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Inheritance and the Intergenerational Transmission of Poverty in Sub-Saharan Africa: Policy Considerations

Elizabeth Cooper

What is Chronic Poverty?

The distinguishing feature of chronic poverty is extended duration in absolute poverty.

Therefore, chronically poor people always, or usually, live below a poverty line, which is normally defined in terms of a money indicator (e.g. consumption, income, etc.), but could also be defined in terms of wider or subjective aspects of deprivation.

This is different from the transitorily poor, who move in and out of poverty, or only occasionally fall below the poverty line.

University of Oxford
Wellington Square
Oxford
OX1 2JD

Abstract

In many Sub-Saharan African societies, inheritance is one of the most common means by which physical property is transferred from one generation to another. As such, policy initiatives concerning the intergenerational transmission of poverty (IGT poverty) would do well to attend to how inheritance systems are governed, and particularly which considerations affect who is included and excluded. This requires examination of both legal and political rights of property ownership, as well as context-specific values, norms and dynamics of social organisation.

While there is a logical link between inheritance and the enhancement (through inclusion) or prevention (through exclusion) of people's socio-economic opportunities, this paper's examination of existing research, policy and programming literature finds that presently, there is insufficient understanding of *how* inheritance systems affect IGT poverty. Nevertheless, inheritance systems in Sub-Saharan African countries have garnered growing research and policy attention, largely because of concern about women's property rights and women's vulnerability and poverty, persistent questions regarding the economic (in)efficiencies of land use, and increasing policy attention to the consequences of HIV/AIDS illnesses and deaths across the continent.

This paper is a review of existing research and policy that address issues of inheritance and IGT poverty. It is organised into three main sections: the first outlines what is known about how inheritance correlates with IGT poverty; the middle section discusses specific initiatives that have been proposed or taken to affect inheritance in Sub-Saharan African countries; and the last section lists some key points for policy makers and researchers to consider in developing future initiatives concerning inheritance and IGT poverty.

Inheritance is conceptualised broadly to attend to intergenerational transfers of property that occur at different moments in lifecycles, including birth, death, marriage and retirement from work. As research in different contexts has shown, rationale for intergenerational property transfers often encompass consideration of the dynamics of social institutions such as 'marriage markets' (Fafchamps and Quisumbing, 2005) and claims to intergenerational authority (Cheater, 1983). Intergenerational property transfers have also been considered in tandem with other investments (e.g. education) made by parents for children (Quisumbing *et al.*, 2004). Such multifaceted conceptualisation of inheritance recognises that outcomes are the result of negotiated and dynamic interpersonal processes that involve not just members of a family but also wider community norms and practices.

The majority of most recent research and policy that address issues of inheritance and IGT poverty is focused on the correlations between the insecurity of women's land rights and social and economic vulnerabilities. As such, much of this paper discusses how an agenda for improving women's socioeconomic security has influenced thinking and action on

inheritance systems in Sub-Saharan African contexts. This focus has been valuable for drawing attention to how women's property and inheritance rights may be affected by marriage and motherhood, systems of land tenure and titling systems, and the localised dynamics of political economies.

Three general spheres of practice are identified from this review of what has been advocated and tried to date, as well as what might be regarded as successful, in influencing how inheritance systems operate to reduce IGT poverty in Sub-Saharan African countries. These three areas are: legal reform; institutional implementation; and socio-economic empowerment. Specific initiatives as well as general conclusions emanating from these three spheres of practice are discussed. This section also includes a summary of how children's inheritance rights, and particularly orphaned children's inheritance rights, have been advocated as an issue that requires increased and focused policy attention.

The paper concludes with key points for policy makers to consider in formulating initiatives to address inheritance systems in Sub-Saharan African societies. These points do not serve as directive recommendations for action, but rather as key considerations in thinking through the complexities of inheritance and IGT poverty. These points focus on conceptualising inheritance as a social justice issue, the imperative of earning the social legitimacy of new ideas and practices, recognising how inheritance is practiced at the most local of levels, and integrating research with action.

Keywords: inheritance, intergenerational transmission of poverty, property rights, land, women, Africa

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Elizabeth Cooper is finishing her doctorate in social anthropology at the University of Oxford. She has worked internationally on research and programming concerning poverty and children's lives. Her current research concerns the consequences of orphanhood in western Kenya. Email: elizabeth.cooper@sant.ox.ac.uk

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1 Introduction: Inheritance and IGT poverty in Africa

Recent thinking concerning poverty emphasises poverty dynamics; that is, changes in the poverty status of an individual or household over time (Shepherd, 2007; Hulme and Shepherd, 2003). Leading questions such as: ‘what causes people to be poor?’, ‘what keeps people poor?’, and ‘what helps people get out of poverty?’ reflect the concern with factors that change or sustain people’s experiences of poverty. The increasing framing of poverty in terms of whether it is transient or chronic and/or transmitted from one generation to another clearly embodies an approach that is both time and life course conscious (Yaqub, 2002). ‘Poverty traps’ are by definition antithetical to dynamism; their diagnoses focus on which barriers render people unable to break out of their economic status over time.

Material assets figure prominently in the study of poverty dynamics (Osmani, 2007; Chimhowu, 2006; Wieggers *et al*, 2006; Bird and Shinyekwa, 2004). Recent analyses of chronic and intergenerational poverty have identified the significance of both private and public transfers, or lack of transfers, of material assets, physical health, psychological health, and social capital (Bird, 2007; Smith and Moore, 2006; Moore, 2001). Household and lifecourse poverty analyses have specifically highlighted the importance of different individuals’ access to physical assets for their socio-economic wellbeing and security from economic shocks (Carter and Barrett, 2006; Bird and Shinyekwa, 2004). Physical assets, including land, livestock, and other productive assets (e.g. farm equipment, sewing machines) are fundamental to individuals’ and households’ survival (e.g. shelter) as well as their economic livelihoods (e.g. food production and employment tools). It is argued that the economic, psychological and social benefits of an increased asset base provide the circumstances under which poverty can be interrupted and both individuals and households are able to plan for the future, laying a more secure foundation for subsequent generations (Ford Foundation, 2002).

Inheritance is a major means for the transfer, or exclusion from the transfer, of adults’ accumulated physical capital. As such, it can have positive or negative effects on different people’s poverty statuses over the life course. Inheritance events can either be boons of property accumulation or they can strip people of their previous security of access to assets. On the positive side, the transfer of physical assets from the parent generation to the child generation has furthermore been shown to provide the start-up material for the younger generations’ more independent future livelihoods and economic productivity (Fafchamps and Quisumbing, 2005). On the negative side, studies of poverty trajectories of households and individuals in Sub-Saharan African societies has identified that exclusion from assets inheritance exacerbates vulnerability to chronic and IGT poverty (Bird *et al.*, 2004).

Inheritance systems in Sub-Saharan African countries have recently garnered growing research and policy attention, largely because of concern about women's property rights and women's vulnerability and poverty, as well as because of persistent questions regarding the economic (in)efficiencies of land use, and as a result of increasing policy attention to the consequences of HIV/AIDS illnesses and deaths across the continent. Recent poverty-focused research has revealed that particular categories of people are commonly excluded from opportunities of wealth accumulation through inheritance, most notably women and children because in many African societies women and children do not experience secure rights to property. Even more specifically, widows, orphaned children and households affected by HIV/AIDS have been found to be particularly disenfranchised through rules and practices of inheritance (Cooper 2008; Rose, 2006; Oleke *et al.*, 2005; Bird *et al.*, 2004; Strickland, 2004; Drimie, 2003; Human Rights Watch, 2003; Drimie, 2002).

The following subsections look at some examples of how inheritance affects poverty dynamics and specifically the intergenerational transmission of poverty in different Sub-Saharan African societies. These highlight current research foci and gaps.

1.1 Inheritance and land rights

According to researchers Platteau and Baland (2000: 2), the 'major mode of land acquisition in most Sub-Saharan African countries is inheritance.' Certainly, most of the work that has focused on inheritance in Sub-Saharan African countries focuses on allocations of land. This is consistent with asset and poverty calculations that usually use land as a starting point, especially in Africa. Land has long been recognised as a primary source of wealth, social status, and power, providing the basis for shelter, food, and economic activities. Access to resources such as water and to services such as sanitation and electricity, as well as the ability to make long-term investments in land and housing, are often conditioned by access to rights in land. Rights to land are consequently analysed as crucial factors in households' and individuals' economic livelihoods and security, as well as for communities' and nations' broader economic development. Studies focused on poverty processes in African contexts have specifically addressed the significance of land rights and access because land comprises such a large share of the asset portfolio of the poor, and particularly the rural poor, throughout Africa (Deininger, 2004).

Examinations of women's poverty commonly emphasise the significance of women's land rights, or lack thereof. And again, land rights are not conceptualised merely in terms of the direct economic yields of that land. On a macro-scale, women's lack of land rights is held to interfere with African countries' attempts to rearticulate property law with the goal of capital formation (Joireman, 2008). On another level, Agarwal (2001, 1997) has argued that women's ownership of land leads to improvements in women's welfare, productivity, equality, and empowerment, a proposition that has gained resonance in the international development policy arena (Whitehead and Tsikata, 2003). It is theorised that owning assets may give

women additional bargaining power not just in the household, but also in their communities and other public arenas which encourages the perpetuation of women's social, economic and political empowerment. Other research has demonstrated that equal access, control and ownership of land has instrumental value in terms of its positive impact on consumption (increasing spending on food, children's welfare and education) and productivity (particularly in areas, such as Sub-Saharan Africa, where women are responsible for the majority of land cultivation) (Bird *et al.*, 2004). Yet, despite progress on women's rights on some fronts over the last few decades, it has been asserted that women's access to land and security of tenure has noticeably declined (Sait, 2008: 6). By some estimates, women own only an estimated 1-2 percent of all titled land worldwide (USAID, 2003). UN Habitat (2006) contends that inheritance is one of the commonest ways for women to acquire or access land.

1.2 Inheritance systems and practices

Inheritance as a means of property transfer has most often been noted to occur as a consequence of moments in the lifecycle such as death, marriage, divorce and birth. However, it can also occur *inter vivos* (transfer of property among living people) at other strategic points. For example, as Fafchamps and Quisumbing (2008) show, parents may transfer property to a child prior the child's entrance into a marriage market or, as Cheater (1983) and Shipton (2007) have recorded, a parent may transfer property at the time when he or she is ready to retire from labour. While legal analyses of inheritance often focuses on devolution of property at death and divorce, ethnographic studies and some recent economic research has documented a much wider range of catalysts for property transfers.

There are myriad configurations of different factors affecting transmissions of assets through inheritance. Understanding these configurations as both legacies of history as well as adaptations to contemporary circumstances is a useful approach to learning the meanings of their content and practice. For instance, in many Sub-Saharan African societies inheritance systems correspond with long-held patrilineal or matrilineal descent principles. In patrilineal cultures children are primarily considered members of their father's kin group and inherit the father's property at his death. However, there are often also allowances for lateral transmissions of property from one man to his brothers which can prevent or diminish vertical transmissions from the same man to his children. In matrilineal cultures kin membership is traced through the uterine line, or according to siblings' relationships, so that children are primarily considered to belong to their mother's kin group (matrikin) and not to their father's. In matrilineal systems, a man's heirs are his sister's children, not his own.

While understanding whether a society is organised along matrilineal or patrilineal principles is important, these designations do not always reflect what actually happens in practice. A small-scale study in both patrilineal and matrilineal societies in Malawi finds that a variety of land transfer and inheritance practices occur and these do not always adhere to the 'ideal constructs' of matrilineal or patrilineal societies' customary laws (Takane, 2007). The

researchers found that unique personal relationships between original landholders and heirs were often influential in determining land transfer outcomes. For instance, it was recorded that several widowed and divorced women who were household heads in patrilineal societies had not gained access to their land as a result of their claims on deceased husbands' property, but rather through transfers from their fathers, mothers, maternal uncles, paternal uncles or brothers.

Indeed, the *de jure* rules of inheritance systems may be purposefully undermined or manipulated by the property owners to achieve their own livelihood strategies and transferral preferences. Two studies among the matrilineal Akan society of Ghana finds that while the customary inheritance system is organised to see a man's land automatically transfer to his sister's children upon his death, many people are resisting this by making *inter vivos* transfers to their own children, thereby reducing the property left to be inherited by nephews upon the uncle's death (La Ferrara, 2007; Quisumbing *et al.*, 2004). An accounting of how parents and their children interact with one another to influence inheritance outcomes reveals calculated economic practices. For instance, it was found that Akan parents are significantly more likely to receive cash transfers from their children compared to patrilineal ethnic groups in Ghana and that this effect is reinforced by the extent to which customary matrilineal norms are observed (i.e. a nephew resides in the man's household). Such actions seem to indicate that Akan children strategically make monetary transfers to their parents to entice parents' favour in response to the threat of disinheritance as governed by rules of matrilineal descent (La Ferrara, 2007). As well, it has been found that men are increasingly likely to offer *inter vivos* property transfers as 'rewards' for the labour of wives and children so as to provide incentives for their important contributions to cocoa farming on the family's land (Quisumbing *et al.*, 2004:7). In addition to increasing use of *inter vivos* transfers as 'gifts', the writing of wills that stipulate that some of their property will be inherited by their own children has risen (both provisions are subject to approval on behalf of the matrikin however). Among this society then, there are discernible shifts in practices of assets transfer - what Quisumbing *et al.* (2004:17) term 'institutional innovation' – so as to achieve outcomes that would not otherwise be possible under the Akans' matrilineal inheritance system.

Studies of parents' transfers of property rights to their children reveal significant cost-benefit analyses and strategies. In some contexts, parents favour using *inter vivos* transfers or investments over bequests so as to improve their children's more immediate livelihoods chances. For example, Fafchamps and Quisumbing's (2005) study of Ethiopian parents' *inter vivos* transfers to their daughters of marriageable age demonstrated strategic motives behind such decisions (but not for sons, since the outcome of the marriage market is not an important determinant of men's future welfare). In some cases, parents' provision of more property to their daughters correlated with their daughters' improved marriage prospects (i.e. wealthier husbands). In other cases, parents increased what they transferred to married daughters if the grooms brought less into the marriage, thereby improving the start-up capital available to the new household. In a different study that compares Ghanian parents' land

transfers and education investments in children the point is made that different types of wealth should be included in appraisals of intergenerational transfers (Quisumbing *et al.* 2004). In societies where land does not offer the only or best economic returns, for example, parents may strategically choose to invest in their children's non-land related economic activities, including education. Such transfers would not be captured in an analysis that only looks at property transfers but the principles of intergenerational transfers by the parent generation to economically benefit the child generation are obviously at play. In their study that did measure and compare parents' investments in their various children's educations as well as their transfers of land to their children, Quisumbing *et al.* (2004) found no discrimination against daughters in parents' land transfers among the matrilineal Akans but strong total discrimination against daughters among non-Akan patrilineal groups in Ghana and total discrimination against investments in daughters' education, compared to sons', among all societies.

In other circumstances, parents guard their own hold on property against their children's claims so as to ensure their economic security and children's subservience to them. For instance, it has been observed by various researchers that parents can strategically withhold permission for sons to use cattle from the family's stock for the bridewealth payments required to marry and thereby start a separate household (Shipton, 2007; Hakansson, 1989; Cheater, 1983;). In this way, the parent generation is able to retain the labour of their sons even into adulthood and hence the parents' household benefits through further capital accumulation. Further complicating decisions on father-to-son transfers of cattle has been the father's recognition that a married resident son has increased traditional claims on the use of the land for all forms of subsistence. As Cheater notes from her studies among rural farmers in Zimbabwe, fathers may not transfer cattle to sons for their bridewealth until the father's own physical capacity is diminishing and he is ready to concede larger portions of the farmland to others (e.g. his sons and their households). This research indicates that intergenerational transfers of property should be considered in terms of several different, and potentially competing, interests among family members and indeed between family members of different generations.

1.3 Inheritance and marriage

Marriage can be occasion for a substantial transfer of assets from the parent to the child generation in many agrarian societies in Africa, typically marking the establishment of a new production unit, e.g. a family farm. What parents give to their children at the time of marriage may be conceptualised as 'advanced inheritance' (Fafchamps and Quisumbing, 2005: 3) Quisumbing's (2007) review of research concerning intergenerational transfers of assets in different countries, including her own research in Ethiopia and Ghana, leads to the conclusion that,

the success of this new household enterprise thus depends to a large extent ... on the arrangement reached by the bride and groom and their respective families regarding the devolution of assets to the newly formed household. [Furthermore], in an environment where asset accumulation takes time and is particularly difficult for the poor, assets brought to marriage play a paramount role in shaping the lifetime prosperity of newly formed households (Quisumbing, 2007:10).

A legitimate marriage under customary law in many African patrilineal societies requires payment of bridewealth¹ from a husband and his family to the wife's family (Shipton, 2007; Hakansson, 1994; Parkin, 1978; Goody, 1973). If bridewealth has been paid, it is expected, in accordance with tradition, that if the husband dies his wife would remain in her late husband's village and in several societies she would be 'inherited' or 'remarried' to one of her husband's brothers who would help her raise her children among the deceased man's kin. If no bridewealth was paid upon marriage, a widowed woman is often expected to return to her natal kin with her children. A woman who had not borne any children at the time of her husband's death was also vulnerable to losing her claims to the home they had shared with her husband. In the case of divorce, a woman's family is often expected to return the bridewealth to the husband's family if it had been paid, and leave the children with the husband and his kin.

Marriage laws have clearly been demonstrated as essential to women's property and inheritance rights. In many African countries women do not have independent property rights. Instead, statutory and customary laws often stipulate that women are to access assets through their fathers, husbands or adult sons. As a result, women who are orphaned, unmarried, separated, divorced or widowed can be significantly disadvantaged as are the children who grow up in households headed by divorced, separated or widowed women. Women in polygamous unions may be even more vulnerable. Even women who have property access through other people are disadvantaged by not having their own independent rights to this property. The view and practice of women as embedded in the household without autonomous access to property has led to uncertainty and instability in their lives when their personal status changes due to the death of a husband, divorce, or polygamy.

¹ Bridewealth or bride-price refers to the transfer of assets from the groom's family to the bride's. Dowry is the term used when assets are transferred from the bride's family to the groom's or from the bride's parents to the bride at the time of her marriage. Bridewealth transfers are common in many Sub-Saharan African societies while dowries are common in societies across Asia (Fafchamps and Quisumbing, 2008; Goody, 1973, Goody 1970).

1.4 Inheritance customary and statutory laws

In many Sub-Saharan African countries issues related to inheritance are explicitly meant to be governed by customary law. Commonly, a country's constitution will exclude inheritance, as well as marriage and other so-called 'family law' matters, from any non-discrimination clauses which are meant to govern the equal status of citizens under the law. For example, Botswana's Bill of Rights exempts devolution of property upon death from its non-discrimination clause and the country's Administration of Estates Act states that every person belonging to an ethnic group, which essentially applies to every native citizen of Botswana, will have their property devolved according to the customs and practices of their particular ethnic group. According to the patrilineal system of marriage that most Batswana follow, a married woman belongs to her husband's ethnic group. Most of the property owned or acquired by the couple in the course of the marriage belongs to the husband and will pass to the eldest son when his father dies. A woman retains, in theory, the right to certain property, such as her plowing fields, which are intended to pass to her daughter upon her death. The male household head, however, determines whether the property will go with the daughter into her marriage (Richardson, 2004). Similarly, in Lesotho statutory law states that customary law governs inheritance and women are treated as minors and therefore cannot be allocated land, inherit it or make decisions about its management and use. Daughters cannot inherit their father's fields and if there are no sons to inherit a man's land it can be claimed by the local chief to reallocate to others after the holder's death (Mutangadura, 2004). Ghana, Kenya, Zambia and Zimbabwe also list inheritance-related matters as exemptions to the application of non-discrimination based on sex in their countries' laws (UN Habitat, 2006).

Ethiopia, Mozambique, Namibia, Nigeria, Rwanda, Senegal, South Africa, Tanzania, and Uganda have constitutions that explicitly prohibit discrimination in the application of law, including customary law, based on sex and do not make exemptions to this stipulation. Namibia's law recognises the right of all citizens in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees. Unfortunately, however, what may be found in the letter of the laws is not often the reality on the ground in many of these countries. In Namibia, for example, legislation has had little impact because women do not know their rights under statutory law, and customary law continues to control the dispossession of property (Joireman, 2008). A case study analysis of land rights of women in Uganda reflects: '[a] gulf between government rhetoric, legislation and policy and the reality as it is experienced by, particularly rural, women; commitments have been made in relation to gender equality and land rights without being accompanied by measures to ensure their social legitimation, implementation and enforcement.' (Bird *et al.*, 2004:31). Such inconsistencies are addressed further below under sections 2.2, 2.3 and 2.4.

1.5 'Property grabbing' from widows, orphans and HIV-affected households

Property grabbing is an often cited example of statutory law being ignored with impunity. It has also been characterised as a manipulation of customary law. There is indeed growing evidence that traditions of widows being cared for amongst the kin of a deceased husband are being manipulated to justify the disinheritance of women. The families of men have been reported to manipulate the custom of taking care of a deceased brother's or son's wife, children and property by claiming the property by not upholding the accompanying responsibilities of caring for the deceased man's family. A recent study among the Langi of northern Uganda, for example, contrasts traditional and contemporary norms and practices concerning the support of widowed women's claims upon their families and communities (Oleke *et al.*, 2005). Traditionally, among the Langi, it was expected that a woman's natal kin would discontinue their role as providers to her at the time of her marriage. The transfer of bridewealth would mean the transfer of responsibility for the woman and her future children to her husband's kin. Patrilocal marriage (the wife moves to the husband's village) also physically removed the woman and her children from the woman's natal family, making the continuance of claims upon a woman's natal kin more difficult. Investigating the cases of widowed women and orphaned children among the Langi in recent years, this study finds that sixty-three percent of the households caring for orphans in the study area were no longer headed by paternal kin in a manner deemed culturally appropriate by the patrilineal Langi society, but rather were headed by marginalised widows, grandmothers or other single women receiving little support from the paternal clan. The authors reflect that the rapid discontinuation of practices of widow inheritance (and care for the widow's children) is a consequence of local impoverishment and deaths of adults as a result of political violence or HIV/AIDS, which has drastically limited the availability of any potential inheritors (e.g. husband's brothers) to support widowed women and their children. Oleke *et al.* (2005: 2636) judge that the disinheritance of widows and orphaned children reflects 'the breakdown of fundamental organising principles in Langi society' and demonstrates that Langi society has been overwhelmed by the magnitude of the disease burden and its economic implications.

The extent of property grabbing against widowed women, orphaned children and other configurations of HIV-affected households is not well-known. In Kenya, Aliber and Walker (2004) find that most women are able to hold onto their land after the death of a husband by turning to the community as a whole to gain support in legitimising the wife's claim to the land. In this study, the cases of women losing their homes and lands after their husbands' deaths were exceptional. However, Human Rights Watch (2003) research in Kenya found frequent occurrences of property grabbing against widows and consequential poverty of women and their children. A recent household survey of 889 rural households in Kenya found no significant differences in inherited land between former non-orphans and orphans (Yamano, 2008). Oleke *et al.*'s (2005) study of orphans' care in Uganda argued that the fact that children whose father had died were living with their mothers, and not within the



homestead of a paternal uncle, indicates that these children are receiving little or no support from their extended family, as tradition would expect. The researchers found, however, that even in such cases, the clan affiliation of these children is not questioned and their right to inherit their own father's land is rarely contested or violated. As Strickland notes in his literature review of women's property and inheritance rights and HIV/AIDS in Sub-Saharan Africa, 'like the tip of an iceberg, disturbingly little is known about the negative intergenerational economic consequences for orphans stripped of their rightful inheritance through such practices.' (Strickland, 2004:17) Similarly, while many policy analysts are concerned about the inter-related risks of property disinheritance and HIV/AIDS, how the two affect each other is not yet well understood.

1.6 Inheritance and poverty research gap

The above overview has emphasised those aspects of existing inheritance research that seem to have implications for people's economic statuses. It demonstrates that the few recent studies that have taken inheritance as their focus in social and economic analyses have been rewarded with new insights into how individuals and families organise their affairs to maximise economic gains. To date, however, much of the published work concerning how inheritance systems affect people's experiences of poverty remains conjectural (see Cooper, 2008 for an overview). The existing evidence does not shed light on the scale or significance of asset transferral that occurs through inheritance in African countries. As well, the scope of which questions have been investigated remains narrow, with a predominant and certainly important focus on widows' experiences of inheritance. Further discussion of other relevant questions that might be tackled in future research is included in the last section of this paper 'Points for Policymakers'.

Despite the significant gap in empirical data concerning how inheritance systems work to prevent, escape or exacerbate individuals' and households' poverty, there has been significant attention in recent years to reforming inheritance laws and practices, particularly to achieve equity between men and women. The next section describes an amalgamated reform agenda as promoted and pursued by different governmental and non-governmental actors in various Sub-Saharan African countries.

2 What has been tried? What has worked?

In recent years, many multilateral governmental and non-governmental organisations have raised concerns regarding inheritance rights in Africa, and specifically in most cases, women's inheritance rights. These include UN Habitat, USAID, the Global Coalition on Women and AIDS, the Food and Agricultural Organization (FAO), Oxfam, Human Rights Watch, the Centre on Housing Rights and Evictions (COHRE) and the International Centre for Research on Women (ICRW) as well as many other African regional and national organisations primarily operating in their respective countries, especially women's rights and law groups. Workshops have been organised, research has been done, and reports have been written and published, most often about the relevant laws in place that address women's property and inheritance rights and the perceived challenges in implementing laws have been discussed. In addition, several African countries have addressed inheritance issues through legal reforms.

The efforts made or advocated to address inheritance rights in Sub-Saharan African countries fall under three general spheres of practice: legal reform; institutional implementation; and socio-economic empowerment. The point is consistently made by analysts that these three spheres of action are complementary and that, indeed, reforms in one sphere will be significantly challenged and possibly ineffectual if changes in the other two areas are not made. What has been tried, what may be deemed successful and further recommended actions are described below.

2.1 Legal reform

The starting point of most analyses of inheritance systems in African countries is national laws. The organising principle of this work is to harmonise land, marriage and inheritance laws, as well as provisions in national constitutions, and to ensure consistency between those laws and international human rights treaties. As discussed above, many Sub-Saharan African countries continue to have multiple legal systems and laws at work at once which have various different, and often conflicting, implications for property and inheritance laws. Therefore, work on legal reform necessitates an approach that looks at the potential and actual interplay of statutory and customary law (and any other systems of law, such as those specific to a particular religion, like *sharia* for Muslims in Nigeria) as well as different laws themselves.

One approach has been to promote the ratification and domestication of international legal instruments that prohibit gender discrimination. The primary international law referred to is the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which requires signatories to 'take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure, on a basis of equality of men and women. The same rights for both

spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property...'. National constitutions are the first laws reviewed since constitutional provisions serve as an important justification for trying to improve women's interests in the context of reforms. Court challenges have made clear how necessary constitutional reform is to the protection of women's inheritance rights. In the well-known *Magaya case* in Zimbabwe, the Supreme Court ruled that Ms. Magaya could not inherit land, because customary law does not permit women to inherit and the Constitution still allowed discrimination in such matters (UN Habitat, 2006).

Countries that have made constitutional provisions that prohibit discrimination, including in customary law and practice, include the constitutions of Uganda, South Africa and Mozambique. In their 2006 Progress Report on Removing Discrimination against Women in Respect of Property and Inheritance Rights, UN Habitat designates these as 'best practices'. Malawi's constitution is unique in that it makes specific mention of women's property rights. The constitutions of several other countries, including Zimbabwe, Zambia, Lesotho, Botswana, Swaziland and Kenya, allow for discrimination in customary and personal law matters (such as inheritance) to persist and remain on the reform agenda.

Amending constitutional provisions is not enough, however. Other laws that govern property ownership (e.g. land acts), marriage and inheritance must be addressed and harmonised. Mozambique is often identified as a good example of progress in this sphere, having addressed gender discrimination in property ownership and inheritance laws by amending the country's constitution as well as land and family laws.

Some African countries have initiated legal reforms to address women's property and inheritance rights following the death of a husband. For example, in 1989, Zambia enacted the Intestate Succession Act, which significantly affected a woman's legal rights to inherit. This act is meant to govern the administration of an estate when there is no will. It contains provisions for the division of inheritance: widows are to be given 20 percent, parents 20 percent, other dependents 10 percent, and children 50 percent. The act also states that a 'surviving spouse or child or both [are] entitled to [the] house,' that 'the surviving spouse shall have a life interest in that house which shall determine upon the spouse's remarriage,' and specifies the penalty that will be imposed on any person who denies any person his/her right to the property to which he/she is entitled under the act. However, as Richardson (2004) notes in her legal analysis, while this act might be regarded as beneficial to women because it secures their lifetime right to remain in their home, it does not grant equal inheritance rights to women: 'The widow does not inherit the title to the home; instead, she may only stay until her own death or remarriage. She gains only the usufruct right of use, not absolute ownership. Additionally, enforcement of the Intestate Succession Act requires a widow to take her case before a statutory court ... which is not a realistic option for most Zambian women.' (Richardson, 2004:4) Other countries, such as Namibia, have similar laws (Namibia's Married Persons Equality Act of 1996 and the Communal Land Reform Act of

2002) to allow women to remain in their houses and on their land after the death of a husband.

Succession laws that entitle widows to temporary right to the marital home are regarded as useful in combating property-grabbing however, the temporary quality of the property rights they afford limit women's options. For example, under such laws women may not have the rights to sell, mortgage or carry out any other transactions that may benefit them and their children. As well, if a woman decides to remarry she will lose her right to the property that was hers during her marriage to her deceased husband.

It has been recommended that laws to allow the co-registration of property in the names of both spouses can be more protective of women's statuses. Cousins *et al.* (2005) document that in South Africa, and Ensminger (1997) documents that in Kenya, titling initiatives that were done in the name of a single household member (usually the male household held) have reduced women's tenure security. Joint registration of property can redress this imbalance. Moreover, if property is registered jointly, in the event of the death of a husband, the estate would more firmly remain in the hands of the widow rather than be contested by other family members.

Researchers at the Makerere Institute of Social Research reviewed 70,000 land records in Uganda to document the uptake of joint land titles among conjugal couples between 1980 and 2002. They found an increase in joint titling, however, the percentages remain low: about 1.3 percent of all titles in 1980 were co-registered compared to 3.4 percent by October 2002. Women's ownership of titled land has risen from 12.4 percent to 16 percent in the same period. (FAO and Oxfam, 2003, citing Sabina-Zziwa) Many reasons for the lack of participation in co-registration of property have been identified. Most common factors include lack of awareness and education, cultural attitudes that undermine women's assertiveness of their property rights, and logistical challenges including the time and effort required to pursue co-registration. These types of constraints on the realisation of property and inheritance rights are discussed in the following subsections. At this point it is important to note that efforts to promote joint titling are underway in many African countries, however the practical effects of joint titles have yet to be thoroughly tested or assessed.

To avoid the obstacles of lack of awareness, local discriminatory attitudes, and logistical barriers, Tanzania's Land Act of 1999 has been written to automatically presume co-registration of land occupied by both spouses unless otherwise indicated by the spouses. This is lauded as an innovative and seemingly very effective law to protect women's property rights, however, more analysis is required to prove these points.

Another identified priority area for legal reform is the registration of all marriages. This is regarded as a priority initiative for the protection of women's rights to property in the case of a husband's death or abandonment. It has been observed in Rwanda (André and Platteau,

1998) and Kenya (Human Rights Watch, 2003) that some customary leaders are applying increasingly restrictive definitions of a correct customary marriage as a means of restricting 'married' or widowed women's rights to access land. Such situations point to the necessity of ensuring that the requirements for marriage to be legally recognised are consistent with cultural criteria for marriage. Research concerning women's property and inheritance rights violations in Kenya noted that the payment of bridewealth (dowry) by the husband and/or his family to the family of the wife should not be a legal requirement for any type of marriage since the woman often has little influence over this occurrence yet still contributes as a wife to the marriage (Human Rights Watch, 2003). Furthermore, it is recommended that the civil registry of marriages be linked with the land registry (Global Land Tools Network, 2006).

A legal requirement for family or spousal consent for transfers of family land and housing has been proposed and the Ugandan Land Act of 1998 is an example of a law that requires the consent of the spouse on land sales. Another recommended priority for safeguarding property inheritance rights is legal stipulations for the equal or fair division of family property in the event of separation or divorce.

In addition to national legislation some policy analysts have encouraged the issue of women's land rights to be taken up in African regional instruments, such as the African Charter on Human Rights, NEPAD and the SADC declaration on gender and violence. The idea is that these will then in turn provide further influence on countries' notice and adherence to these rights.

2.2 Legal case study of Ghana's inheritance legal system

Ghana is widely seen as a leader in the struggle for inheritance rights in Africa. In addition to having ratified numerous international human rights treaties, including CEDAW and the African Charter on Human and Peoples' Rights, Ghana passed, in 1985, the Intestate Succession Law (the Provisional National Defense Council, or PNDC, Law 111). PNDC Law 111 significantly altered the system of land and property distribution legally recognised by the Ghanaian government. According to its accompanying memorandum, the law seeks to 'provide a uniform intestate succession law that will be applicable throughout the country irrespective of the class of the intestate and the type of marriage [statutory or customary] contracted by him or her.' The law, 'aimed at giving a larger portion of the estate of the deceased to his spouse than is normally the case at present,' grants concrete rights to spouses to the property acquired by the decedent during his or her lifetime. This notably does not include family and lineage property. Despite this omission, the Act states that wives and children may remain in the home as tenants in common until the widow's death or remarriage.

PNDC Law 111 was enshrined in the 1992 Constitution with clauses addressing the property rights of spouses. The Constitution states in article 22 that 'spouses shall have equal access to property jointly acquired during marriage' and that '[a] spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.' With these provisions explicitly providing for women's inheritance, Ghanaian constitutional law goes well beyond that of Botswana and Zambia in legally preserving women's rights. No exceptions exist for the application of customary law in Ghana.

Customary law, however, persists despite these laws. Ghana contains both matrilineal (in the Upper East, Upper West, and South western regions) and patrilineal (in the Northern, Volta, Greater Accra, and Southern regions) ethnic groups. In addition, nearly half of all marriages in Ghana are officially polygamous, while a much greater number consist of a husband with one official wife and one or more concubines.

Under customary law, when a man dies, all of his self-acquired property (which often includes property acquired with the assistance and labour of his wife) returns to his lineage and is distributed accordingly. In patrilineal societies ... the land will thus go to a son or brother. In matrilineal societies, ... property will devolve to nephews. In both systems, the widow is usually entirely dispossessed.

With the advent of PNDC Law 111, entire systems of property inheritance and distribution were legally uprooted, particularly those in matrilineal lineages. The legal revolution, however, has not fully translated into cultural transformation. In many ways, the law is impractical in matrilineal communities whose entire social and familial system would be completely debased if the law were to be implemented. The law also fails to mention or recognise polygamous marriages, which constitute the majority of marriages in Ghana. When applied to these unions, the law fails to adequately address the multitude of complexities arising when a man dies leaving multiple wives and multiple sets of children.

An even greater obstacle to the law's implementation is the lack of public education about the law. Today, 19 years after PNDC Law 111 was passed, many people who do not belong to the educated, urban classes are not aware of the law's existence. There is no public education program designed to inform the Ghanaian citizenry of this significant aspect of their legal system. Customary inheritance systems persist and customary courts continue to resolve conflicts.

(Excerpt from Richardson, 2004:5)

2.3 Addressing Customary Law

Investigations in the operation of inheritance systems make evident that if inheritance practices are to change, customary law must also be a focus of reforms. As noted above, many African countries' constitutions still defer to customary law to govern marriage and so-called family law, which often have significant determination over property and inheritance rights. Even when statutory laws do exist to govern these rights, customary laws are often the most common recourse in inheritance cases because they are governed locally and hence more readily accessible and socially legitimate. As Rose (2006:8) observes, 'although the provisions of statutory law are supposed to prevail when the provisions of customary law and statutory law are contradictory, the reality is that statutory law will be poorly implemented and possibly completely ignored.' Moreover, although it is quite widely acknowledged that local customary law adjudication is often male-dominated in contemporary African societies, in some cases women have been found to prefer to take their inheritance claims to this local adjudication of uncodified, customary law because it is more flexible and takes extra-legal matters into consideration whereas codified laws can be too restrictive (Kameri-Mbote, 2002).

UN Habitat's recent analysis of gender discrimination in property and inheritance rights characterises the persistence of customary norms as 'a conundrum':

While a number of customary norms are patriarchal in nature, the dismissal of all customs can not only be alienating but also misses a wide range of practices which do have positive implications for women's lives. Moreover, the mere substitution of customary land rights with statutory rules has failed to improve women's security of tenure since custom still provides legitimacy and influences general opinion and decision makers (UN Habitat, 2006: 30).

How to approach customary law remains an interesting debate. Whether to seek to do away with customary laws altogether or to engage with customary legal systems for particular desired approaches and outcomes is hotly contested in many African countries (Whitehead and Tsikata, 2003). One important point of consensus, however, is that each context should be considered carefully in its own right and practice before judgements and interventions are made to change the influence of customary laws.

Lessons have been learned from past efforts to engage with, and influence customary law to enhance women's property and inheritance rights. Most of these concern dialogue, education, awareness building and capacity building of both the arbitrators of customary law as well as the public who appeal to customary law for governance of inheritance. Practices of such initiatives are described in the next two sections.

2.4 Institutional implementation

Most analysts agree that property rights in African countries can not be achieved through legal reform alone (Varley, 2007; Jütting and Morrisson, 2005; Mutangadura, 2004; FAO and Oxfam 2003; Human Rights Watch, 2003; Steinzor, 2003; Benschop, 2002; Women and Law in Southern Africa Research and Educational Trust, 2000; Cross and Friedman, 1997). Even where progressive laws are in place, weak enforcement mechanisms and lack of funding often undercut their effectiveness (UN Habitat, 2006). As discussed in the previous section, in Namibia, for example, despite the introduction of laws to protect women's right to remain on their land after the death of a husband, legislation has had little impact because women do not know their rights under statutory law, and customary law continues to control the dispossession of property (Joireman, 2008) According to Joireman's appraisal, the Namibian government has not made the necessary investment in civic education to promote the enforcement of these laws. The notion that social legitimation is just as important a process to invest in as regularly reform is being made self-evident in many other contexts as well (Bird *et al.*, 2004). As Deininger notes (2003:22), 'property is not merely the assets themselves, but consensus between people about how these assets should be held, used, and exchanged.' Consensus building is vital to the protection of people's inheritance rights.

Cumbersome regulatory frameworks, costly procedures, lack of information, and corruption have all been identified as factors that undermine people's capacities to claim their rights (Benschop, 2002). Inheritance procedures are often quite technical, centralised, and difficult to access. Land information systems, for instance, are often centralised which prevents rural people from seeking to register their land rights. The decentralisation of such processes as land management responsibilities, including administration of deceased estates, with clear guidance from central land and succession laws, is recommended to improve access and timely adjudication. The Gender Land Tools Network has also identified that many regulations and guidelines for the implementation of laws and policies have often not yet been written from a gender perspective which undermines women's efforts to use these. For example, forms for registration of land, often simply lack the space to indicate joint registration of both spouses. The attitudes and practices of administration personnel also need to be addressed to ensure they are able to interact with the public in non-intimidating or discriminatory ways.

Another important means in making laws applicable are efforts to bring test cases regarding inheritance rights to court, thereby making public demonstrations of the law. Strategic litigation can establish useful legal precedents and can be critical in bringing property rights changes into effect where the state does not have the resources or the inclination to pursue enforcement of new laws. Women lawyers' associations and civil society groups in Burkina Faso, Ghana, Uganda, and Tanzania have played an important role in agitating for women's property rights and educating the populace by bringing test cases regarding women's property rights to court and promoting the enforcement of laws that protect women's property

(Joireman, 2008 citing: Cotula, 2002; Kampire, 2006; Ki-Zerbo, 2004; Kuma, 2006; Tripp, 2004).

Beyond headline-grabbing and precedent-setting court cases, ensuring all women's access to the means of legal redress in their local environments is a recognised priority. To effect this, training for land professionals, policy makers, judges and magistrates, lawyers, registrars and police in inheritance rights so that they have the capacity and knowledge to interpret and implement national laws with respect to equal inheritance rights is an important area of intervention. Current programs in several different countries to provide paralegal and legal aid services to women are held to be very effective. According to a report commissioned by the International Centre for Research on Women (Strickland 2004: 55), 'Such services operate at the frontier between statutory and customary law and often represent the strongest resource for women seeking to defend their property claims from discriminatory customary practices.' Paralegals assist legal aid centres, mediate in disputes and raise awareness on the ground of inheritance rights. FIDA-Kenya claims wide national impact in protecting women's property rights through different complementary strategies, including the training and use of paralegals. The paralegals of FIDA have terms of reference, are not employees but volunteers with allowances. The organisation also offers mobile clinics which visit different communities to offer services locally. Another route taken by The AIDS Support Organisation (TASO) of Uganda has been to combine with the Legal Aid Project so that HIV/AIDS counsellors can be educated and trained about property inheritance rights and laws as well as the methods available to uphold the law. When clients, 65 percent of whom are women, come for services at the TASO counselling centres they receive advice about these laws as well as the importance of will writing (ICRW, 2004).

As discussed above, engaging with customary legal systems is necessary in many African societies to ensure that inheritance is practiced fairly. Dialogue with elders and other enforcers of customs and traditions is critical to raising awareness and finding ways to possibly harmonise customary norms with equitable inheritance rights. Often such actions will go beyond mere education of statutory laws or principles of human rights. Toulmin and Quan (2000) make the point that it is important to pay attention to the actions of local arbitrators: In areas where land has a higher value, customary land ownership patterns can empower and enrich those who make decisions regarding its allocation. "Authority in land whether vested in the chiefs, or in the government officials and political leaders, can in turn, lead directly to private economic benefits for these actors, derived from land accumulation, patronage and land transactions" (Toulmin and Quan, 2000). Research in Kenya (Aliber *et al.*, 2004) draws attention to the importance of the agency of influential individuals (e.g. sub-chiefs) who intervene to mediate local-level disputes plays a critical role in protecting, or not, vulnerable people's property rights. While the study shows that Kenya's statutory tenure system does offer protection to women and orphans, it also shows that this protection is not consistently nor automatically applied, and often requires the person who believes her/his rights have been violated to initiate engagement with local officials and for these local

officials to decide to act. This research finds that there are various factors at play in the security of households' property rights including, in cases of AIDS affected households, the degree of local AIDS-related stigma, and local leaders' attitudes towards enforcing the statutory tenure rights of women and children. As such, the authors argue that possibly constructive interventions would be directed at combating HIV/AIDS-related stigma and strengthening the system of property claims administration. Importantly, this research once again reiterates the significance of analysing inheritance rules and practices in terms of local social, economic and political realities.

Most organisations operating at the institutional level recommend combining focused advocacy and capacity-building of key players with public awareness and support building efforts through open meetings in communities and mass media like radio and newspapers. Such coordination of activities seeks to make women's legal rights more familiar and acceptable to society and to galvanise social movements and momentum in favour of attitude and practice change. Ensuring the social legitimacy of inheritance rights requires such multi-faceted approaches (Tsikata, 2004).

2.5 Socio-economic empowerment

[E]ven if national legislation will fully recognise women's equal rights to own, co-own, access, control and inherit land, housing and other property, existing practices will not automatically be changed; wider changes in social and cultural attitudes are necessary for this legislation to reach all women. Only then would women be able to enjoy substantive equal and independent rights, which entails the enjoyment of access to rights in and control over land and housing. Obstacles to equal substantive rights like continued application of customs, difficulties in paying court fees, violence against women and lack of sufficient economic resources still exist. Shifts in social and power relations may still take several generations (Benschop, 2002:180).

Access to legal processes is a major hurdle for women in terms of the time, money and skills such as literacy required. In recognition of these obstacles, some governmental and nongovernmental organisations have taken steps to decentralise their offices and services, including legal aid, to ensure their accessibility for more citizens. Representation of women in various fora within local governance structures is considered critical to advance women's issues. Tsikata (2004) observes that in most African countries women have too little political voice at all the decision making levels that are implied by the land question: in local level management systems; within the formal law and also within the government and civil society itself.

All of these efforts focused at women's property and inheritance rights must also, of course, include men. Male community members need to be accepting of inheritance claim resolutions in favour of women if these outcomes are to be respected and realised in

practice. A study of instances of joint titling of land in Uganda found that younger and more educated men were more sympathetic to the idea of co-ownership (FAO and Oxfam, 2003) which lends credence to the notion that men's support for women's equal rights can be gained with the right kinds of engagement.

It has been noted by researchers of different societies' inheritance systems that inheritance decisions are commonly based less on specific customs (or statutory law) than on people's perceptions of what is right (Rose, 2006; Strickland, 2004). This is a critical contingency if change in inheritance systems governance and outcomes is an aim. Finding ways to influence how people regard what is right in terms of inheritance processes and outcomes is an important area for further work.

2.6 Children and inheritance

Up to now, most of this paper's review of what has been tried in different African societies to influence inheritance practices has focused on women. This reflects where most initiatives have been directed to date. However, recently there has been some attention also paid to how children fare under existing inheritance systems and what might be done to improve their inheritance rights. This is an important area of investigation and analysis.

Most African countries' constitutions make little or no mention of children and closer examination of several land laws to discern children's land rights indicates that these also scarcely acknowledge children's rights. Children's rights are often subsumed under a mother's property rights. In her comparison Rose (2006) records that some countries, such as Botswana, do not have specific legislation dealing with children's inheritance while other countries, such as Lesotho, Malawi, South Africa, and Zambia, have legislation that provides children with a portion of the deceased's estate in the case of intestacy (a person dies without leaving a will). In several countries, children born out of wedlock are not recognised as legitimate heirs. Rwanda's 'Law on Matrimonial Regimes, Liberalities and Successions' of 2000 is cited as one example of several laws that have been passed in the region with the aim of enhancing and ensuring women's and girls' property and inheritance rights. This law stipulates that children of a deceased parent will, in accordance with the civil laws, inherit in equal parts without any discrimination between male and female children. Rose (2005) notes that the law addresses several issues of importance for children's rights: the rights of children born within three types of marital regimes; the ranking of children's rights within the regime of separation of property (i.e. children's rights are ranked ahead of other members of the extended family); and the penalty to be imposed in the event that a surviving spouse fails to fulfil his/her duties to raise the children of the deceased.

An analysis of the rights of children in child-headed households in South Africa (Sloth-Nielsen, 2004) identifies the most significant issues to be addressed include: the importance of children acquiring proof of identity to secure his or her recognition as a person before the



law, which may help to protect inheritance rights; the role of appointed guardians for child care or trusteeship of property; and the review of customary laws' privileging of primogeniture inheritance to establish gender equality in inheritance rights.

3 Points for policy makers

Inheritance events represent confluences, and often negotiated contests, of multiple laws, political rights, economic considerations, cultural and social norms and systems of organisation. Yet despite this complexity, inheritance seems to lend itself well to focusing poverty alleviation policies and activities due to the fact that inheritance systems and practices are brought to light as a result of critical points in lifetimes, including the start-up of new households, usually at the time of marriage, and the devolution of property at the time of a person's death. A marriage's dissolution may also be regarded as such critical points in lifetimes as divorced or separated status can significantly affect inheritance rights and responsibilities. Similarly, the birth of children can have profound effects on the decisions to be made concerning the distribution of parents' accumulated assets, as does parents' aging to the point of needing to retire from productive working capacities. These critical points in lifetimes are the catalysts for transferring (or not) assets from one person or household to others. As the preceding section of this paper describes, attending to inheritance systems and practices as critical intervention points to prevent the intergenerational transmission of poverty implicates a broad and coordinated approach to legal reform and implementation as well as influencing social norms and actions.

There is certainly much to be done to ensure equitable inheritance systems in Africa. A recent UN Habitat report states that most African countries have generally failed to generate gender responsive laws and regulations, awareness and empowerment and are without supportive judicial interpretation and enforcement (Sait, 2008).

Listed below are some further points policy makers might keep in mind as they consider engaging with the agenda to improve inheritance:

3.1 Inheritance is a social justice concern

Most would agree that inheritance efforts are primarily conceptualised in terms of ensuring equal human rights. This is different from conceptualising inheritance in terms of economic logic. Protecting equal claims in property inheritance might not always be the most economically rational strategy for property use. The individualisation of land may contribute to declining overall productivity. As Platteau and Baland (2000:32) comment based on their review of inheritance systems in Sub-Saharan Africa, 'Equality in inheritance seems to be maintained at the price of reducing landholdings to minuscule sizes that cannot ensure decent livelihood for the rightsholders.' Corporate ownership and management of lineage land has been noted to often be more widely beneficial to local family members and

economy. In addition, consideration of whether inheritance property is useful or not to the potential inheritors is often not taken into account. Research in Burkino Faso and Senegal, for example, finds that equal apportionment of family land is made irrespective of whether a son has received advanced education and obtained a permanent job outside the agricultural sector as a result. (*ibid*: 32) The point is that ensuring equitable inheritance systems is not necessarily a strategy for maximising the economic potential of heritable assets. Nevertheless, as the preceding section describes, reforming laws and influencing their practice to ensure claims are upheld can protect the property rights of some of the most vulnerable individuals, such as widows and orphaned children, who might otherwise find themselves stripped of their heritable assets and plunged into poorer economic statuses. Therefore, it makes sense to acknowledge from the start that policy attention to inheritance focuses on upholding the rights of those most vulnerable to alienation from heritable property and consequent poverty, most notably women and children.

3.2 Change depends on the social legitimacy of new ideas and practices

Gaining social legitimacy for principles enshrined in law but not usually practiced customarily requires long and sustained engagement with the local people who operate in local processes of arbitration. Designing interventions at this level may be helped by recognising the challenge in Joireman's (2008:1235) advice that 'Customary law is explicitly political and is best viewed as a battleground in the struggle for power within a society.' Customary law and practice is dynamic as well as context-specific so approaches must focus on what is germane to particular local influential players, develop constituencies and work to build on positive practice. This is a cooperative and participatory approach to changing norms and behaviours rather than a top-down directive and punitive approach to contradictions with the law.

The challenges in addressing how to implement and enforce inheritance rights are many. As Strickland (2004: 37) advises in a review of women's inheritance rights in Sub-Saharan Africa, new initiatives addressing legislative reform must recognise the typically slow pace of the reform process and be prepared to sustain the necessary focus and resource levels over a period of several years. Coalitions and networks may be integral to sharing the burden of such work and sustain the necessary momentum over time.

3.3 Inheritance is practiced at the most local of levels

Finding entry points on the ground, at the local level, is critical to effecting such change. Focusing on the local level, such as an administrative district, provides a smaller unit to work with, and often provides a more sympathetic or open arena for addressing property rights issues. It is also the level at which most people engage therefore the power brokers at that level, such as chiefs, are paramount to the outcomes of inheritance events. Paralegals have

also proven effective actors at the local level in influencing the protection of women's property claims. These are more cost-effective players than lawyers and may contribute to solving property disputes on the ground, if working in concert with other authorities, such as chiefs, in more timely and cheaper ways than redress to courts involve. Building constructive relationships between such legal advisors and local administrators may further enhance the capacity of local administrators to govern local inheritance practices consistently with the law.

3.4 Empirical research is required

To improve understanding of how inheritance can affect the intergenerational transmission of poverty more research is certainly required. Such work should seek to broaden analysis of inequity from the focus on the legal domain to address the power structure of a society in a broad sense, as well as everyday processes that mediate people's access to, and opportunistic use of, physical assets for poverty alleviation. Such 'social relations analysis' has been recognised as particularly useful for policy and programming (UNDP, 2003). This research agenda would expand the attention to how inheritance systems operate and affect livelihoods beyond the current focus on women's rights and experiences. It could address how other qualities, such as disability, contested birth, distance from homeland, birth order, etc. also affects inheritance rights.² Some questions that might be addressed in this research include: Does equal partition of heritable land undermine cooperative farming ventures and investments? Are heritable assets considered as liquid as other assets or are there social restrictions on how they can be used (e.g. family's land cannot be sold)?³ How do lifetime-only allowances for property access (e.g. in the case of widows who only have the right to live on their land) affect livelihood strategies (e.g. investments in inherited land, future marriage or migration)? Research and policy should also consider inheritance of assets other than land, such as the governance of heritable savings in bank accounts, and heritable debts as well. As well, a very pertinent and practical area requiring further investigation is the role of guardians in safeguarding or not the heritable property of orphaned children.

Improved understanding is also needed about how inheritance is practiced to design appropriate policies and community engagement initiatives. At present, there is not sufficient empirical data about the actual practices of inheritance systems in different African countries.

² Bird and Pratt with O'Neil and Bolt (2004), for instance, find that people with disabilities in Uganda are excluded, under customary law, from inheriting which further exacerbates their livelihoods vulnerability. Other research by Bird and Shinyekwa (2004) in Uganda that collected life histories to trace livelihood trajectories reveals that interpersonal relationships within a family also can lead to favourable and unfavourable treatment in property allocations.

³ For example, research in Malawi found that while a widow can inherit the property that she shared with her deceased husband, if she remarries social tensions with her first in-laws can arise and her children could lose their claims to the same property (Mutangadura, 2004).



This limits insights into how to improve the practice of inheritance systems to protect the most vulnerable to alienation of their property rights. Legal analyses have recorded how such systems are meant to be governed, but outcomes more often depend on local processes of negotiating settlements. Before designing any approaches to reform of inheritance systems, detailed case studies of current practice is necessary. Such investigations should focus on recent inheritance settlement precedents, and specifically on who is included and excluded as well as decision makers' knowledge and attitudes, and the options known to be available by local people for making one's claim. Understanding how local power over inheritance is brokered will indicate where and how efforts at change may be focused.

Documentation and dissemination of best practices in ensuring inheritance governance to protect the property rights of the poor and vulnerable is necessary. This work should delve into real-life experiences of inheritance to assess how different systems actually work, or not, for people, and be used to inform what kinds of approaches are working that might be replicated elsewhere.



4 Conclusion

This paper has reviewed existing academic and policy literature to answer questions concerning the relationship between property inheritance systems and the intergenerational transmission of poverty (IGT poverty) as well as how particular initiatives have sought to influence this relationship in different Sub-Saharan African societies. The review has drawn attention to the concern that neither inheritance practices nor their relationship to IGT poverty are well understood and it encourages further empirical research be pursued to fill in these gaps in knowledge. Nevertheless, this paper discusses some existing studies that point future research in several useful directions including, for example, consideration of how marriage may affect women's claims to inheritance as well as analysis of on-the-ground innovations (and their particular socioeconomic patterns of logic) to customary systems of property devolution.

While the link between inheritance (or disinheritance) and IGT poverty has not yet been systematically established from research, gender discrimination in inheritance systems has been documented. Policy makers are pursuing reform to secure gender equity in inheritance systems. These efforts focus on legal reform, institutional implementation, and socio-economic empowerment; these are conceptualised as inter-dependent spheres affecting change. The paper closes with four points for policymakers. These points do not serve as directive recommendations for action, but rather as key considerations in planning initiatives to address inheritance and IGT poverty.

References

- Agarwal, B. (2001). 'Land Rights and Gender'. International Encyclopedia of the Social & Behavioral Sciences, 8251-8256.
- Agarwal B. (1997). Bargaining and Gender Relations: Within and Beyond the Household. *Feminine Economics* 3(1): 1–51.
- Aliber, M. and Walker, C. (2004). *The Impact of HIV/Aids on Land Rights: Case Studies from Kenya*. Cape Town: Human Sciences Research Council. Available at: www.hsrcpublishers.ac.za.
- Benschop, M. (2002). 'Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?' Nairobi: United Nations Human Settlements Programme. Available at: <http://ww2.unhabitat.org/publication/hs66702e/default.asp>
- Benschop, M. and Sait, M. (2006). 'Progress Report on Removing Discrimination Against Women in Respect of Property and Inheritance Rights'. Nairobi: United Nations Human Settlements Programme. Available at: www.unhabitat.org/downloads/docs/3983_71713_Inheritance_percent20Final_percent20071006.pdf
- Bird, K. (2007). 'The Intergenerational Transfer of Poverty: An Overview'. Chronic Poverty Research Centre Working Paper 99. Manchester, UK: Chronic Poverty Research Centre (CPRC). Available at: <http://www.chronicpoverty.org/pdfs/99Bird.pdf>
- Bird, K. and O'Neil, T., with Bolt, V. (2004). 'Illustrative Case Studies of the Fracture Points in Social Policies for Chronic Poverty Reduction'. London: Overseas Development Institute (ODI) and Chronic Poverty Research Centre (CPRC). Available at: http://www.chronicpoverty.org/pdfs/47ANNEXBird_et_al.pdf
- Bird, K. and Pratt, N. with O'Neil, T. and Bolt, V. (2004). 'Fracture Points in Social Policies for Chronic Poverty Reduction'. Chronic Poverty Research Centre Working Paper 47, Overseas Development Institute Working Paper 242. London: Overseas Development Institute (ODI) and Chronic Poverty Research Centre (CPRC). Available at: www.chronicpoverty.org/resources/cp47.htm.
- Bird, K. and Shinyekwa, I. (2004). 'Multiple Shocks and Downward Mobility: Learning from the Life Histories of Rural Ugandans'. Chronic Poverty Research Centre Working Paper No 36. London: Overseas Development Institute (ODI) and Chronic Poverty Research Centre (CPRC). Available at: www.chronicpoverty.org/resources/cp36.htm.
- Carter, M., Barrett, C. (2006). 'The Economics of Poverty Traps and Persistent Poverty: An Asset-based Approach'. *Journal of Development Studies*, 42(2), 178 – 199.
- Cheater, A. (1983). 'Cattle and Class? Rights to Grazing Land, Family Organization and Class Formation in Msengezi'. *Africa: Journal of the International African Institute*, 53 (4), 59-74.
- Chimhowu, A. (2006). 'Tinkering on the Fringes? Redistributive Land Reforms and Chronic Poverty in Southern Africa'. Chronic Poverty Research Centre Working Paper 58. Manchester, UK: Chronic Poverty Research Centre. Available at: www.chronicpoverty.org/resources/cp58.htm.
- Cooper, E. (2008). 'Inheritance Practices and the Intergenerational Transmission of Poverty: A Literature Review and Annotated Bibliography'. London: Overseas Development Institute (ODI) and Chronic Poverty Research Centre (CPRC). Available at: <http://www.chronicpoverty.org/pubfiles/116%20Cooper-annotatedbib-litreview.pdf>

- Cousins, B., Cousins, T., Hornby, D., Kingwill, R., Royston, L., & Smit, W. (2005). 'Will formalizing property rights reduce poverty in South Africa's 'second economy'?'. Cape Town, South Africa: Programme for Land and Agrarian Studies, University of the Western Cape.
- Cross, C. and Friedman, M. (1997). 'Women and Tenure: Marginality and the Left-Hand Power'. In Meer, S. (Ed.) Women, Land and Authority: Perspectives from South Africa. Oxfam, Oxford.
- Deininger, K. (2004). 'Land Policies for Growth and Poverty Reduction: Key Issues and Challenges Ahead'. Paper presented at the Inter-regional Special Forum on The Building of Land Information Policies in the Americas, Aguascalientes, Mexico October 26-27 ,2004. Available at: www.fig.net/pub/mexico/papers_eng/ts2_deininger_eng.pdf
- Drimie, S. (2003). 'HIV/Aids and Land: Case Studies from Kenya, Lesotho and South Africa'. Development Southern Africa, 20 (5), 647-658. Available at: <http://www.informaworld.com/smpp/content~content=a713618534~db=all>
- Dimrie, S. (2002). 'The Impact of HIV/AIDS on Rural Households and Land Issues in Southern and Eastern Africa'. Food and Agriculture Organisation of the United Nations. Available at: www.fao.org/wairdocs/ad696e/ad696e00.htm
- Ensminger, J. (1997). 'Changing Property Rights: Reconciling Formal and Informal Rights to Land in Africa' in The Frontiers of the New Institutional Eco-nomics (J.N. Drobak and J.V.C. Nye, Eds.). San Diego: Academic Press: 165-196.
- Fafchamps, M. and A. Quisumbing (2008). 'Household Formation and Marriage markets in Rural Areas'. In Schultz, T. and Strauss, J (Eds.). Handbook of Development Economics, 4 (5): 3187-3247.
- Fafchamps, M. and Quisumbing, A. (2005). 'Assets at Marriage in Rural Ethiopia'. Journal of Development Economics, 77, 1– 25.
- FAO and Oxfam (2003). 'Report of the FAO/Oxfam GB Workshop on Women's Land Rights in Southern and Eastern Africa'. Pretoria: FAO and Oxfam.
- Farha, L. (2000). Women and Housing Rights, Source Series No. 5. City: Centre on Housing Rights and Evictions.
- Ford Foundation (2002). Building Assets to Reduce Poverty and Injustice. City: Ford Foundation. Available at: www.eldis.org/cf/search/disp/docdisplay.cfm?doc=DOC9678&resource=f1
- Global Land Tools Network (2006). 'Mechanisms for Gendering Land Tools: A Framework for Delivery of Women's Security of Tenure'. Strategies and Outline adopted at the High Status Round Table on Gendering Land Tools, 21 June 2006, world Urban Forum. Vancouver, Canada
- Goody, J. (1973). 'Bridewealth and dowry in Asia and Eurasia'. In Goody, J., Tambiah, S.J. (Eds.) Bridewealth and Dowry. Cambridge: Cambridge University Press.
- Goody, J. (1970). 'Sideways or Downwards? Lateral and Vertical Succession, Inheritance and Descent in Africa and Eurasia'. Man, 5 (4). 627-638.
- Hakansson, T. (1989). 'Family Structure, Bridewealth and Environment in Eastern Africa: A Comparative Study of House-Property Systems'. Ethnology, 28 (2), 117-134.
- Hulme, D. and Shepherd, A. (2003) 'Conceptualising Chronic Poverty'. World Development, 31(3): 403-423.

- Human Rights Watch (2003). *Double Standards: Women's Property Rights Violations in Kenya*. New York: Human Rights Watch. Available at: <http://www.hrw.org>
- Joireman, S. (2008). 'The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and Customary Law'. *World Development*, 36(7): 1233–1246.
- Jütting, J. and Morrisson, C. (2005). 'Changing Social Institutions to Improve the Status of Women in Developing Countries'. OECD Policy Brief 27. Paris: OECD. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=871445
- Kameri-Mbote, P. (2002). *Gender Dimensions of Law, Colonialism and Inheritance in East Africa*. International Environmental Law Research Centre. Available at: www.ielrc.org/content/a0205.pdf
- La Ferrara, E. (2007). 'Descent Rules and Strategic Transfers. Evidence from Matrilineal Groups in Ghana'. *Journal of Development Economics*, 83, 280–301
- Moore, K. (2001). 'Frameworks for Understanding the Intergenerational Transmission of Poverty and Well-Being in Developing Countries'. Chronic Poverty Research Centre Working Paper 8. Manchester, UK: Chronic Poverty Research Centre (CPRC). Available at: www.chronicpoverty.org/resources/cp08.htm
- Mutangadura, G. (2004). 'Women and Land Tenure Rights in Southern Africa: A Human Rights-based Approach'. Presentation at Land in Africa: Market Asset or Secure Livelihood Conference, London, UK, November 8-9, 2004. Available at: www.iied.org/docs/events/Key_Notes_Ben_Cousins_SouthAfrica.pdf
- Oleke, C., Blystad, A. and Rekdal, O. (2005). 'When the Obvious Brother is Not There': Political and Cultural Contexts of the Orphan Challenge in Northern Uganda'. *Social Science & Medicine*, 61, 2628–2638.
- Osmani, S. (2007). 'When Endowments and Opportunities Don't Match: Understanding Chronic Poverty'. Chronic Poverty Research Centre Working Paper 78. Manchester: UK: Chronic Poverty Research Centre (CPRC). Available at: <http://www.chronicpoverty.org/pdfs/78Osmani.pdf>
- Parkin, D. (1978). *The Cultural Definition of Political Response: Lineal Destiny Among the Luo*. London, New York, San Francisco: Academic Press.
- Platteau, J.P. and Baland, J.M. (2000). 'Impartible Inheritance Versus Equal Division: A Comparative Perspective Centered on Europe and SubSaharan Africa'. Namur, Belgium: Centre de Recherche en Economie du Développement (CRED), Faculty of Economics, University of Namur. Available at: www.fundp.ac.be/eco/cahiers/filepdf/c209.PDF
- Quisumbing, A. (2007). 'Investments, Bequests and Public Policy: Intergenerational Transfers and the Escape from Poverty'. Chronic Poverty Research Centre Working Paper 98. Manchester, UK: Chronic Poverty Research Centre (CPRC). Available at: <http://www.chronicpoverty.org/pdfs/98Quisumbing.pdf>
- Quisumbing, A., Payongayong, E. and Otsuka, K. (2004). 'Are Wealth Transfers Biased Against Girls? Gender Differences in Land Inheritance and Schooling Investment in Ghana's Western Region'. Washington, DC: International Food Policy Institute. Available at: www.ifpri.org/divs/fcnd/dp/papers/fcndp186.pdf
- Richardson, A.. (2004). 'Women's Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform'. Human Rights Brief.

- Rose, L. (2006). 'Children's Property and Inheritance Rights and their Livelihoods: The Context of HIV and AIDS in Southern and East Africa'. Food and Agricultural Organization of the United Nations'. Available at: www.oxfam.org.uk/resources/learning/landrights/downloads/childrens_property_and_inheritance_rights_and_livelihoods.pdf
- Rose, L. (2005). 'Orphans' Land Rights in Post-War Rwanda: The Problem of Guardianship'. *Development and Change*, 36 (5), 911-936. Sabates-Wheeler, R. (2006). 'Asset Inequality and Agricultural Growth: How Are Patterns of Asset Inequality Established and Reproduced?'. Washington, DC: World Bank. Available at: <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/AgricInequalityRachelSabatesWheeler.pdf>
- Sait, Siraj. 2008. *Gendering Land Tools: Achieving Secure Tenure for Women and Men*. Nairobi: UN Habitat.
- Shepherd, A. (2007). 'Understanding and Explaining Chronic Poverty – An Evolving Framework for Phase III of CPRC's Research'. Chronic Poverty Research Centre Working Paper No 80, Manchester, UK: Chronic Poverty Research Centre (CPRC). Available at: www.chronicpoverty.org/pdfs/80Shepherd.pdf
- Shipton, P. (2007). *The Nature of Entrustment: Intimacy, Exchange and the Sacred in Africa*. New Haven & London: Yale University Press.
- Sloth-Nielsen, J. (2004). 'Realising the Rights of Children Growing up in Child-headed Households: A Guide to Laws, Policies and Social Advocacy'. Belleville, South Africa: Community Law Centre, University of the Western Cape. Available at: www.communitylawcentre.org.za
- Smith, B. with Moore, K. (2006). 'Intergenerational Transmission of Poverty in Sub-Saharan Africa: A Select Annotated Bibliography with Special Reference to Irreversibilities associated with Poor Nutrition, Health and Education'. Chronic Poverty Research Centre Working Paper 59, CPRC Annotated Bibliography 3. Manchester, UK: Chronic Poverty Research Centre (CPRC). Available at: [www.chronicpoverty.org/pdfs/59Smith_\(Moore\).pdf](http://www.chronicpoverty.org/pdfs/59Smith_(Moore).pdf)
- Steinzor, N. (2003). 'Women's Property and Inheritance Rights: Improving Lives in a Changing Time'. Washington, DC: USAID. Available at: http://pdf.dec.org/pdf_docs/PNADA958.pdf
- Strickland, R. (2004). 'To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa'. Washington, DC: International Center for Research on Women. Available at: www.icrw.org/docs/2004_paper_haveandhold.pdf
- Takane, T. (2007). 'Customary Land Tenure, Inheritance Rules and Smallholder Farmers in Malawi, Chiba'. Japan: Institute of Developing Economies. Available at: www.ide.go.jp/English/Publish/Dp/pdf/104_takane.pdf
- Toulmin, C., & Quan, J. (2000). Introduction. In C. Toulmin, & J. Quan (Eds.) *Evolving land rights, policy and tenure in Africa*. London: IIED.
- Tsikata, D. (2004). 'Securing Women's Land Rights: Approaches, Prospects and Challenges'. Presentation at Land in Africa: Market Asset or Secure Livelihood Conference, London, November 8-9, 2004. Available at: www.iied.org/docs/events/Key_Notes_Ben_Cousins_SouthAfrica.pdf
- United Nations (2004). 'Property and Inheritance Rights and HIV/AIDS: Women and Girls in Southern Africa'. New York: United Nations Secretary General's Task Force on Women, Girls and HIV/AIDS in Southern Africa. Available at: http://womenandaids.unaids.org/documents/factsheet_general.pdf

- United Nations Development Program (2003). 'Transforming the Mainstream, Gender in UNDP'. New York: United Nations.
- UN Habitat (2006). Progress Report on Removing Discrimination Against Women in Respect of Property and Inheritance Rights. Nairobi: United Nations Centre for Human Settlements.
- UN Habitat (1999). Women's Rights to Land, Housing and Property in Postconflict Situations and During Reconstruction: A Global Overview. Nairobi: United Nations Centre for Human Settlements. Available at: www.unhabitat.org/pmss/getElectronicVersion.asp?nr=1926&alt=1
- USAID (2003). Women's Property and Inheritance Rights: Improving Lives in Changing Times: Final Synthesis and Conference Proceedings Paper. Washington DC: USAID.
- Varley, A. (2007). 'Gender and Property Formalization: Conventional and Alternative Approaches'. *World Development*, 35 (10), 1739-1753.
- Whitehead, A. and Tsikata, D. (2003). 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary'. In Razavi, S. (Ed.) *Agrarian Change, Gender and Land Rights*. Oxford: Blackwell Publishing: 67-112.
- Women and Law in Southern Africa Research and Educational Trust (2000). *Charting the Maze: Women in Pursuit of Justice in Swaziland*, Swaziland: WLSA. Available at: www.wlsa.org.zm/index.html
- Yamano, T. (2008). 'The long-term impacts of orphanhood on education attainment and land inheritance among adults in rural Kenya'. *Agricultural Economics*, 37(2-3): 141-149
- Yaqub, S. (2002). 'Chronic Poverty: Scrutinizing Estimates, Patterns, Correlates, and Explanations'. Working Paper No. 21. Manchester: Chronic Poverty Research Centre.



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