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Land Shortage, Customary Law, and Smallholders

Land is a key asset for most people in rural Malawi. To have access to and control over land is crucial for constructing their livelihood strategies. This chapter 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 chapter 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 unidirectional evolutionary perspective may be misleading.¹

2.1 Debates on Customary Land Law in Africa

Customary law (including customary land tenure and inheritance rules) in Africa attracted much interest from early British colonial officials and anthropologists because it provided the ideological underpinnings for colonial rule. Many of the customary laws were studied and their fundamental principles (as anthropologists understood them) were published. In some cases, these studies led to the codification of customary law through the writing of a single,

authoritative version of customary laws by colonial and postcolonial authorities.

The stylized and abstract views on customary laws were later subjected to criticism by many scholars. Leach (1961) provided a classic critique on the lack of a fit between reality and abstract principles found in the early anthropologists' descriptions of customary laws and rules. Leach warned of the anthropologists' tendency to abstract and emphasized the importance of starting one's analysis from a concrete reality rather than from an abstract reality.² Another criticism was raised by Comaroff and Roberts (1981), who argued that the rules consisted of a loosely constructed repertoire rather than an internally consistent code and could not be reduced to formalistic models. The rules of property relations, for example, may always be construed in a variety of culturally recognized ways and may repeatedly be revised to express contemporary interests or relations. Similarly, as Moore (1986) wrote of the Chagga, "customary" practices changed freely in response to the social and economic transformation without any explicit revision of the stated customary law. The new norms and patterns of behavior that emerged under new conditions were simply incorporated as part of the system of practice. Moore summarized that the Chagga used "their traditions as one of a number of resources out of which to construct new arrangements to suit their ever-changing situations" (Moore 1986, p. 319).

From a different perspective, Chanock (1985) argued that customary law was a product created in the process of the transformation in African institutions under colonialism. Customary law played a role in the legitimizing of power on the local level as British colonial policies sought to support a particular rural power structure in the name of tradition. In this process Africans were the active and strategic users, not the passive recipients, of the customary law that were created to deal with the new situation of the colonized world and to translate their values and interests into power over others. Codification of customary law, Chanock maintained, transformed previously fluid and flexible custom into fixed rules and led to a freezing of rural status and stratification, henceforth defined and not negotiated. This last point, however, was later challenged by other scholars (Berry 1993; Shadle 1999), who argued that the same process resulted in a series of ongoing debates and perpetual contest over the rules, and that customary law remained fluid.

These theoretical perspectives on customary law in Africa have been reflected, though in varied degrees, in the existing studies of contemporary land tenure in Malawi (Mkandawire 1984; Peters 1997, 2002; Peters and Kambewa 2007; Kishindo 1997, 2006). With this previous scholarship in mind, this chapter contributes to the current debates on the contemporary dynamics of

customary land tenure in Malawi and in rural Africa at large in the following ways. First it sheds light on the debates over whether the contemporary dynamics of land rights in rural Africa lead to adaptive and negotiable customary systems of landholding or to a growing inequality and social differentiation. An influential work by Sara Berry (1993) interprets African rural land as being subject to multiple interests and to a dynamic of litigation and struggle that both fosters investment in social relations and helps keep them fluid and negotiable. Peters (2004a), on the other hand, argues that more attention is needed on the instances of intensifying conflict over land. While acknowledging the adaptive and negotiable nature of customary tenure, Peters maintains that it is only part of the story, emphasizing the processes of competition, exclusion, and inequality and social differentiation associated with the proliferation of incidents of conflict over land. The increasing incidents of conflict over land, Peters argues, belie “the assumption that socially embedded systems of landholding and land use guarantee access, let alone equal access” (Peters 2004a, p. 305). Using detailed case materials of actual land transactions, this chapter examines the relevance of these arguments in the case of rural Malawi.

The second contribution is in clarifying the extent of the development of the market-based transaction of land rights. Chimhowu and Woodhouse (2006) argue that the commoditization of access to land within the framework of customary tenure, which they call “vernacular land markets,” is now more common than in the past. The principal factors driving the vernacular land markets include increasing commercialization of agricultural produce and the mobility of labor that has generated cash flows and increased the value of land. Chimhowu and Woodhouse also suggest that commoditization of land inevitably works to the disadvantage of those with lower purchasing power and that those with the most influence over land under customary tenure (such as village heads and lineage heads) are best placed to gain from land sales and rents. This argument echoes Peters’s emphasis on the inequality and social differentiation associated with the contemporary dynamics of land rights (Peters 2004a). This chapter examines the extent to which these arguments about vernacular land markets are supported by the empirical evidence from a number of locations across rural Malawi.

2.2 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 percent 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 the community as a whole.³ 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. Nonindigenous 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 inheritance⁴ follows matrilineal or patrilineal rules, depending on the kinship organization of an ethnic group. Matrilineal kinship organizations are 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 matrilineal or patrilineal rules, 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).⁵ Rules of residence in patrilineal societies, on the other hand, are virilocal in which a wife lives in her husband's village after marriage. A legitimate marriage in patrilineal societies involves a payment of bridewealth (*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).

2.3 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).⁶ 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.

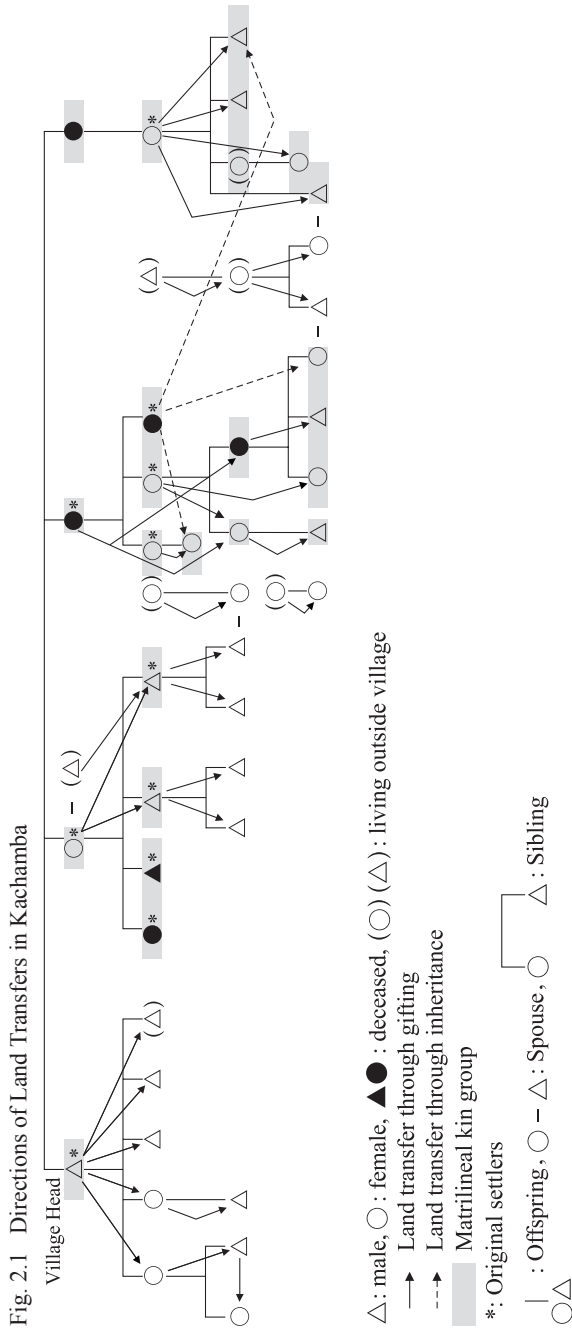
2.3.1 Land Rights in Matrilineal Societies

Among the six villages studied, people in Kachamba and Horo follow matrilineal rules of inheritance. As can be seen in Table 2.1 which summarizes 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.⁷ Most residents of Kachamba are descendants of the original settlers and obtained their land as a gift or by inheritance (Figure 2.1). 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 percent) cultivated their own land. The average household landholding size was 0.88 ha, and the average farm size (including rented land) was 1.10 ha. As Table 2.2 shows, 26 percent of households operated very small farms of less than 0.5 ha. 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 4 cases, both male and female household members (husband and wife) had separate plots of land.



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

TABLE 2.1 Methods and Sources of Land Acquisition Observed in the Study Villages

			Kachamba			
Dominant ethnic group and inheritance rule			Chewa (Matrilineal)			
No. of sample households			31			
Method	Matrilineal/ Patrilineal	Source	Male	Female	Total	
Gifting	Matrilineal	Mother	10	5	15	
		Maternal uncle	0	0	0	
		Maternal grandmother	0	3	3	
		Uterine sibling	0	1	1	
		Maternal aunt	0	0	0	
		Matrilineal total		10	9	19
	Patrilineal	Father	8	2	10	
		Paternal uncle	0	0	0	
		Agnate sibling	0	0	0	
		Patrilineal total		8	2	10
	Other	Husband	0	0	0	
		Maternal grandfather	0	0	0	
		Stepmother	0	0	0	
		Brother of maternal grandfather	0	0	0	
		Other total		0	0	0
	Gifting total		18	11	29	
Inheritance	Matrilineal	Mother	0	0	0	
		Maternal aunt	0	1	1	
		Maternal grandmother	0	0	0	
		Sister of maternal grandmother	0	1	1	
		Daughter of maternal grandmother's sister	1	0	1	
		Matrilineal total		1	2	3
	Patrilineal	Father	0	0	0	
	Other	Husband	0	0	0	
		Inheritance total		1	2	3
		Matrilineal inheritance and gifting total		11	11	22
	Patrilineal inheritance and gifting total		8	2	10	
	Other inheritance and gifting total		0	0	0	
Other methods	Allocation by village head	0	0	0		
	Purchase	3	0	3		
	Other methods total		3	0	3	
	Grand total		22	13	35	
Rented/ Borrowed	Rented land	5	1	6		
	Borrowed land (free of charge)	4	0	4		
	Rented/Borrowed total		9	1	10	

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

2. Total number of cases exceeds that of the sampled households because a household

Belo			Horo			Bongololo			Mulawa		
Mixed			Lomwe (Matrilineal)			Tumbuka (Patrilineal)			Ngoni (Patrilineal)		
30			32			33			28		
Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
1	1	2	10	13	23	0	1	1	0	0	0
1	0	1	0	1	1	0	1	1	1	0	1
0	0	0	3	4	7	0	0	0	1	0	1
2	0	2	0	0	0	0	0	0	0	0	0
0	0	0	1	0	1	0	0	0	0	0	0
4	1	5	14	18	32	0	2	2	2	0	2
3	4	7	1	5	6	14	2	16	21	1	22
0	0	0	0	0	0	0	1	1	0	0	0
0	0	0	0	0	0	1	1	2	0	1	1
3	4	7	1	5	6	15	4	19	21	2	23
0	1	1	0	0	0	0	0	0	0	0	0
0	1	1	0	0	0	1	0	1	0	0	0
0	0	0	0	1	1	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	2	2	0	1	1	1	0	1	0	0	0
7	7	14	15	24	39	16	6	22	23	2	25
0	0	0	0	2	2	0	1	1	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	2	2	0	1	1	0	0	0
0	0	0	2	1	3	2	2	4	0	0	0
0	2	2	0	0	0	0	3	3	0	3	3
0	2	2	2	3	5	2	6	8	0	3	3
4	1	5	14	20	34	0	3	3	2	0	2
3	4	7	3	6	9	17	6	23	21	2	23
0	4	4	0	1	1	1	3	4	0	3	3
14	4	18	0	0	0	2	0	2	0	0	0
0	0	0	1	0	1	0	0	0	0	0	0
14	4	18	1	0	1	2	0	2	0	0	0
21	13	34	18	27	45	20	12	32	23	5	28
0	0	0	1	2	3	7	0	7	0	0	0
5	1	6	1	0	1	7	2	9	1	1	2
5	1	6	2	2	4	14	2	16	1	1	2

may have obtained land from multiple sources through different methods.

TABLE 2.1 (Continued)

			Mbila		
Dominant ethnic group and inheritance rule			Mixed		
No. of sample households			32		
Method	Matrilineal/ Patrilineal	Source	Male	Female	Total
Gifting	Matrilineal	Mother	0	2	2
		Maternal uncle	1	0	1
		Maternal grandmother	2	0	2
		Uterine sibling	1	0	1
		Maternal aunt	0	0	0
	Matrilineal total		4	2	6
	Patrilineal	Father	10	3	13
		Paternal uncle	0	0	0
		Agnate sibling	0	0	0
	Patrilineal total		10	3	13
	Other	Husband	0	0	0
		Maternal grandfather	1	0	1
		Stepmother	0	0	0
		Brother of maternal grandfather	0	1	1
	Other total		1	1	2
Gifting total		15	6	21	
Inheritance	Matrilineal	Mother	0	0	0
		Maternal aunt	0	0	0
		Maternal grandmother	0	0	0
		Sister of maternal grandmother	0	0	0
		Daughter of maternal grandmother's sister	0	0	0
	Matrilineal total		0	0	0
	Patrilineal	Father	1	0	1
	Other	Husband	0	2	2
Inheritance total		1	2	3	
Matrilineal inheritance and gifting total			4	2	6
Patrilineal inheritance and gifting total			11	3	14
Other inheritance and gifting total			1	3	4
Other methods	Allocation by village head		6	0	6
	Purchase		2	0	2
Other methods total			8	0	8
Grand total			24	8	32
Rented/ Borrowed	Rented land		2	0	2
	Borrowed land (free of charge)		2	0	2
Rented/Borrowed total			4	0	4

Total		
186		
Male	Female	Total
21	22	43
3	2	5
6	7	13
3	1	4
1	0	1
34	32	66
57	17	74
0	1	1
1	2	3
58	20	78
0	1	1
2	1	3
0	1	1
0	1	1
2	4	6
94	56	150
0	3	3
0	1	1
0	0	0
0	1	1
1	0	1
1	5	6
5	3	8
0	10	10
6	18	24
35	37	72
63	23	86
2	14	16
22	4	26
6	0	6
28	4	32
128	78	206
14	2	18
20	4	24
34	6	42

TABLE 2.2 Ratio of Households by Farm Size in the Study Villages

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 rent-in 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 2.1 and Figure 2.1, 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 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.⁸ 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 uxorilocal. In Kachamba, however, cases of virilocal marriage were more common (16 cases) than uxorilocal marriage (5 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 uxorilocal 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 percent larger than the average landholding of a husband only.⁹ 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 land acquisition.

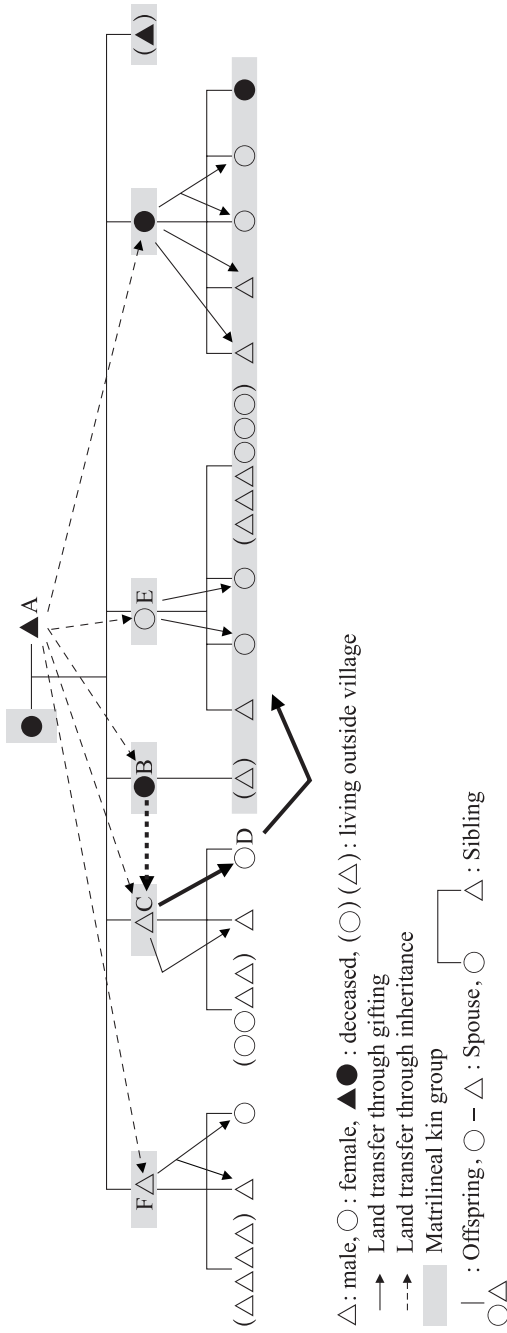
(2) *Horo*

Most residents in Horo were matrilineal Lomwe. They were descendants 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 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 2.1).

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 2.2, 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 ha, the smallest in the six study villages. Half of the sample households in Horo cultivated less than 0.5 ha.

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 percent) 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.

Fig. 2.2 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.

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 34-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 ha) from her stepmother to cultivate maize.

Case 2: In the case shown in Figure 2.2, 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.¹⁰

2.3.2 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 2.1), but there were also some exceptions. The following section examines the cases in which land was not trans-

ferred 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 ha, and 27 percent of the sample households cultivated less than 0.5 ha (Table 2.2). At the time of the survey, there was little uncultivated land left for new allocation and most households obtained their land rights through gifting or inheritance.¹¹ Land sales were not allowed in Bongololo but land rental was permitted.

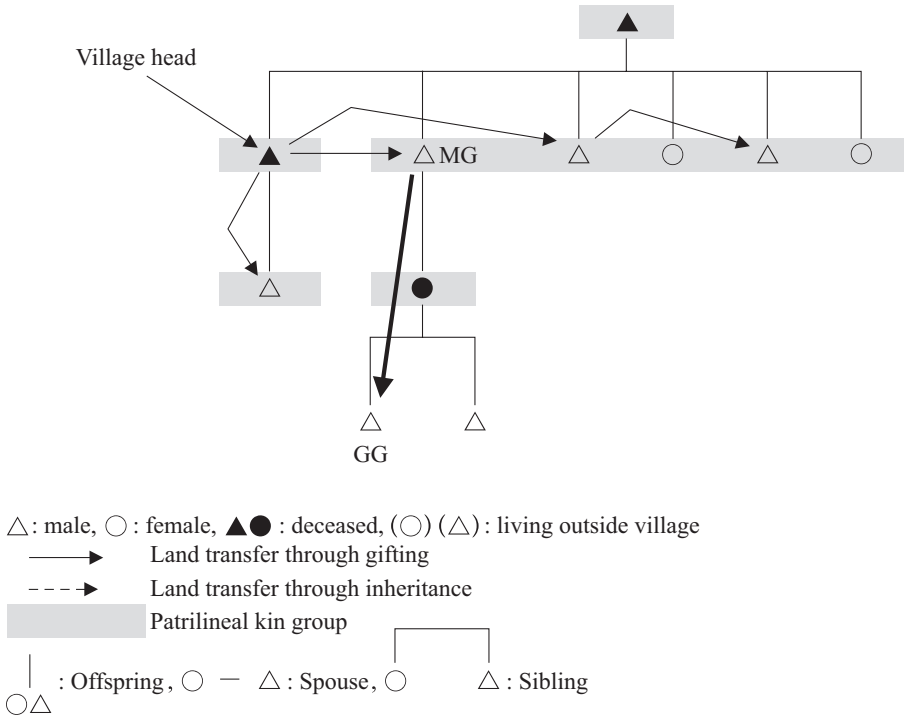
Residents of the village were mostly patrilineal Tumbuka.¹² Among the sample households, instances of land acquisition from patrilineal kin members accounted for 77 percent (23 cases) of the total. On the other hand, there were seven cases¹³ in which plots of land were obtained from somebody other than 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 led 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 2.3, 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 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.

Fig. 2.3 Non-patrilineal Land Transfer in Bongololo (Case 3)

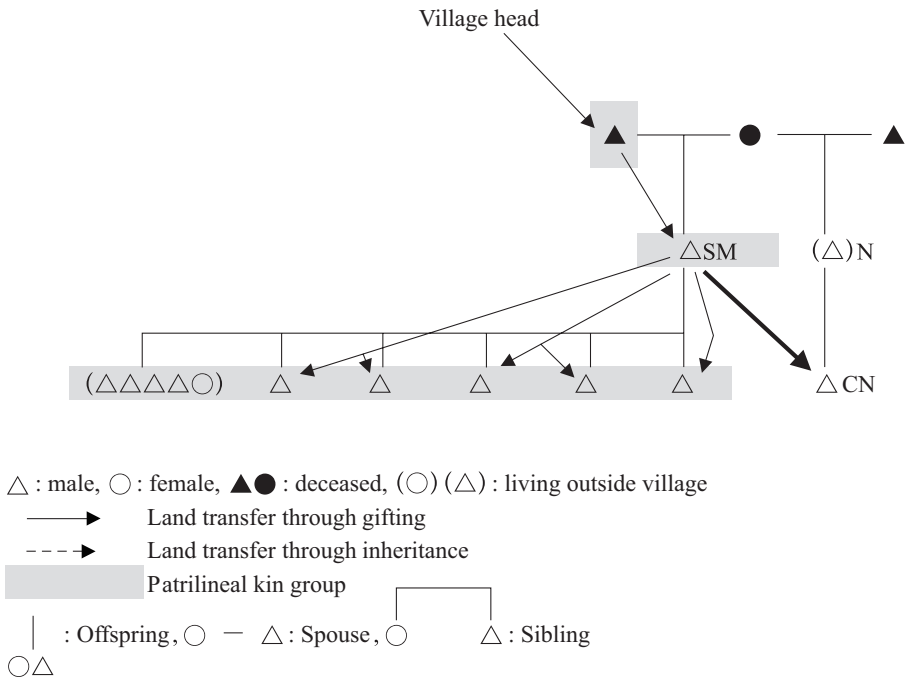


Note: The non-patrilineal land transfer discussed in the main text is indicated in bold type.

Case 4 (Figure 2.4):¹⁴ 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 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.

Fig. 2.4 Non-patrilineal Land Transfer in Bongololo (Case 4)



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

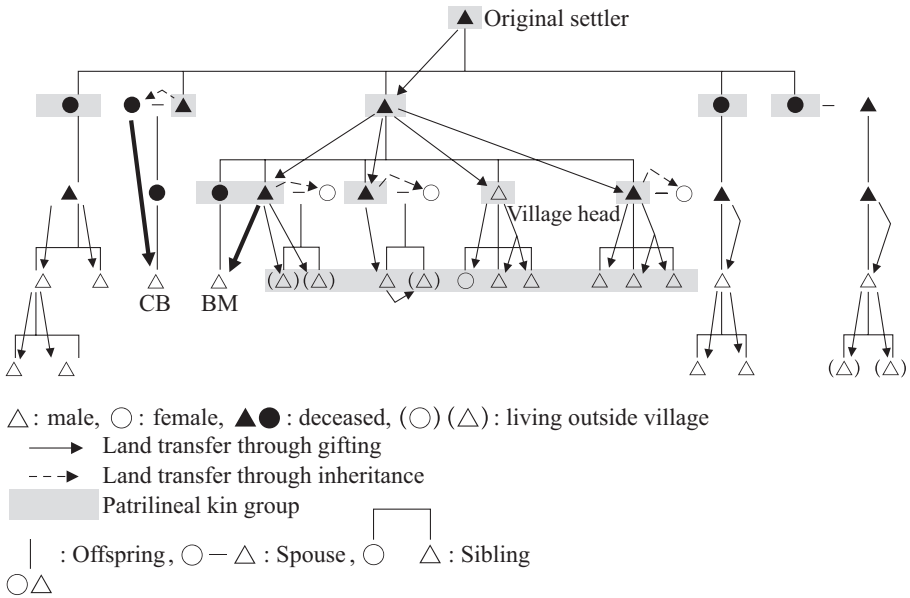
(2) *Mulawa*

Mulawa is a patrilineal Ngoni village. Most residents in Mulawa are the descendents of an 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 2.1) showed similar characteristics with those in Bongololo. First, most cases (82 percent) 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 2.5): BM’s mother was born in Mulawa but moved to her

Fig. 2.5 Directions of Land Transfers in Mulawa (Cases 5 and 6)



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

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 ha piece of land from the maternal uncle. The maternal uncle had two sons, who also received land from their father.

Case 6 (Figure 2.5): 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. This fact echoes the observation made by Moore and Vaughan (1994, p. 210) in northern Zambia that rights regarding land are “historically determined, often being bound up with the biography of particular individuals.”

2.3.3 Land Rights in a Multi-Ethnic Community: Mbila

Mbila is a multiethnic community where the majority of residents (72 percent 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 percent 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 multiethnic 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 marriage were observed, as the case below illustrates.

Case 7 (Figure 2.6): SD is a Chewa man who was born in Zambia and moved to Mbila in 1983 when he married 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 2.3 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.

Fig. 2.6 Coexistence of Uxorilocal and Virilocal Marriages (Case 7)

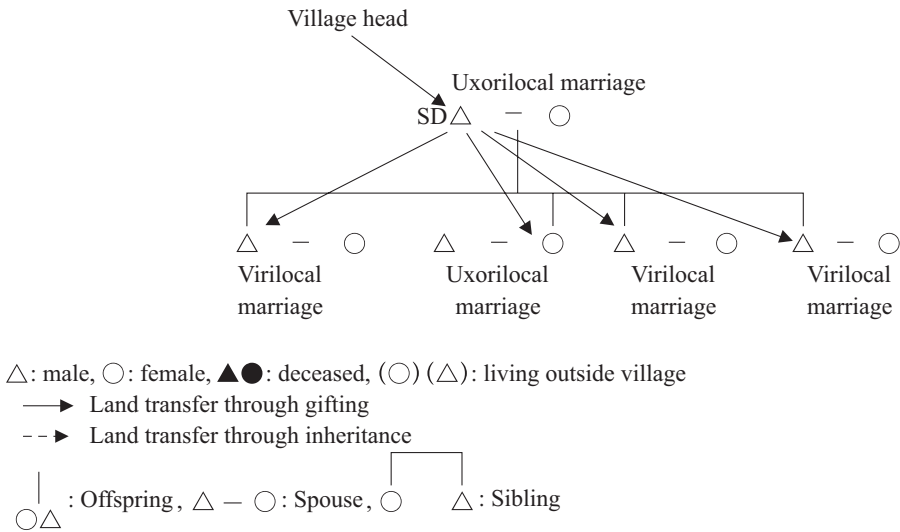


TABLE 2.3 Sources of Land Acquisition among the Chewa in Mbila

Source	No. of Cases
Matrilineal:	
Mother	2
Maternal grandmother	2
Uterine sibling	1
Maternal uncle	1
Total	6
Other:	
Father	10
Husband	2
Allocation by village head	3
Purchase	2
Total	17

2.3.4 A Land Abundant Migrant Community: Belo

Belo belongs to the 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 2.4). Thirty-six percent of the household heads in Belo came from other villages within the Mangochi District or from the adjacent Ntcheu,

TABLE 2.4 Year of Migration into Belo of Household Head

	No. of Households	(%)
1985 or before	10	(9)
1986–90	27	(23)
1990–95	15	(13)
1996–2000	22	(19)
2001 or later	26	(23)
Unknown	5	(4)
<hr/>		
Total migrant households	105	(91)
Total indigenous households	10	(9)
<hr/>		
Total Belo households	115	(100)

Balaka, and Machinga Districts. It is noteworthy that many of the migrants (41 percent) came from the land-scarce areas of the Southern Region such as the Zomba, Mulanje, and Thyolo Districts. This provides micro-level evidence of increasing rural-rural migration driven by land shortage, as discussed by Potts (2006).

In fact, 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 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 8: 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 ha 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 2.2) clearly shows the relative abundance of land in Belo. The remote location of the village delayed the inflow of population into the Belo area,¹⁵ 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 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 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 9: 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 adjacent 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 8, 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 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.

2.4 Vernacular Land Market

Contrary to the customary prohibition against outright sales of land, some cases of land acquisition by purchase were found in Kachamba (three cases), Horo (one case), and Mbila (two cases). In one case in Mbila, a migrant who worked on a large commercial farm for 12 years purchased a 2.4 ha piece of land from the village headman in 1999 and settled in the village. In another case in Mbila, a soldier from another area purchased a piece of land of about 7 ha from a relative of the village head in 1998, and a written agreement on the land sale was prepared in the presence of the village head. In Kachamba and Horo, on the other hand, most land buyers were resident farmers who wished to expand their farms. Overall, purchases in five out of the six cases were made in the last 10 years¹⁶ and the transactions were authorized by the village heads. These facts suggest that the land sales have been taking place relatively recently, with the “official” approval of the village heads despite the customary prohibition in theory. One such case in Kachamba is described below.

Case 10: YK was a 35-year-old man in Kachamba who had a brother and a sister in the same village. All of them were married and had formed independent households. YK’s widowed mother had a 2 ha piece of land, from which she gave a 1.5 ha piece to YK’s brother. She kept the remaining 0.5 ha for herself. YK therefore had to seek other sources to acquire land. He first bor-

rowed a 0.5 ha piece of land free of charge from his maternal grandfather in 1996. In 1998, he purchased a 1.2 ha piece of land from somebody in a nearby village for US\$145. Upon purchase, he and the seller prepared a written document certifying the sale. They also reported to the group village headman about the sale and gave a goat to him to show their appreciation of his approval.

The cases of land purchase in the villages studied generally support the argument of Chimhowu and Woodhouse (2006), who maintain that the vernacular land market has been gaining momentum in recent years. The cases also echo their assertion that people try to reinforce the legitimacy of land rights acquired in the vernacular markets through various means, such as the preparation of written documentation and the approval from authorities. In addition, the types of land buyers observed in the villages studied correspond to those identified by Chimhowu and Woodhouse: migrants who lack customary land rights; bureaucrats and politicians who have enough income earned from full-time jobs to invest in land; and indigenous residents who have access to customary land rights but are forced to resort to land purchases because of the increasing problem of land scarcity (Chimhowu and Woodhouse 2006, pp. 357–58).

The lands purchased in the villages studied were relatively large, and the land buyers appeared to be wealthy. The amount of land purchased in the past 10 years ranged from 0.41 to 7 ha, and their average was 2.4 ha.¹⁷ Given that the average farm size per household in the sample was 1.0 ha, the sizes of land obtained through purchase were much larger than those obtained through the customary transaction of gifts and inheritance. All land buyers were men and either had a regular salaried job or were from relatively wealthier households or both. When household income per adult equivalent was calculated, four of the land buyers belonged to the top income quartile.¹⁸ These facts suggest that it is the upper stratum of the population that is most likely to be able to obtain a large tract of land or expand their landholdings through purchase. This fact partly supports the argument of Peters (2004a) and Chimhowu and Woodhouse (2006) that the contemporary dynamics of customary land rights and the emerging vernacular land markets result in increased inequalities.

In contrast to the cases of land purchase, land rental markets were used by a diverse range of farmers. The size of land rented was much smaller than that of purchased land, ranging from 0.1 to 0.5 ha, the average being 0.3 ha. The sizes of the farms operated by the land-renting households ranged widely, from 0.3 to 3.7 ha, the average being 1.2 ha. Household income per adult

equivalent of the land-renting households varied across all income quartiles. Both land-hungry and land-rich households resorted to land rental markets. For the poor household, the aim of renting land was to secure its survival. A 69-year-old man in Horo, for example, only had a small (0.03 ha) piece of land of his own and rented an additional 0.2 ha on which he grew maize for home consumption. His household was ranked in the bottom income quartile. For the wealthier households, on the other hand, the aim was to maximize their farm income by increasing farm size. A wealthy farmer in Kachamba, for example, rented 0.2 ha and 0.4 ha pieces of land in the nearby village at the cost of about US\$10 per year. In his village he already had a 3.1 ha piece of land, parts of which had been purchased in 1997. His farm was the largest in the village, and the household income per adult equivalent was the second highest. Thus, land rental plays two roles in the vernacular land markets in situations in which land is scarce. On the one hand, it enables the farmers lacking land to acquire their means of survival by obtaining additional land. On the other hand, it provides opportunities for wealthy farmers to further expand their farm acreage. Thus, the effects of the development of land rental markets are not unidirectional, as they would be in the case of land purchase.

Although the emerging vernacular land markets have these important implications, the extent to which the vernacular land markets have developed remains relatively limited in the villages studied. Only six cases of land purchase were found in three of the six villages studied while the number of cases of land acquisition based on the non-market-based customary rules (gifts, inheritance, and allocation by village head) was 200 (Table 2.1). Land rental was more active (18 cases) than land purchase and was found in four villages studied, but the number was smaller than that of the cases of land borrowed free of charge from relatives and friends (24 cases). Overall, the cases of market-based land transactions (purchase and rent) accounted for 10 percent of the total cases of land transactions and those of land purchase only 2 percent. Thus, the vernacular land markets have taken place in the villages studied only to a limited extent.

Conclusion

This chapter has examined the interrelationship between the actual land transactions that were observed in the villages studied on the one hand and customary land tenure and inheritance rules on the other. The case studies reveal 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 the deviation was the unique personal relationships that developed between original landholders and heirs. Another factor was the seemingly increasing number of cases of wives returning to patrilineal villages. Still another factor was the intensifying scarcity of land which encouraged villagers to adopt strategies to obtain land rights from any source and by any means. But 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. These facts suggest that, in a situation in which land is scarce, 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 that tendency to protect lineage land.

This chapter has also shown that the vernacular land markets have been developing recently in rural Malawi. However, the development is still limited and relatively weak, as the strength of kinship remains the main force behind land transactions. But the limited number of cases of vernacular land markets shows some important characteristics. In the land-sales markets, it is the wealthier segment of the rural population that has taken advantage of the opportunities generated by the vernacular land markets to obtain relatively large tracts of land. In the land-rental markets, transactions occur on a much smaller scale than in the land-sales markets in terms of land-plot size but on a larger scale in terms of the number of cases. In addition, land-rental markets are utilized by both poor and wealthy households for different purposes.

Revisiting the debate over whether the contemporary dynamics of land rights in rural Africa have led to adaptive and negotiable customary land systems or to a growing inequality and social differentiation, this chapter has revealed a mixed, complex, and non-unidirectional picture. On the one hand, we observed many cases of adaptive and flexible applications of customary land tenure and inheritance rules that enabled the less powerful segment of the rural population to obtain land rights. On the other hand, the same flexible and adaptive application of customary rules generated conflicts between individuals and lineages. The emerging vernacular land markets also resulted in the undetermined outcomes of providing different opportunities to both the poor and the rich. This bewildering array of results better represents the complex reality of rural Malawi than oversimplified and unidirectional interpretations of the contemporary dynamics of the agrarian economy.

Notes

- 1 This chapter is based on Takane (2008).
- 2 This critique has also been made in ethnographic terms by Englund (2002) in the study of contemporary Malawi.
- 3 This does not mean that the customary land tenure guarantees equitable access of land to the community members. A local “custom” is often subject to manipulations by powerful elites and a discourse on “custom” frequently upholds inequalities within a community (Whitehead and Tsikata 2003).
- 4 In this book, *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.
- 5 Kishindo (1995) and Place and Otsuka (2001) argue that under uxorilocal 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.
- 6 Vaughan (1983) also points out the lack of fit between socioeconomic realities and people’s public expression of their culture in rural Malawi.
- 7 Some of the original settlers, including the senior brother who later became village headman, were still alive at the time of the survey.
- 8 Inheritance of land from father to children was also reported by Mkandawire in the Lilongwe Rural Development Project (Mkandawire 1984) and by Englund in the Dedza District (Englund 1996, 1999)
- 9 In the four cases, the average landholding size of the husband was 0.897 ha, while that of wife was 0.354 ha.
- 10 Peters emphasizes the increasing inequality and conflict over land in Africa in general (Peters 2004a) and southern Malawi in particular (Peters 2002, 2007).
- 11 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.
- 12 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. 152–53).
- 13 In six of the cases, land was obtained by women. These cases will be examined in Chapter 7.
- 14 Case 4 was not a sample household and therefore not counted in Table 2.1.
- 15 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.
- 16 The only exception was the original settler of Kachamba, who purchased land from the local chief in 1953.

- 17 The case of the original settler in Kachamba who purchased land in 1953 is excluded here.
- 18 Income quartiles were obtained by ranking all sample households in each village studied according to income per adult equivalent unit and dividing them into four equal groups. For the income disparities among the sample households, see Chapter 6.

