

Customary land tenure, inheritance rules, and smallholder farmers in Malawi

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**Customary Land Tenure,
Inheritance Rules, and Smallholder
Farmers in Malawi**

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Abstract

Based on information derived from six villages in various parts of rural Malawi, this paper examines the interrelationship between smallholder strategies to obtain land on the one hand, and customary land tenure and inheritance rules on the other. The paper revealed that although the majority of land transactions followed customary land tenure systems and inheritance rules, in a good number of cases land transactions deviated from the basic rules. One factor behind such deviation was the unique personal relationships that were developed between original landholders and heirs. Another factor was the seemingly increasing cases of returning wives in patrilineal villages. Still another factor was the intensifying land scarcity that encouraged villagers to adopt strategies to obtain land from any source by any means. On the other hand, there were also some cases in which the same land-scarcity problem induced villagers to countercheck the practice of flexible land transfer to prevent their lineage land from being alienated to non-kin members. These facts suggest that, in a land scarce situation, an individual strategy to obtain land rights from any possible sources by deviating from customary rules may occasionally be in conflict with a lineage strategy to countercheck such tendency.

Keywords: Land, Smallholder, Customary Tenure, Malawi, Africa

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CUSTOMARY LAND TENURE, INHERITANCE RULES, AND SMALLHOLDER FARMERS IN MALAWI

by

Tsutomu TAKANE

I. Introduction

Land is a key factor of production for agriculture. For most people in rural Malawi, to have access to and control over land is crucial for constructing their livelihood strategies. This paper seeks to clarify the interrelationship between people's strategies to obtain land rights on the one hand, and indigenous land tenure systems and customary inheritance rules on the other. The paper highlights both flexible and strict applications of land tenure systems and inheritance rules in land transactions. These different applications are influenced by many factors such as the degree of land scarcity, life history of residents, and various strategies adopted by farmers to secure access to land. The complex nature of actual land transactions implies that oversimplified views of land tenure systems and inheritance rules based on a matrilineal/patrilineal dichotomy or a uni-directional evolutionary perspective may be misleading.

The contribution that this paper makes is to broaden the scope of the existing studies on customary land tenure and smallholder farmer's rights to land in Malawi (Kishindo 1997; Kishindo 2006; Mkandawire 1984; Peters 1997; Peters 2002). Despite their

importance, these studies focused on particular geographical areas and had little comparative perspective with other areas in Malawi. In addition, these studies examined the cases of matrilineal societies in central and southern Malawi. Relatively little is known about the farmer's rights to land under the customary tenure in patrilineal societies in northern Malawi. The present study intends to fill these gaps by providing detailed comparative studies of six villages in matrilineal *and* patrilineal societies in various parts of rural Malawi.

The paper is organized as follows. The next section briefly presents the characteristics of six villages studied. This is followed in section three by a description of indigenous land tenure systems and inheritance rules in rural Malawi. Section four discusses the complex interrelationship of land scarcity, customary institutions, and the struggle of villagers to obtain land. The last section summarizes the findings of this study.

II. Study Locations

Fieldwork for this study¹ was carried out in six villages in various parts of Malawi (Figure 1). When selecting study sites, care was taken to choose villages that represent several socioeconomic characteristics, such as location, the predominant ethnic group, and the degree of population pressure on the land.

The first study location, Kachamba, is a matrilineal Chewa village under the

¹ The author would like to thank the people at the Centre for Social Research, University of Malawi, for providing him with an excellent research environment during his stay in Malawi.

Traditional Authority (TA) Mavwere in the Mchinji District of the Central Region. There were 31 households in Kachamba at the time of the survey,² and the population was 109. Nine households were headed by a woman, and the ratio of female-headed households (FHH) in Kachamba was 29 per cent. The main crops cultivated in Kachamba were maize, groundnuts, and tobacco. Maize is a staple food in Malawi and by far the most important crop; every household in Kachamba (and in the other study villages) cultivated it. Due to land scarcity in the area, land was not allowed to lie fallow but was used every year.

The second village studied, Belo, is located in the TA Mponda in the Mangochi District of the Southern Region. There were at the time of the survey 115 households and a population of 513 in Belo. The ratio of FHH was 18% (21 households). Among the main crops produced in the village were maize, tobacco, chilies, groundnuts, and cassava. The community was made up of indigenous Yao residents and migrants from various parts of southern Malawi. Most of the migrants settled in the area after the 1980s, opening new farms on previously uncultivated land. Upon their arrival in Belo, migrants had been given pieces of land for farming by the village headman. At the time of the survey, many of the allocated plots had not yet been opened. The relative abundance of land in Belo was in sharp contrast to the situation in Kachamba.

The third study location, Horo, is a matrilineal Lomwe village in the TA Mkhumba in the Phalombe District of the Southern Region. Horo lies about 20 kilometers from Mozambique. The ratio of FHH in Horo was 46% (36 households), which was the

² A household is defined here as a unit of co-residence and agricultural production. In most cases, it is also a unit of consumption. However, members of poor households that exhausted their maize stocks in the hungry season ate at relatives' households.

highest among the study villages. Maize was cultivated by all farmers, but many also intercropped with minor crops such as pigeon peas, sorghum, millet, and sunflowers. Due to the scarcity of land in the area, land was not allowed to lie fallow.

The fourth village studied, Bongololo, is in the TA Chikulamayembe in the Rumphi District of the Northern Region. There were 69 households and a population of 360 when the survey was taken. Almost all of the inhabitants were patrilineal Tumbuka. The ratio of FHH was 26% (18 households). The crops produced in Bongololo were maize, tobacco, groundnuts, cassava, soybeans, sweet potato, and millet.

The fifth study location, Mulawa, is a patrilineal Ngoni village under the TA Mzukuzuku in the Mzimba District of the Northern Region. Mulawa lies 20 kilometers away from the major road that links the capital, Lilongwe, to the northern regional capital of Mzuzu. The number of households in Mulawa was 29; the population was 151. The ratio of FHH was 34% (10 households).

The sixth study location is Mbila, five kilometers north of the district capital, Kasungu, in the Central Region. The village had 76 households (14 of which were FHH) and a population of 348. The majority of residents were matrilineal Chewa, but patrilineal Ngoni and Tumbuka also lived in the village. Villagers cultivated maize, groundnuts, soybeans, cassava, sweet potato, and tobacco.

Fieldwork in Kachamba and Belo was undertaken between August and October 2004. In the remaining four study villages, data were collected between May and September 2005. The sampling procedures for the present study were as follows. During the first week of the survey in each study site, a census of the village was conducted. Based on the census, the sampling frame consisted of all the households in each study village.

Next, households were divided into two categories: those that grew tobacco in the previous season and those that did not. Equal numbers of households were then randomly selected from each category. This sampling procedure was adopted because an important research topic in the overall study project was to assess the impact of tobacco production on rural livelihoods (Takane 2005; 2006). The final sample size for all of the study villages totaled 186 households.

Interviews in the six villages were conducted with the assistance of a village resident and a graduate research assistant who was fluent in Chichewa (a major language spoken in Kachamba, Belo, Horo, and Mbila) and Chitumbuka (spoken in Bongololo and Mulawa). This writer attended, recorded, and reviewed all interviews. A structured questionnaire was used during the interviews, and free discussion was encouraged to elaborate important issues such as family history, land disputes, and livelihood strategies adopted by household members. In addition, farms operated by sample households were measured using global positioning systems to obtain data on the size of the plots. Key informant interviews were also conducted to obtain information such as village history, kin relations, and land tenure systems.

III. Customary Land Tenure and Inheritance Rules in Malawi

Land in Malawi can be classified into three categories: public, private, and customary land (Kishindo 2004). Public land is owned or held in trust by the government or Traditional Authorities. This category includes such areas as national parks, forest reserves and conservation areas. Private land is held or owned under

freehold title, leasehold title, or Certificate of Claim granted by early colonial governors to European settlers. Most large scale estates fall under this third category of private land. Customary land is held under the customary law of each ethnic group and makes up 69 per cent of total land in Malawi (Government of Malawi 2001). As most of the land cultivated by smallholder farmers falls under this category, the following analysis focuses exclusively on customary land.

Rights to customary land are regarded as held by communities as a whole. Local chiefs exercise trusteeship over land on behalf of the people in the area. Village heads are entrusted with the management of the land within their territory and make decisions regarding land allocation to community members. Every indigenous inhabitant, by virtue of membership in a community, is entitled to access to a piece of land. Non-indigenous inhabitants such as migrants may also be allocated a piece of land, provided that vacant land is available and the recipients respect community tradition and customs. Once acquired, the right to the land can be handed over to one's heirs on a quasi-permanent basis. However, when a landholder and his or her kin members all die or move out of the village, the land must be returned to the community for reallocations to other community members. As land is not owned as such but is vested in the community as a whole, the permanent alienation of land (such as through sale) is usually prohibited (Government of Malawi 1999, p.63). In reality, however, several cases of land sales were observed in the study villages.

The transfer of land rights within a lineage through gifting and inheritance³ follows

³ In this paper, *gifting* refers to cases where one obtains land from a relative while the relative is still alive. *Inheritance* refers to cases where one obtains land after the death of the original landholder.

a matrilineal or patrilineal rule, depending on the kinship organization of an ethnic group. Matrilineal kinship organization is predominant in the major ethnic groups of central and southern Malawi, such as the Chewa, Yao, and Lomwe, and within these groups, land is transferred along matrilineal lines. Patrilineal rules, on the other hand, are practiced among the major ethnic groups in northern Malawi, particularly among the Tumbuka and Ngoni. In these societies, land rights belong to the men and are transferred mostly from fathers to sons. In both matrilineal and patrilineal societies, land is gifted to an heir when the heir gets married, gives birth to a baby, or becomes mature enough to form an independent household. Inheritance of land also follows a matrilineal or patrilineal rule, but the decision of who inherits the land of a deceased is made by a lineage head based on consultation with lineage members. In both gifting and inheritance, preference is given to those who reside in their natal village over those who reside elsewhere.

Matrilineal and patrilineal social organizations are closely linked to marriage and residence rules. In matrilineal societies, uxori-local residence in which a husband moves to the wife's village and cultivates her land is the norm. A husband has no decision-making power on the transfer of the wife's land rights. Upon divorce or wife's death, a husband is expected to return to his natal village and lose the use rights to the land in his wife's village. Children remain in their mother's village, because they belong to the mother's matrilineal kin (Kishindo 1995; Peters 1999, 2002; Mkandawire 1984).⁴ Rules of residence in patrilineal societies, on the other hand, are virilocal in

⁴ Kishindo (1995) and Place and Otsuka (2001) argue that under uxori-local marriage, men have weak land-right security in the early period of the marriage, and they thus lack incentives to make long-term investments in the land.

which a wife lives in her husband's village after marriage. A legitimate marriage in patrilineal societies involves a payment of bridewealth (called *lobola*) from a husband to the wife's kin. A divorced woman must go back to her village, leaving her children to the husband's village and returning the bridewealth to the husband's kin (Read 1956). A widow may remain in her late husband's village and continue cultivating his land together with their children, provided that the bridewealth was paid upon marriage. If no bridewealth was paid upon marriage (which has become increasingly common in recent years), a divorced woman or a widow may take her children back to her natal village. The return of a man or woman to his/her village after a divorce or spouse's death may cause a land dispute among kin members because the allocation of land to the returnee is likely to be difficult due to the severe scarcity of land in many parts of rural Malawi (Peters 2002; Kishindo 1997).

IV. Actual Land Transactions in the Study Villages

The indigenous land tenure systems and matrilineal and patrilineal inheritance rules described above are better regarded as "ideal constructs" (Phiri 1983, p.258). It should not be supposed that, both in the past and present, all land transactions follow these idealized models of customary land tenure (Chimhowu and Woodhouse 2006). As the following section will show, the actual land transactions observed in the study villages were more complex and flexible than the general rules summarized above. Also observed were many exceptions to the inheritance rules, such as land gifts from father to son in matrilineal societies. Nevertheless, we should not jump to the conclusion of

an evolutionary, uni-directional increase in patriliney (Brantley 1997; Guyer 1981). The more important issue here is to understand in what circumstances such exceptions occur, and why flexible application of inheritance rules are used in some cases while in other cases they are rigidly applied. By examining the cases of actual land transactions in both matrilineal and patrilineal societies in the six study villages, the following section seeks to clarify the complex interplay of indigenous institutions and the villagers' struggle for land.

1. Land Rights in Matrilineal Societies

Among the six villages studied, people in Kachamba and Horo follow matrilineal rules of inheritance. As can be seen in Table 1 which summaries the methods and sources of land acquisitions in the study villages, the majority of residents in the two villages obtained land rights through matrilineal lines. It is noteworthy, however, that in a good number of cases villagers obtained land from sources other than matrilineal lines, indicating a flexible application of the inheritance rules. On the other hand, as will be shown in the case of Horo below, very rigid applications of matrilineal inheritance rules were also found. Behind this seemingly paradoxical coexistence of both flexible and rigid application of inheritance rules lies the growing problem of land scarcity in the two villages.

(1) Kachamba

The Kachamba area was first inhabited in 1953 by a group of Chewa matrilineal kin members who migrated from a village in the adjacent TA Mlonyeni. The group was led

by a senior brother who had obtained vacant land in the present Kachamba area from a local chief. The senior brother divided the land and distributed it among his kin.⁵ Most residents of Kachamba are descendants of the original settlers and obtained their land as a gift or by inheritance (Figure 2). In the past, when land was abundant, villagers sought permission from the village headman and opened farms on uncultivated areas. At the time of the survey, however, no extra land was available, and acquisition through gifting and inheritance was the most important means of obtaining access to land.

In Kachamba, 30 households (97%) cultivated their own land. The average household landholding size was 0.88 hectares, and the average farm size (including rented land) was 1.10 hectares. As Table 2 shows, 26% of households operated very small farms of less than 0.5 hectares. Only one female-headed household did not hold land (it was renting land). Among the landholding households, there were 15 cases in which the land belonged to male household members, and 11 in which the land belonged to female members. In the remaining four cases, both male and female household members (husband and wife) had separate plots of land.

The Chewa people follow matrilineal rules of descent and inheritance in which land is passed down through matrilines, most commonly from female landholders to female heirs (Mkandawire 1992; Kishindo 2004). In Kachamba, however, both men and women obtained their land matrilineally *and* patrilineally. As shown in Table 1 and Figure 2, in the majority of cases (22 out of 32 total cases) land rights were obtained from matrilineal kin members, although land transfers from mother to daughter were

⁵ Some of the original settlers, including the senior brother who later became village headman, were still alive at the time of the survey.

not many (only 5 cases). On the other hand, there were 10 cases in which sons and daughters received land from fathers, contrary to matrilineal inheritance rules.⁶ The rule of matrilineal inheritance in Kachamba, therefore, was not rigid, but flexible.

A similar flexibility was observed in the rules of residency after marriage. Among matrilineal societies in Malawi, marriages are usually uxori-local. In Kachamba, however, cases of viri-local marriage were more common (16 cases) than uxori-local marriage (five cases). Generally, those who had obtained land before marriage or who could be given land upon marriage tended to remain in Kachamba after marriage.

The flexible practice of inheritance and marriage rules in Kachamba may be an adaptive strategy employed by villagers in response to the increasing scarcity of land. As acquisition of land became more difficult, villagers sought land from any source, whether matrilineally or patrilineally. Once they obtained land, men continued to stay in the village after marriage (contrary to the rule of uxori-local marriage) to secure their land right. While staying in Kachamba after marriage and using their own land, some male villagers cultivated additional land belonging to wives who came from nearby villages. Four such cases were found, and their average landholding (husband's land plus wife's land) was 39% larger than the average landholding of a husband only.⁷ Because landholdings became smaller as the land was divided among descendants upon transfer, obtaining land from sources other than one's own village, such as from a wife's village, appeared to be an important means of increasing farm size. By altering local institutions, villagers coped with the increased land pressure and difficulties in

⁶ Mkandawire (1984) reports a similar situation in the Lilongwe Rural Development Project.

⁷ In the four cases, the average landholding size of the husband was 0.897 hectares, while that of the wife was 0.354 hectares.

land acquisition.

In addition to land transfers by gift and through inheritance, three cases of transfer through purchase (all of which occurred in the late 1990s) were found in Kachamba.⁸ Upon transfer of the land rights, both buyers and sellers obtained permission from the group village headman by giving a gift of goats or cash. In one case, a written agreement of land sale was prepared. Still another means of obtaining a right to land was through rental. There were six cases of land rental; five were a fixed rent in cash and one was a fixed rent in kind. The contract was for one farming season. In addition to these land rentals, there were four cases in which plots of land were borrowed free of charge from relatives. These land sales and rentals were other adaptive strategies that villagers employed to expand their farm acreage under the pressure of increasing land scarcity.

(2) Horo

Most residents in Horo were matrilineal Lomwe. They were descendents of migrants who originally came from Mozambique in the first half of the twentieth century. At that time there was a massive migration of Lomwe people who fled to the Nyasaland territory to escape the oppression of Portuguese rule in Mozambique. Some of the Lomwe migrants were absorbed as farm laborers into the large European settler estates in southern Nyasaland. Others settled onto unoccupied land and formed new villages, and Horo was one such village. The present-day residents in Horo were the third or fourth generation of the original settlers. Due to population increase, there was no

⁸ In all cases, purchases were made from someone in a nearby village.

uncultivated land left for new allocation at the time of the survey. The acquisition of land rights of the sample households in Horo were mostly through gifting and inheritance (Table 1).

The Lomwe people follow matrilineal inheritance rules. However, land held by male landholders among the first-generation migrants (who obtained land rights by opening new farms on unoccupied land) tended to be inherited or gifted to their children if other matrilineal kin members did not reside in their village. When land was transferred to the next generation, it was divided into pieces to ensure all legitimate heirs received land. This practice often resulted in the situation where individual landholdings became smaller as the generations proceeded. In the case shown in Figure 3, for example, the land held by an original migrant had been divided into small pieces that were held by 13 descendants at the time of the survey. As a consequence of such subdivision of land, the average farm size of the sample households in Horo was only 0.58 hectares, the smallest in the six study villages. Half of the sample households in Horo cultivated less than 0.5 hectares.

Sources and methods of land acquisition in Horo show some similarities with those in Kachamba. First, although the majority of land acquisition cases were from matrilineal kin members, there were 10 cases (23%) in which plots of land were acquired through non-matrilineal lines. Second, land transfer from mother to daughter was not always the norm. Landholders included both women and men, and it is noteworthy that there were 10 cases in which men obtained land from their mothers. As was the case in Kachamba, matrilineal inheritance rules were not rigidly applied to actual land transactions in Horo.

The existence of flexible applications of inheritance rules does not necessarily mean that matrilineal inheritance is weakening. On the contrary, there were some cases in which flexible application was counterchecked by a rigid application of matrilineal inheritance rules, as the following two cases illustrate.

Case 1:

When JT, a thirty-four-year-old woman in Horo, was living with her mother, they were cultivating a piece of land that had been allocated by the father of JT's mother. When JT's mother died, however, the land was taken by matrilineal kin of the mother's father, and JT could not inherit the land and lost her cultivation right on it. As a divorced woman with five young children, JT did not hold her own land at the time of the survey. She had borrowed a very small piece of land (0.14 hectares) from her stepmother to cultivate maize.

Case 2:

In the case shown in Figure 3, when a female kin member, B, died, her land was inherited by her uterine brother, C, in accordance with matrilineal inheritance rules. In 2003, C gifted the land to his daughter, D. However, this land gift was challenged by other kin members because D did not belong to the matrilineal kin group. After some discussion among kin members, it was decided that from 2005 the land should be given to one of E's children, who is a matrilineal kin member of the original landholder.

In both cases, land transfer from a man to his child or grandchild was counterchecked by his matrilineal kin. Under the situation of increasing land shortage in the area, individuals sought to obtain land rights from any source, including non-matrilineal kin members such as father or grandfather. On the other hand, the same land shortage induced matrilineal kin groups to countercheck the practice of flexible land transfer to prevent their lineage land from being alienated to non-kin members. Thus, coexistence of both flexible and rigid applications of inheritance rules under land scarce situations represent the conflict between the individual struggling for land rights and the lineage seeking to protect land from alienation.⁹

2. Land Rights in Patrilineal Societies

Villagers in Bongololo and Mulawa follow patrilineal inheritance rules in which land is transferred through patrilineal lines, mostly from father to son. Most of the land gifts and inheritances observed in the sample households in the two villages were patrilineal (Table 1), but there were also some exceptions. The following section examines the cases in which land was not transferred patrilineally, revealing that inheritance rules were applied flexibly to accommodate various individual situations.

(1) Bongololo

The average farm size of the sample households in Bongololo was 0.80 hectares, and 27% of the sample households cultivated less than 0.5 hectares (Table 2). At the time of the survey, there was little uncultivated land left for new allocation and most

⁹ Peters emphasizes the increasing inequality and conflict over land in Africa in general (Peters 2004) and southern Malawi in particular (Peters 2002).

households obtained their land rights through gifting or inheritance.¹⁰ Land sales were not allowed in Bongololo, but land rental was permitted.

Residents of the village were mostly patrilineal Tumbuka.¹¹ Among the sample households, instances of land acquisition from patrilineal kin members accounted for 77 per cent (23 cases) of the total. On the other hand, there were seven cases¹² in which plots of land were obtained from somebody other than one's patrilineal kin group. Two such cases are examined below to clarify the reasons for non-patrilineal inheritance and gifting of land. In both cases, the existence of strong relationships between original landholders and heirs lead to the non-patrilineal land transfer.

Case 3:

GG, a 25-year-old man in Bongololo, received a piece of land from his mother's father, MG (a person who is not GG's patrilineal kin). As is shown in Figure 4, this was the only non-patrilineal land transfer in the family, and all other land transfers followed patrilineal inheritance rules. The following life history of GG explains why the non-patrilineal land transfer occurred.

GG's mother was born in Bongololo but moved to the district capital of Mzimba when her father, MG, found a job there. However, she died in Mzimba after giving birth to two babies, one being GG. Thereafter, MG took care of the two babies, and

¹⁰ There were two cases in which the villagers obtained land rights through the village headman's allocation. In both cases, land had been allocated a long time ago, in 1987 and 1949.

¹¹ Until the mid-nineteenth century, the Tumbuka followed matrilineal inheritance and uxorilocal residence. However, after being conquered by the patrilineal Ngoni around 1855, the Tumbuka gradually adopted Ngoni-patterned patrilineality, virilocal residence, and bridewealth payments (Vail and White 1989, pp.152-153).

¹² In six of the cases, land was obtained by women. These cases will be examined later.

when he returned to Bongololo, MG also brought the two young children along to the village. GG and his younger brother grew up in MG's house in Bongololo, and when GG got married in 1999, he was gifted with a piece of land from MG.

The above life history of GG explains the reason for the non-patrilineal land transfer: although GG and MG did not belong to the same patrilineal kin, their relationship in everyday life made them very close to that of real kin. In fact, GG put up his house next to that of MG and MG's patrilineal kin members, and lived as if he were a member of the kin group. The non-patrilineal land transfer from MG to GG was made possible under this situation of "quasi-kin relationship" between the two.

Case 4¹³ (Figure 5):

A similar non-patrilineal land transfer based on a quasi-kin relationship was found in the case of CN, a 37-year-old man who obtained land from his father's uterine brother, SM. Most of the land that SM (who was 79 years old at the time of the survey) obtained from his late father was gifted to SM's sons, following the patrilineal inheritance rules. However, a portion of land was also given to CN, who was not a patrilineal kin member. The following family histories explain the non-patrilineal land transfer.

When SM was still young, his father died and his widowed mother soon remarried and gave birth to N, CN's father. SM and N were uterine brothers and they grew up together. Later they put up their houses next to each other, and SM was a part of CN's

¹³ Case 4 was not a sample household and therefore not counted in Table 1.

life from the latter's childhood. Although, strictly speaking, SM and CN belonged to different patrilineal kin groups, their relationship was clearly much more than that of mere neighbors. This strong personal relationship was the reason behind the non-patrilineal gifting of land.

(2) Mulawa

Mulawa is a patrilineal Ngoni village. Most residents in Mulawa are the descendents of a Ngoni migrant who came from a village north of Mzimba and settled in what was then an uninhabited area in the first half of the twentieth century. At the time of the survey, population pressure on the land was not very keen in Mulawa as it was in the three villages discussed above. This was reflected in the fact that the average household farm size in Mulawa was 1.18 hectare, twice as much as that in Horo.

Methods and sources of land acquisition in Mulawa (Table 1) showed similar characteristics with those in Bongololo. First, most cases (82%) of land gifting and inheritance followed patrilineal inheritance rules. Second, there were a few cases in which land rights were obtained through non-patrilineal lines. It is noteworthy that, again, strong personal ties between landholders and heirs explain the non-patrilineal land transfers, as the following two cases illustrate.

Case 5 (Figure 6):

BM's mother was born in Mulawa but moved to her husband's village in Zambia when she married. Later she gave birth to BM in Zambia, but soon divorced and came back to Mulawa with BM. The mother died when BM was only five years old.

Thereafter, BM grew up under the care of his mother's brother. When BM got married in 1992, he received a 0.64-hectare piece of land from the maternal uncle. The maternal uncle had two sons, who also received land from their father.

Case 6 (Figure 6):

CB's mother was also born in Mulawa, moved to her husband's village when married, but came back to Mulawa after the death of her husband. At the time of returning to Mulawa she was pregnant, and soon gave birth to CB. CB and his mother lived with his maternal grandparents in Mulawa. Later his grandfather died; then his own mother died, and thereafter CB lived with his grandmother who inherited her late husband's plot of land. When CB grew up, the grandmother gifted her late husband's land to CB.

The four cases in Bongololo and Mulawa described above indicate the two conditions under which a non-patrilineal land transfer can occur. One is where a person who, for reasons unique to his or her individual life history, has no contact with patrilineal kin members who, under normal conditions, should be the sources of land acquisition. The other is where an original landholder and an heir develop a strong relationship, like that of a foster parent and child, which legitimizes a land transfer that does not follow patrilineal inheritance rules. Although patrilineal inheritance was practiced in the majority of cases in the two villages, the rules were flexibly applied under the two above conditions so as to accommodate individual circumstances.

(3) Land rights of female headed households

In matrilineal societies such as those in Kachamba and Horo, land is passed down through matrilineal lines and mostly to female heirs. Although sons also obtained land from their matrikin, the norm in matrilineal inheritance rules is that daughters have priority over land (Peters 1997). Therefore, female headed households in matrilineal societies have legitimate access to land under customary inheritance.

On the other hand, inheritance rules of patrilineal societies, in principle, exclude women from having access to land rights. The norm in patrilineal societies is that land is passed down from fathers to sons. In Bongololo and Mulawa, however, we found some cases in which women obtained land rights (Table 1). One means for women to gain access to land was through widowhood. If a marriage is a legitimate one involving a bridewealth payment, a widowed wife may remain in the late husband's village with her children and continue cultivating the husband's land. This type of land transfer from husband to wife may be called "inheritance" in a sense, but in fact the wife has no right to transfer the land to her patrilineal kin. The land right of a widowed wife in patrilineal societies is that of a custodian: she is expected to take care of the land until the legitimate heirs, her sons, grow up to take over the land. Although the widowed wife's right to cultivate on the late husband's land is guaranteed, landholding rights remain with the husband's patrikin, and the wife has no right of land disposal. This temporal land right of a widowed wife is in accordance with patrilineal inheritance rules.

Other means for women to obtain land rights that were observed in the study villages did not follow patrilineal inheritance rules. As is shown in Table 1, some women in Bongololo and Mulawa obtained land from their father, mother, a maternal

uncle, a paternal uncle, and a brother. All of these women were the head of a household, and many of them were returnees from a husband's village after a divorce or husband's death. Although patrilineal inheritance rules, if applied rigidly, would not allow these women to hold land, they managed to obtain land from one source or another as the following case illustrates. This again indicates that customary inheritance rules can be flexible enough to accommodate individual situations.

Case 7:

SG was a 45-year-old female and the head of a household in Bongololo. She divorced in 2000 and returned from husband's village to Bongololo with two children. As a divorced woman with no land in her natal village, she initially made a living by brewing and selling local beer. In 2003 her paternal uncle gifted to her a 0.11-hectare piece of land, on which SG planted maize and tobacco. In 2005 she borrowed another 0.17-hectare plot from her younger brother free of charge where she grew maize.

3. Land Rights in a Multi-Ethnic Community: Mbila

Mbila is a multi-ethnic community where the majority of residents (72% at the time of the survey) are indigenous (matrilineal) Chewa, while patrilineal Tumbuka and Ngoni also accounted for a sizable part of the population (20% when the survey was taken). The village is located close to the border between the Central Region (where the population is predominantly matrilineal) and the Northern Region (which is patrilineal), and this partly explains the multi-ethnic component.

As was the case in Kachamba, uxori-local marriage was not strictly practiced among

the Chewa in Mbila. Both uxori-local and viri-local marriages were observed, as the case below illustrates.

Case 8 (Figure 7):

SD is a Chewa man who was born in Zambia and moved to Mbila in 1983 when he married to a Chewa woman in the village (uxori-local marriage). In the next year, he and his wife were allocated a piece of land by the village headman. At the time of the survey, parts of this land were gifted to his three sons and one daughter who were all married. The wives of the three sons had all moved to Mbila upon marriage (viri-local marriages) while the husband of SD's daughter had moved to wife's village (uxori-local marriage).

Similarly, matrilineal inheritance rules were not strictly followed among the Chewa in Mbila. As Table 3 shows, the number of cases in which land rights were obtained from matrilineal kin was less than that from other sources. Thus matrilineal inheritance and uxori-local marriage were not the norm among the Chewa in this village. On the other hand, the sources of land acquisition in all four cases of land gifting and inheritance among Tumbuka and Ngoni households were fathers.

Contrary to the customary prohibition against outright sales of land, two cases of land acquisition by purchase were found in Mbila. In one case, a migrant villager purchased a 2.4-hectare piece of land from the village headman in 1999. In another case, a soldier from another area purchased a piece of land of about seven hectares from an indigenous resident. In the later case, a written agreement on the land sale was

prepared in the presence of village head. Purchases of land were also observed in Kachamba (three cases) and Horo (one case). In all cases, purchases were made in the last ten years and the transactions were authorized by the village heads. These facts suggest that land sales have been taking place with the "official" approval of the village heads despite the customary prohibition, and that the practice has been gaining momentum in recent years.

4. A Land Abundant Migrant Community: Belo

Belo belongs to TA Mponda and used to be a small indigenous Yao community until the 1980s. However, at the time of the survey in 2004, the majority of Belo residents were migrants who had settled in the village since the 1980s (Table 4). The main reason for the migration to Belo appeared to be the availability of land in the area. During the interviews, most migrants made clear that they had come to Belo in order to obtain land. Upon arrival at Belo, migrants were given portions of land by the village headman. No payment was made when land was allocated to the migrants, although some expressed their appreciation to the headman by giving gifts such as chickens, maize, or cash. After receiving the land, migrants were free to transfer land rights to relatives. However, transfer of land to strangers was not permitted.

When migrants (and their relatives) leave Belo, their lands must be surrendered to the village headman for reallocation to others, in accordance with the customary land tenure. As migrants who recently came to the village from various parts of Malawi, many of Belo's residents did not have relatives in the village. Leaving the village after some years therefore means abandoning the rights to the land, and a migrant's labor

and capital investment in the land going for naught. The following case shows one strategy that migrants in Belo adopted to retain control of their land even after they have left the village.

Case 9:

OJ, a 28-year-old Yao man, settled in Belo in 1996 after being asked by his maternal uncle to come to Belo and take over the land which the uncle had obtained in 1990 from the village headman. When the uncle returned to his natal village for some undisclosed reason in 1996, he was farming land as well as holding as yet unopened land in Belo, but he had no relatives there to take over the land, which meant that the land would be reallocated to somebody else after he left. To keep the land rights even after he left Belo, the uncle decided to invite OJ, a legitimate heir, to come and continue cultivating the land. At the time of the survey, OJ was cultivating 1.2 hectares of land and was still expanding the farm.

In contrast to the general scarcity of land in the other study villages, land was still readily available in Belo at the time of the survey. The size distribution of farms in the study villages (Table 2) clearly shows the relative abundance of land in Belo. The remote location of the village delayed the inflow of population into the Belo area,¹⁴ and most residents at the time of the survey were first-generation migrants. They were still in the process of expanding farms on the allocated land, and the subdivision of

¹⁴ A 1/50,000 scale map, produced by the Department of Surveys based on aerial photography done in 1970, showed nothing but “orchard bush” and no settlement in the area today covered by Belo.

land through gifting and inheritance to the next generation (as was observed in other study villages) was yet to occur.

The abundance of uncultivated land in Belo often caused boundary disputes. Many Belo residents still had parts on their land unopened. As the boundaries of the allocated land were not always clearly defined, some farmers claimed “invasion” of their land by others. This was most likely to happen when an unused part of one farmer’s land lay along side land being cultivated by another farmer. To avoid such invasions, some farmers began cultivating plots along the boundaries of their land. Their strategy was to avoid impingement of their land rights by clearly demonstrating the results of their labor inputs on the land. The following case illustrates such strategy.

Case 10:

LL was once a farm laborer on an estate near Lilongwe. In 1988 he migrated to Belo to obtain land there and soon was allocated land by the village headman. Because LL was one of the early migrants who settled in Belo, unoccupied land was abundant in the village. He, therefore, received a large tract of land from the village head, which enabled LL to distribute lands to his seven children and six relatives. Even after this distribution, many parts of his allocated land were still unopened at the time of the survey.

In 2003 a migrant put up a house, without LL’s consent, on an unopened part of LL's land, and started opening a new farm there. The migrant claimed that he had been allocated the land by a village headman under the adjunct TA Nankumba. This happened because the border of the land between the two Traditional Authorities was

not clearly demarcated, and the two village headmen under different TAs allocated the same land to two households. LL did not openly challenge the claim of the newcomer, but ordered his children to open up new farms along the border area of his land to prevent further impingement.

The strategy of opening new plots to prevent impingement of land was only possible under the land abundant situation in Belo. In other study villages where unopened land was hardly available due to land scarcity, problems of impingement rarely occurred because every villager clearly recognized the boundaries of every plot of land. Similarly, the strategy of inviting a legitimate heir to the village to prevent land alienation, seen in Case 9, is peculiar to Belo. The strategy was adopted in a situation where the majority of households were first-generation migrants who had to look for a legitimate heir who could assume the land rights. In other study villages, and probably in most rural areas in Malawi, it is easy to find legitimate heirs in the same village. The problem in rural Malawi is usually not the absence of legitimate heirs as in the case of Belo, but too many of them for a small piece of land as in Horo. However, it seems highly likely that within a few decades Belo residents will also experience a similar population increase and subdivision of land that will lead to an intensifying struggle for land among villagers.

V. Conclusion

This paper has examined the interrelationship between the actual land transactions

that were observed in the study villages on the one hand, and customary land tenure and inheritance rules on the other. The paper revealed that although the majority of land transactions followed the customary land tenure systems and inheritance rules of each community, in a good number of cases land transactions deviated from the basic rules. One factor behind such deviation was the unique personal relationships that were developed between original landholders and heirs. Another factor was the seemingly increasing cases of wives returning to patrilineal villages. Still another factor was the intensifying scarcity of land that encouraged villagers to adopt strategies to obtain land rights from any source by any means. On the other hand, there were also some cases in which the same problem of land scarcity induced villagers to countercheck the practice of flexible land transfers to prevent their lineage land from being alienated to non-kin members. These facts suggest that, in a land-scarce situation, an individual strategy to obtain land rights from any possible source by deviating from customary rules may occasionally be in conflict with lineage strategies to countercheck such tendency in order to protect lineage land.

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Figure 1: Study Locations

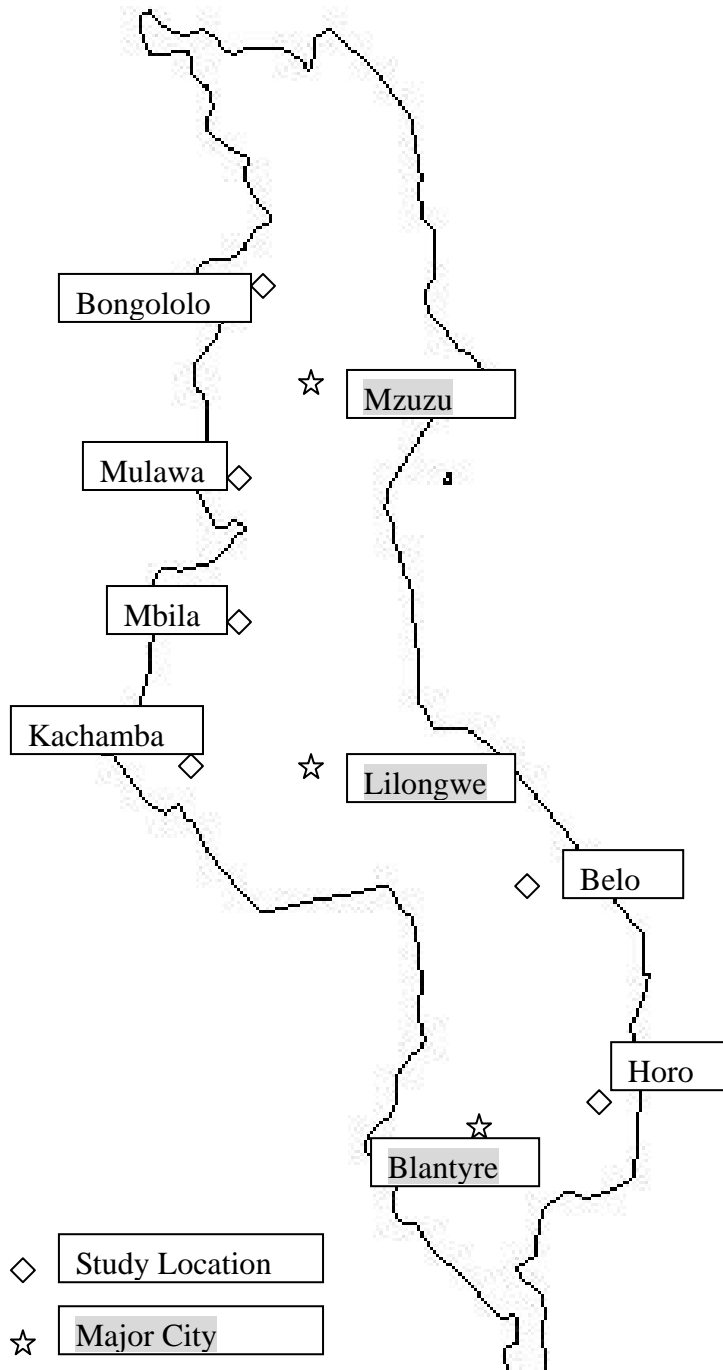


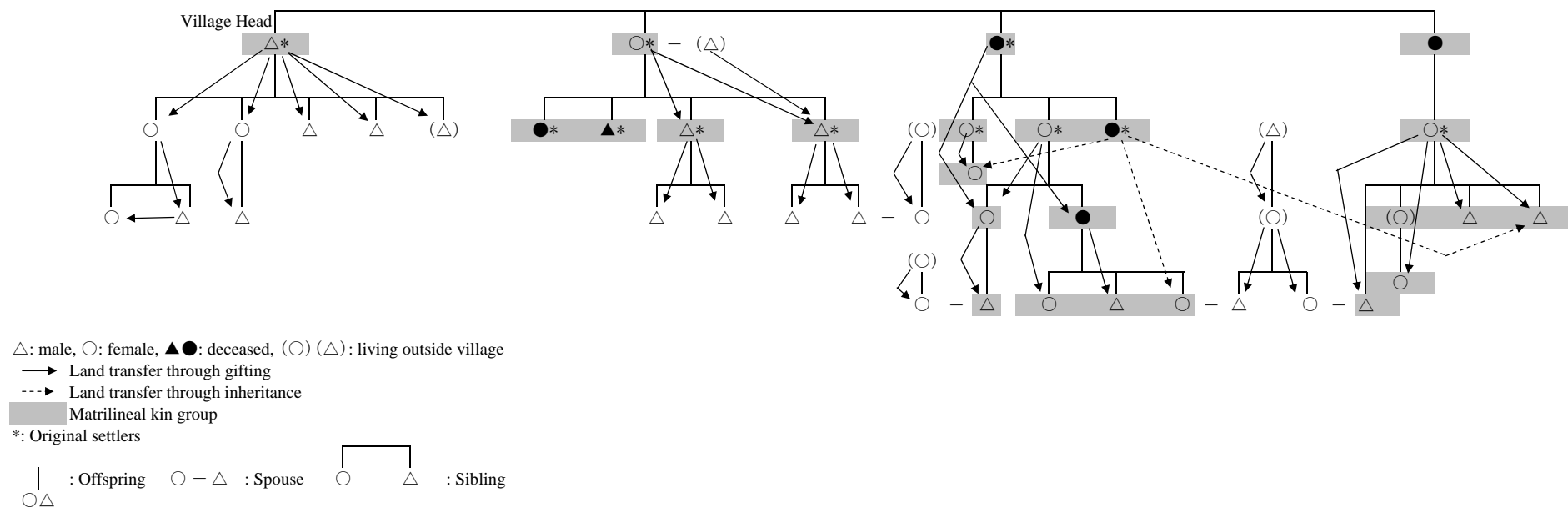
Table 1: Methods and Sources of Land Acquisition Observed in the Study Village

| Village | | | Kachamba | | | Belo | | | Horo | | | Bongololo | | | Mulawa | | | Mbila | | | Total | | | |
|--|--------------------------------|---|---------------------|-----------|-----------|-----------|-----------|-----------|---------------------|-----------|-----------|-----------------------|-----------|-----------|---------------------|-----------|-----------|-----------|-----------|-----------|------------|-----------|------------|-----------|
| Dominant Ethnic Group and Inheritance Rule | | | Chewa (Matrilineal) | | | Mixed | | | Lomwe (Matrilineal) | | | Tumbuka (Patrilineal) | | | Ngoni (Patrilineal) | | | Mixed | | | | | | |
| Number of Sample Households | | | 31 | | | 30 | | | 32 | | | 33 | | | 28 | | | 32 | | | 186 | | | |
| Method | Matrilineal/ Patrilineal | Sources | Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total | Male | Female | Total | |
| Gifting | Matrilineal/ Patrilineal | Mother | 10 | 5 | 15 | 1 | 1 | 2 | 10 | 13 | 23 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 2 | 2 | 21 | 22 | 43 | |
| | | Maternal Uncle | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 1 | 1 | 0 | 1 | 1 | 1 | 0 | 1 | 1 | 1 | 0 | 1 | 3 | 2 | 5 |
| | | Maternal Grandmother | 0 | 3 | 3 | 0 | 0 | 0 | 3 | 4 | 7 | 0 | 0 | 0 | 1 | 0 | 1 | 2 | 0 | 2 | 6 | 7 | 13 | |
| | | Uterine Sibling | 0 | 1 | 1 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 3 | 1 | 4 |
| | | Maternal Aunt | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| | Matrilineal Total | | | 10 | 9 | 19 | 4 | 1 | 5 | 14 | 18 | 32 | 0 | 2 | 2 | 2 | 0 | 2 | 6 | 4 | 2 | 34 | 32 | 66 |
| | Patrilineal | Father | 8 | 2 | 10 | 3 | 4 | 7 | 1 | 5 | 6 | 14 | 2 | 16 | 21 | 1 | 22 | 10 | 3 | 13 | 57 | 17 | 74 | |
| | | Paternal Uncle | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| | | Agnate Sibling | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 2 | 3 |
| | Patrilineal Total | | | 8 | 2 | 10 | 3 | 4 | 7 | 1 | 5 | 6 | 15 | 4 | 19 | 21 | 2 | 23 | 10 | 3 | 13 | 58 | 20 | 78 |
| | Others | Husband | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| | | Maternal Grandfather | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 2 | 1 | 3 | |
| | | Stepmother | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 |
| Brother of Maternal Grandfather | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 1 | |
| Others Total | | | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 1 | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 1 | 2 | 2 | 4 | 6 | | |
| Gifting Total | | | 18 | 11 | 29 | 7 | 7 | 14 | 15 | 24 | 39 | 16 | 6 | 22 | 23 | 2 | 25 | 15 | 6 | 21 | 94 | 56 | 150 | |
| Inheritance | Matrilineal | Mother | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 3 | |
| | | Maternal Aunt | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | |
| | | Maternal Grandmother | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| | | Sister of Maternal Grandmother | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | |
| | | Daughter of Maternal Grandmother's Sister | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| | Matrilineal Total | | | 1 | 2 | 3 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 5 | 6 |
| | Patrilineal | Father | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 1 | 3 | 2 | 2 | 4 | 0 | 0 | 0 | 1 | 0 | 1 | 5 | 3 | 8 |
| Others | Husband | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 3 | 3 | 0 | 3 | 3 | 0 | 2 | 2 | 0 | 10 | 10 | |
| Inheritance Total | | | 1 | 2 | 3 | 0 | 2 | 2 | 2 | 3 | 5 | 2 | 6 | 8 | 0 | 3 | 3 | 1 | 2 | 3 | 6 | 18 | 24 | |
| Matrilineal Inheritance and Gifting Total | | | 11 | 11 | 22 | 4 | 1 | 5 | 14 | 20 | 34 | 0 | 3 | 3 | 2 | 0 | 2 | 4 | 2 | 6 | 35 | 37 | 72 | |
| Patrilineal Inheritance and Gifting Total | | | 8 | 2 | 10 | 3 | 4 | 7 | 3 | 6 | 9 | 17 | 6 | 23 | 21 | 2 | 23 | 11 | 3 | 14 | 63 | 23 | 86 | |
| Other Inheritance and Gifting Total | | | 0 | 0 | 0 | 0 | 4 | 4 | 0 | 1 | 1 | 1 | 3 | 4 | 0 | 3 | 3 | 1 | 3 | 4 | 2 | 14 | 16 | |
| Other Methods | Allocation by Village Head | | 0 | 0 | 0 | 14 | 4 | 18 | 0 | 0 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 6 | 0 | 6 | 22 | 4 | 26 | |
| | Purchase | | 3 | 0 | 3 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 | 6 | 0 | 6 | |
| Other Methods Total | | | 3 | 0 | 3 | 14 | 4 | 18 | 1 | 0 | 1 | 2 | 0 | 2 | 0 | 0 | 0 | 8 | 0 | 8 | 28 | 4 | 32 | |
| Grand Total | | | 22 | 13 | 35 | 21 | 13 | 34 | 18 | 27 | 45 | 20 | 12 | 32 | 23 | 5 | 28 | 24 | 8 | 32 | 128 | 78 | 206 | |
| Rented/Borrowed | Rented Land | | 5 | 1 | 6 | 0 | 0 | 0 | 0 | 1 | 1 | 7 | 0 | 7 | 0 | 0 | 0 | 2 | 0 | 2 | 14 | 2 | 16 | |
| | Borrowed Land (Free of Charge) | | 4 | 0 | 4 | 5 | 1 | 6 | 1 | 0 | 1 | 7 | 2 | 9 | 1 | 1 | 2 | 2 | 0 | 2 | 20 | 4 | 24 | |
| Rented/Borrowed Total | | | 9 | 1 | 10 | 5 | 1 | 6 | 1 | 1 | 2 | 14 | 2 | 16 | 1 | 1 | 2 | 4 | 0 | 4 | 34 | 6 | 40 | |

Note 1: Figures in Kachamba do not include those for original settlers.

Note 2: Total number of cases exceeds that of the sampled households because a household may have obtained land from multiple sources through different methods.

Figure 2: Directions of Land Transfers in Kachamba



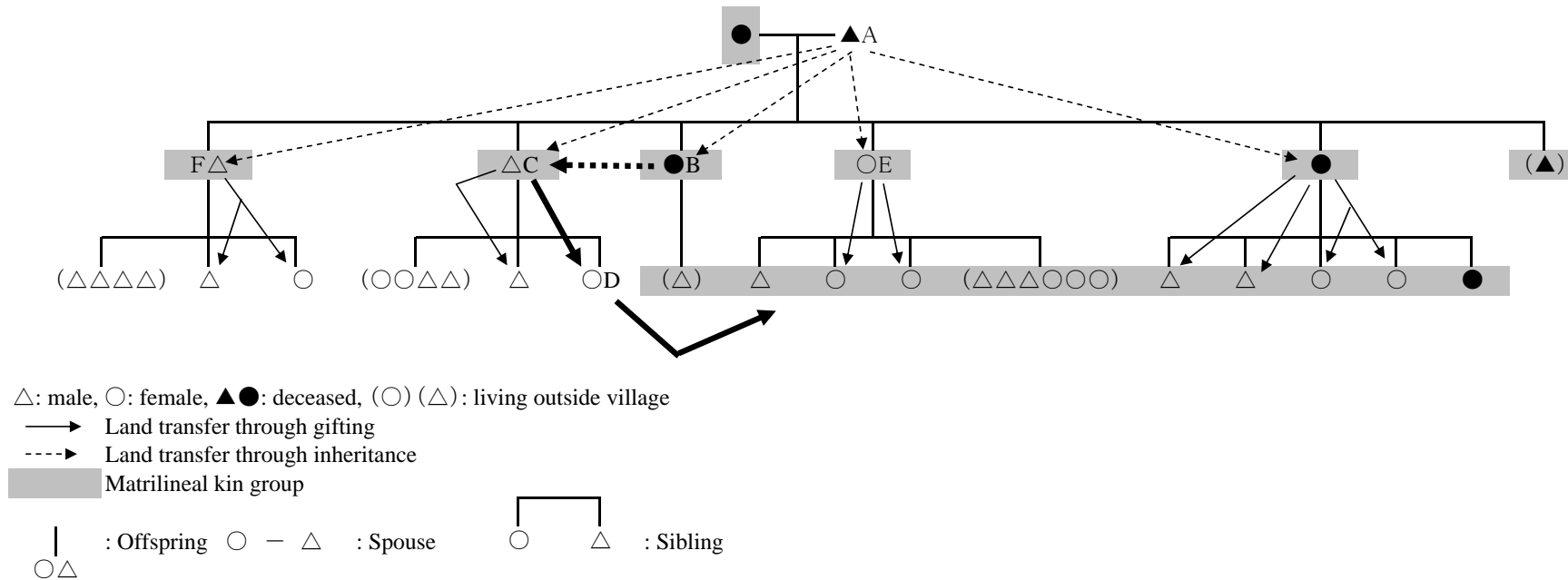
Note: The village headman obtained land from a local authority and distributed it to original settlers.

Table 2: Size Distribution of Farms

| Total Farm Size* | Kachamba n=31 (%) | Belo n=30 (%) | Horo n=32 (%) | Bongololo n=33 (%) | Mulawa n=28 (%) | Mbila n=32 (%) | Total n=186 (%) |
|-------------------|-------------------------|---------------------|---------------------|--------------------------|-----------------------|----------------------|-----------------------|
| None | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| < 0.5 ha. | 26 | 7 | 50 | 27 | 29 | 22 | 27 |
| 0.5 - 1.0 ha. | 39 | 17 | 38 | 48 | 14 | 41 | 33 |
| 1.0 -1.5 ha. | 19 | 27 | 6 | 15 | 29 | 25 | 20 |
| 1.5 -2.0 ha. | 10 | 27 | 6 | 6 | 18 | 6 | 12 |
| More than 2.0 ha. | 6 | 23 | 0 | 3 | 11 | 6 | 8 |
| Total | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

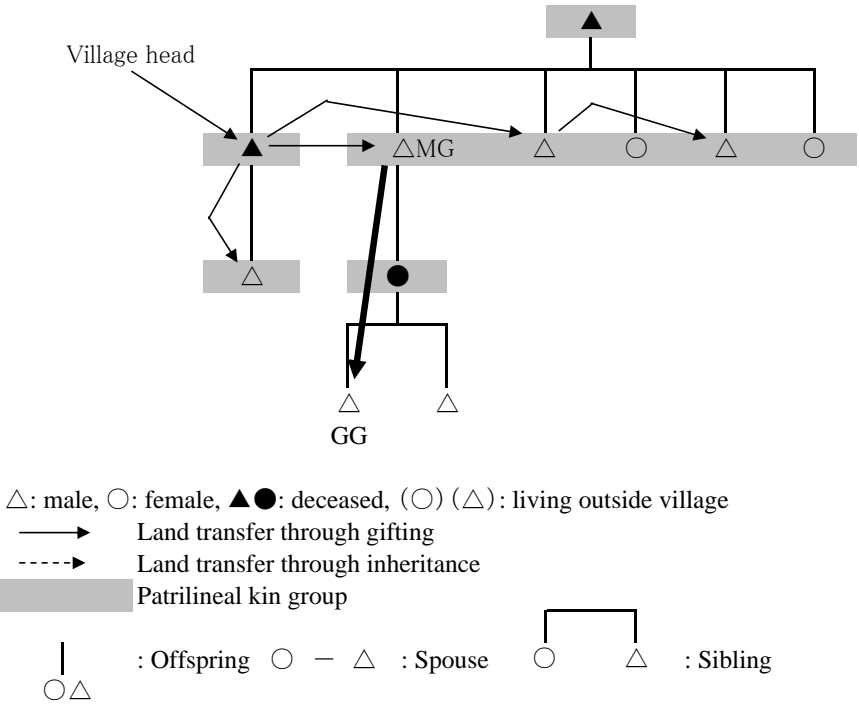
* Including farms on rent-in land.

Figure 3: Directions of Land Transfers in Horo (Case 2)



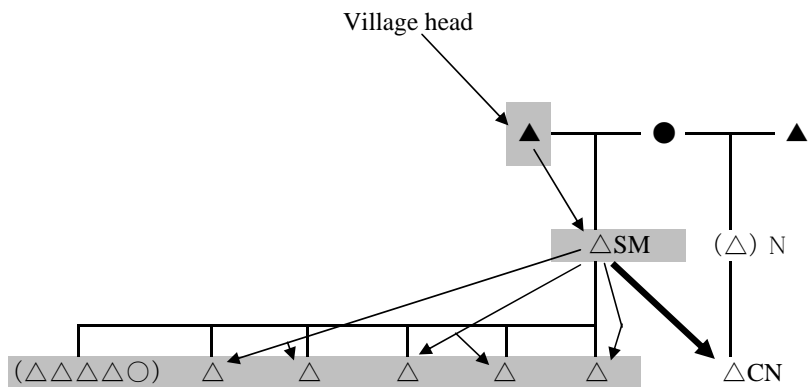
Note: The land transfers in Case 2 discussed in the main text are indicated in bold type.

Figure 4: Non-patrilineal Land Transfers in Bongololo (Case 3)



Note: The non-patrilineal land transfer discussed in the main text is indicated in bold type.

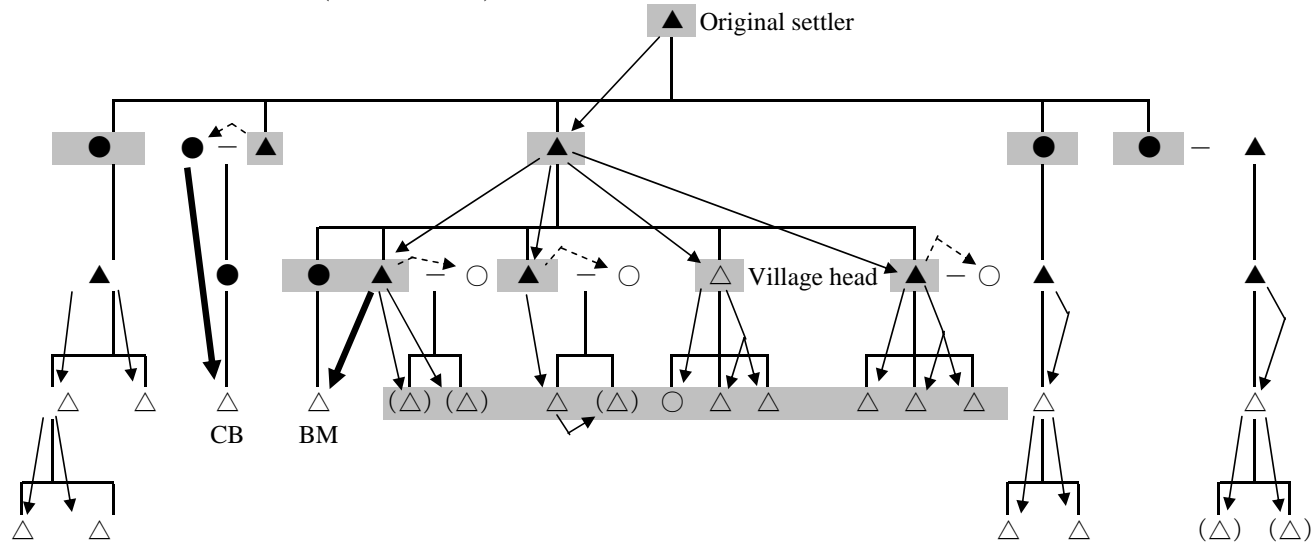
Figure 5: Non-patrilineal Land Transfers in Bongololo (Case 4)



△: male, ○: female, ▲●: deceased, (○) (△): living outside village
 —→ Land transfer through gifting
 - - - -> Land transfer through inheritance
 [shaded box] Patrilineal kin group
 | : Offspring ○ — △ : Spouse ○ — △ : Sibling
 ○△

Note: The non-patrilineal land transfer discussed in the main text is indicated in bold type.

Figure 6: Directions of Land Transfers in Mulawa (Case 5 and 6)



△: male, ○: female, ▲●: deceased, (○) (△): living outside village

→ Land transfer through gifting

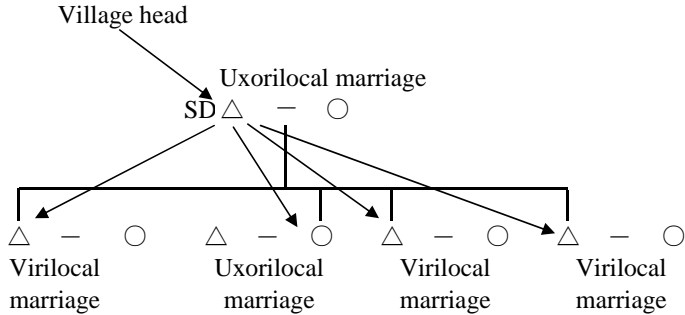
---> Land transfer through inheritance

■ Patrilineal kin group

: Offspring
 : Spouse
 : Sibling

Note: The non-patrilineal land transfers in Case 5 and 6 discussed in the main text are indicated in bold type.

Figure 7: Coexistence of Uxorilocal and Virilocal Marriages (Case 8)



△: male, ○: female, ▲●: deceased, (○) (△): living outside village

→ Land transfer by gift

---▶ Land transfer through inheritance

| : Offspring ○ — △ : Spouse ○ — △ : Sibling

Table 3: Sources of Land Acquisition among the Chewa in Mbila

| Matrilineal/ Other | Source | Number of cases |
|-------------------------------|----------------------------|----------------------------|
| Matrilineal | Mother | 2 |
| | Maternal grandmother | 2 |
| | Uterine sibling | 1 |
| | Maternal uncle | 1 |
| | Total matrilineal | 6 |
| Other | Father | 10 |
| | Husband | 2 |
| | Allocation by village head | 3 |
| | Purchase | 2 |
| | Total others | 17 |

Table 4: Year of Migration into Belo (household heads)

| Year | Number of | Percentage |
|--|------------------|-------------------|
| 1985 or before | 10 | 9% |
| 1986-1990 | 27 | 23% |
| 1990-1995 | 15 | 13% |
| 1996-2000 | 22 | 19% |
| 2001 or later | 26 | 23% |
| Unknown | 5 | 4% |
| Total migrant households | 105 | 91% |
| Total indigenous households | 10 | 9% |
| Total Belo households | 115 | 100% |