

Malawi has two major customary land systems, namely, matrilineal and patrilineal land tenure systems. In both systems, access to land and security of tenure depends on the sex of a person. As such the two systems are the major cause of gender bias and discrimination in land allocation and use (Erling et al., 2014). In matrilineal societies, the land rights are passed on to female heirs. In contrast, in patrilineal societies, they are passed on to male heirs. This is a clear discriminatory approach in the passage of land rights between males and females (Erling et al., 2014; Kumar et al., 2016).

Malawi is more of a matrilineal society where descent and land inheritance is conducted through females. This paper focuses on patrilineal societies that are mostly found in the northern part of the country. Upon marriage, women in this culture move to their husband's communities and have access to land through their spouses and male children (Erling et al., 2014). Male children inherit land from their fathers and male relatives. In this system, the males enjoy the benefit of being leaders and decision-makers on land and other matters (Tschirhart et al., 2015). This, therefore, results in uncertainty and insecurity in women's land rights because women's enjoyment of land benefits becomes dependent on ties to spouses, sons, and male relatives. As such, the problem is more pronounced in unmarried, divorced, and childless women. Access to land for these groups of women often ends when there is a divorce, the death of a spouse and with failure to bear sons (Kevane, 2008). This, therefore, leaves unmarried or divorced and childless women in a precarious position.

Customary Land Tenure for Unmarried Women in Patrilineal Societies

The patrilineal system of land inheritance is linked to marriage in that women gain access to land upon marriage. Marriage entitles them to use their spouse's land. Once married, the matrimonial home is established in the husband's village. The family is allocated land through the husband as the inheritance of land passes through the male line. The land then passes onto the eldest son who inherits it in trust for the other male children. A family with only female children is allowed to pass the land to the girls. However, the female children only hold the land in trust for the benefit of males in the next generation. Consequently, the unmarried women do not have an assured access to land. Widowed women are allowed to continue using the land of their deceased husband on the condition that they do not remarry and are of good conduct and behaviour. Remarriage is accepted when the marriage is between the widow and one of her deceased husband's relations (Chikhwenda,

2002). As such, in patrilineal societies, married women access land only through their husbands and sons, and unmarried women, through their fathers. The information above clearly shows that unmarried women's access to land is dependent on sustained relationships with their fathers, male relatives, and their in-laws if they are widowed. Sustaining good relationships with male relatives may not be easy for unmarried women. Their situation concerning access to land is, therefore, unpredictable and insecure.

Customary Land Tenure for Childless Women in Patrilineal Societies

Childless women can access land in patrilineal societies through marriage and male relatives. Male relatives sometimes 'lend' land to female relatives for them to use. The women only have the right to use the land but the males retain the ability to retrieve it should they need it (Tschirhart et al., 2015). In other cases, childless women can request land from their traditional leaders. These days, it is also common for childless women to rent land (Tschirhart et al., 2015). Widowed women gain access to land through their sons. This means that widowed women who are childless lose out. The death of the landowner usually results in the land being returned to his sons or male relatives (Ajefu & Abiona, 2021).

Customary Land Tenure for Divorced Women in Patrilineal Societies

As stated above, once married, a woman relocates to and lives in her husband's village. Married women's access to land is through their spouses and this access to land is, therefore, dependent on continued good relations with their husbands. Tschirhart et al. (2015) state that in cases of divorce, the woman is often asked to return to her parent's village. In such cases, she accesses land through either her father or brothers. Such women, therefore, do not have a permanent claim to the land and cannot pass it on to their own children. This essentially means that divorce in a patrilineal society robs women of their right to use land. These women are not even

compensated for any form of investment that they might have made on the land.

Legal and Policy Framework for Women's Access to Land in Patrilineal Societies in Malawi

L. Berge (2014, p. 62) notes that "land tenure on customary land has always been based on diverse traditions of ethnic groups which allocate use rights that are inheritable according to the customs of each group". The current Land Act of 2016, as well as the Customary Land Act (CLA), recognise customary land. This means that formal law has recognised customary landholding. This section seeks to analyse the position of women's access to land under the Malawian legal and policy framework as well as what it entails for women in patrilineal settings.

One of the key national principles under Section 13 (a) of the Constitution of Malawi requires the State to progressively adopt and implement policies and legislation aimed at achieving gender equality among other goals, with the aim of actively promoting the welfare and development of the people of Malawi. This is carried out in a number of ways, including the enactment of laws to address inequality and ensure that women's rights are not violated. Malawi enacted the Gender Equality Act, which guarantees the enjoyment of rights by women on an equal basis with men without discrimination. The Act further prohibits harmful cultural practices which are a contributing factor to the marginalisation of women. In relation to women's access to resources, including land, Malawi enacted laws such as the Deceased Estates (Wills and Inheritance) Act and the Marriage, Divorce and Family Relations Act. These two Acts focus on women's land rights following the death of a spouse or relative or following judicial separation and divorce.

Furthermore, the country has comprehensive land laws, including the Land Act, the Registered Land Act, and the Customary Land Act. It must be pointed out that at the time of writing this paper, the

implementation of the Customary Land Act was at a pilot stage. Apart from the above, the Constitution safeguards the right of women to acquire and maintain rights in property, independently or in association with others, regardless of their marital status. Section 24 of the Constitution further provides for the protection of women during dissolution of marriage by requiring the fair disposition of property held jointly with a husband. Thus, the application of the law and realisation of the rights is regardless of the ethnic or customary group and must be on an equal basis between women and men.

The initial step in the recent land reform process in Malawi was the adoption of the 2002 National Land Policy. The goals of the policy were to “ensure tenure security and equitable access to land as well as to facilitate the attainment of social harmony and broad-based social and economic development through optimum and ecologically-balanced use of land and land-based resources” (2002, p.5). One of the key objectives of the policy is guaranteeing secure tenure and equitable access to land to all citizens of Malawi without any gender bias or discrimination since this was one of the identified problems related to the lack of secure tenure for customary land which only granted land use rights and not individualisation of land. This was influenced by a neo-liberal approach whose proponents argue that efficient land markets lead to efficient outcomes (Stiglitz, 2002). Customary tenure has been said to provide insecure tenure for vulnerable groups such as women, children, and persons with disabilities. The National Land Policy, therefore, set out to influence the enactment of land laws that would provide secure tenure for vulnerable groups, including women. Thus, the policy recognised women’s disadvantaged position in access to land and sought to provide measures for protecting their rights through individualisation and registration of customary land.

The Land Act of 2016 is the overarching piece of legislation on land in Malawi. The Act proceeds on the aspirations of the Malawi National Land Policy and Section 7 of the Act categorises land into public

and private land. It recognises the formalisation and individualisation of customary land through customary estates. However, the Act is silent on gender since there are no provisions providing guidance on access to land and gender equality. The Act is gender-neutral in the same way that the Registered Land Act is, which makes provision for registration of title to land and dealings in land. On the surface, these two laws envisage a scenario where women have equal access to land as men.

The Customary Land Act (CLA) provides for the management and administration of customary land. In the management of customary land, the law creates traditional land management areas with committees tasked with managing land within the boundaries of the area as opposed to the authority previously exercised by traditional leaders. Membership of these communities is supposed to consist of equal numbers of women and men as per Section 44 (2)(b). This is a catalyst for the participation of women. However, one of the qualifications for membership is knowledge of customary land law of the area. This has the potential of having members of the committee who are gatekeepers and advance customary practices which have long disadvantaged women in patrilineal settings. Furthermore, if participation is to bring out the desired results for all women, there must be diversity in the nature of women who become members of these committees. However, with the history of exclusion in patrilineal settings, membership would ordinarily entail elderly women as opposed to young women, married women as opposed to unmarried women, those with children as opposed to those without children, and would give room for essentialising women as well as further disadvantaging other women. It can only be hoped that the members of these committees are individuals who are well equipped and aware of the need to protect all women’s rights regardless of their age, marriage, or other status following the constitutional provisions as per Section 49 (1)(a)(ii) of the CLA.

In addition to the above, the Act provides for the allocation and registration of customary estates. The application for a customary estate can be made by individuals as well as families. The former is a positive in that it will allow women to register their interests and allow previously disadvantaged women to have secure land rights. The Act explicitly provides for the need to protect women's rights in the grant of customary estates. For instance, Section 22 of the CLA requires Committees to have regard to the equality of all persons as a factor to be considered in granting a customary estate. This would require that when considering applications for the grant of customary estates, Committees must not treat an application from a woman less favourably than an equivalent application from a man. Furthermore, the Committees should not apply adverse discriminatory practices or attitudes in the grant of customary estates. As can be seen, the law acts to protect women's rights. On the other hand, the same Act, under Section 22 (2)(d)(iii), provides that another factor to be taken into account when considering an application for a customary estate is the likelihood of the applicant being able to obtain access to the necessary skills and knowledge to enable them to use the land productively. This factor envisages that applicants for customary estates will be individuals who will or are likely to have the necessary skills to develop the land. Considering the long history of women being disadvantaged, this has the potential of further disadvantaging women.

Another issue to be considered relates to the application of customary law in the administration of customary land. Section 49 of the Customary Land Act provides for the application of customary or traditional practices of the area. This means that the application of the Act will not bring the same results depending on the area where it is being applied. This is due to the fact that there will still be a distinction between patrilineal and matrilineal settings. It is, therefore, argued that this non-uniformity in the application of the law still puts women in patrilineal settings at a disadvantage if the application of

customary law in patrilineal societies does not consider women's position.

As can be noted from the foregoing discussion, the laws and policies in the country seek to provide for the protection of women's access to land. Considering the identified gaps, there is a need to identify best practices and strategies for securing access to land for women and the next section focuses on these.

Best Practices for Economic Empowerment and Land Rights for Unmarried, Divorced, and Childless Women

It has been proved that women's access, use of, and control over land and productive resources is central to their economic empowerment and good standards of living. To this end, Malawi's legal framework, as discussed earlier, provides a good starting point in guaranteeing women's rights to access, use, and control of land. However, the gaps identified above still remain and need attention to ensure women's actual empowerment in land. Additionally, it is not sufficient to have such de jure provisions on women's ownership, access and control of land. De facto guarantees are more important yet restricted by poor implementation of the available policy and legal frameworks, patriarchal cultural values, and other factors. The subsequent paragraphs will explore key strategies and best practices for maximising land ownership, access and control for unmarried, divorced and childless women.

To begin with, one of the concerns raised with respect to policies, laws, and programmes on women's access and control over land has been the overemphasis on land access and control experiences of the average married woman while overlooking the experiences of other women like those without children and the unmarried (Rose, 2002, p. 124). This is also reflected in the statutes highlighted in the previous section, which make provisions in general terms and are not

adequately nuanced to protect and embrace women's inherent diversity. The Marriage, Divorce and Family Relations Act, though proactive in its provisions, protects women's property rights upon dissolution of marriage. The available jurisprudence also exhibits an overemphasis on married women's access, use, and control over land. To maximise women's economic empowerment through land access, use, and control, it is important to have comprehensive multifaceted laws, policies, and programmes that embrace the diverse and specific needs of various groups of women, coupled with awareness-raising of such laws and simplified guidelines highlighting best strategies for different kinds of women.

Further to and as indicated above, while the key policies mention women's access to and control over land, they do not make this provision the focal point, thus it is incomprehensively provided for. In the Gender Equality Act, for instance, women's access to land is only mentioned in relation to agriculture and natural resources while the land policy makes bare mention of this issue. The policy framework does not adequately reflect the needs and specificities of unmarried, divorced, and childless women. This is reflective of the poor participation of these groups in policy formulation. As argued in section 2 above, participation in village-based governance structures is an opportunity for those involved to enhance individual and collective agency in negotiating, claiming, or defending the exercise of authority over land. The Office of the United Nations High Commissioner for Human Rights (OHCHR, 2013) has stated that effective and meaningful participation of all categories of women at all stages of policy law and development is a commendable best practice that has enhanced women's access, use, and control over land in other countries. The right of women to active, meaningful, and effective participation in legal and policy development is not only crucial to ensuring good policy, but it is also an essential component of a human rights-based approach to women's access, use, and control of land. *"Women's participation has successfully influenced and benefitted land policy*

processes in many contexts" (OHCHR, 2013). In this regard, it may be worthwhile to explore quotas to ensure properly nuanced women participation in community governance structures.

Women require, acquire, and gain access to land in many contexts including marriage, the family, inheritance, land law, property law and commercial transactions. A commendable best practice is *"to ensure that all policies in relation to women's land access, use and control are comprehensive and harmonised"* (OHCHR, 2013). It is important to evaluate how our laws on all the above aspects interact to enhance women's land access across the board. Unfortunately, Malawi's policy and legal framework, in this regard, is disjointed, incoherent, and inconsistent.

Further to the above, women's access, use, and control over land can be enhanced through access to justice. To begin with, even where land access laws are comprehensive and adequate for women, they can only benefit women if they are being effectively implemented. Effective implementation, in turn, is premised on women's knowledge of the law and their ability to initiate disputes or engage the right authorities whenever their rights of access, use, and control over land are impinged. Improving access to formal education as well as adult literacy programmes and legal awareness can go a long way in empowering women to know the law and to challenge discriminatory rules and practices whether formal or informal. Additionally, it is important for courts to be fully accessible (physically and linguistically, among others) and affordable for all women. Unfortunately, these are prominent challenges for most Malawians (Kayuni, 2015, p. 29). Since the informal justice systems are most readily available for the majority of women in rural areas, it is recommended that such should be strengthened and equipped to deal with dispute resolution in relation to land through awareness and training of chiefs and other authorities who preside over such systems. Adequate inclusion and effective participation of

women in such structures are also recommended. Formal justice systems must also be oriented to proactively adjudicate land disputes and to recognise and acknowledge women's non-monetary and indirect contributions to the welfare and advancement of their families. Unfortunately, recent jurisprudence appears to undermine such contributions like in the case of *Sikwese v Banda* MSCA Civil Appeal Number 76 of 2015; *Nyanyale v Nyanyale* Civil Appeal Number 18 of 2020.

It is also recommended to promote titling and registration of land for women generally and unmarried, divorced, and childless women in particular. As argued earlier on, legal ownership is essential for historically excluded groups. However, this must be carefully undertaken to ensure it does not exclude women from access to land in patrilineal societies. As indicated above, the Customary Land Act is making some provisions to mitigate this risk, though it is not comprehensive and women land access is disoriented. Titling and registration must be accompanied by an effective awareness-raising about formal land rights amongst disadvantaged women; non-discrimination; clear and simplified guidelines on the process; and supporting women with knowledge and resources to use the land productively.

CONCLUSION

Unmarried, divorced, and childless women in patrilineal tribes suffer discrimination based on patriarchal gender hierarchies which accord them secondary rights to land as a subordinated category. The recognition of WEE as instrumental to development has resulted in seeking law reform to address the exclusion. For legislative measures to ensure economic empowerment for women, the focus must be holistic in identifying land rights from a gendered lens that goes beyond formalistic or documented ownership of land. It must recognise and create a conducive environment for women that suffer both direct and indirect discrimination due to patriarchal norms that prevent them from exercising agency and choice. Land rights must conceptually be broadened to address the gendered relationships women and men have in patrilineal societies where there may be barriers to access, use, and control benefits from the land. Legislative and other types of measures used to challenge such norms, to redress the disadvantage suffered and to bring transformation must inform strategies towards women's economic empowerment.

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