



## Land inheritance: a gendered analysis of factors influencing the intergenerational transmission of poverty

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### 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.

## Abstract

This paper highlights the importance of land if poor people are to exit poverty, particularly those living in rural areas in low income developing countries. It describes the importance of women having equitable land ownership and inheritance rights both for their own well-being and in order to limit the intergenerational transmission of poverty. It explores a range of policy alternatives to improve equity and shows that in order to support gender equity and improved child outcomes change to legislation and customary practice needs to consider not only land ownership and inheritance but also marital and divorce laws. Policy analysts also need to consider whether individualised land tenure arrangements exist in a particular context or whether land is under collective communal land management systems as this will influence policy options. Enhanced equity depends not only on legal changes but also change in customary practice, both supported by a range of complementary actions.

**Keywords:** inheritance, land, women, gender equity, intergenerational transmission.

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## Executive summary

In low-income developing countries, land is the primary source of wealth, social status and power, and provides the basis for shelter, food and economic activities. In many cases, though, landholdings are strongly unequal – both within and between groups. This paper focuses on within-group inequities and differentiation which result from asset inheritance norms and practice, and particularly women’s rights to own and inherit land. It is driven by a desire to fill a gap in the literature on the intergenerational transmission of poverty, which commonly focuses inadequately on factors occurring later on in the life-course – particularly where they are economically related. The focus on women’s ownership and inheritance of land is important because evidence shows that the intra-household allocation of resources and assets, including land, has a substantial impact on the well-being of both the individual woman and the wider family and has implications for the intergenerational transmission of both poverty and wealth.

Ownership of assets has been found to be linked integrally to a person’s level of wealth, their trajectory and their likelihood of remaining in or moving out of chronic poverty. Assets (particularly land) are a key determinant of non-labour income and can enable the diversification of livelihood options, provide collateral for formal sector borrowing, enable investment (including in human capital formation), reduce vulnerability, boost resilience and limit the need to adopt adverse coping strategies. Loss of productive assets and property has been linked to the economic decline of individuals and their households, who can become trapped in long-term and chronic poverty. A major dimension of differentiation in asset holdings is along gender lines: less than 20 per cent of landholders are female.

Land is commonly obtained through inheritance or *inter vivos* gifts from one generation to another. *Inter vivos* transfers at marriage are often made to daughters, with sons receiving *inter vivos* transfers which are formalised on the death of their parent/s, but the transfers made to daughters often do not compensate for the asset gap between brothers and sisters in terms of inherited assets and schooling. In addition, assets received on marriage are often not controlled by the new wife but rather by her in-laws. Women may also have insecure land rights because they married under customary practice or because they are in a polygamous marriage and therefore are protected inadequately by statutory law. Meanwhile, a lack of independent rights makes women extremely vulnerable to downward mobility on separation, divorce or widowhood. Where children stay with their mother, this loss of her assets may mean they grow up in poverty as well as losing inheritance rights – increasing their chances of becoming poor adults.

Even where land has been purchased and is owned jointly, the majority of women do not feel free to sell, bequeath or rent it, even in consultation with their spouse. This is critical, as equitable access to, control over and ownership of land are instrumental in terms of their positive impact on consumption (increasing spending on food, children’s welfare and

education), productivity and access to other assets, supporting investment and diversification. Inability to own land creates an 'asset trap' which is reinforced by social norms and the gender division of labour to limit women's livelihood options and investment patterns.

Rural women in particular have few choices but to accept the default option presented by their society, which has significant implications for their freedom of choice, economic independence, development and wider rights. Women who anticipate that their husband will gain all their land and livestock on divorce appear to be in a weaker position within the household during the marriage and as a result are more likely to report that their household spends too little on housing and health care. They are also less likely to feel in control of their own life than other women.

State development interventions seldom take into account the fact that economic changes and the erosion of institutions can set off interlinked reactions, including changes in social and family relations, leading to differential gender effects. As a result, they may erode precisely those communal and social institutions that they should be strengthening. Meanwhile, individualised registration can harm women and others (like children) who hold secondary land rights, as the male head of household is often used as the unit of analysis without acknowledgement of other family members' property or usufruct rights.

Customary systems governing land and inheritance still tend to dominate in many societies, compounded because many countries' constitutions allow for discrimination against women by placing inheritance under the control of customary law and excluding it, as well as marriage and other so-called 'family law' matters, from non-discrimination or equality clauses. In addition, there is frequently a mismatch between the law and practice.

Land policy reform is challenging and takes a long time, but evidence shows that positive change can occur where practical and policy solutions are tailored to specific tenure systems. Debate remains regarding the advantages and disadvantages of customary and individual land tenure systems for women, and it is not clear how best to approach the reform of statutory law. Some favour joint titles for spouses, which would give women clear legal rights over marital property in the case of separation, divorce or widowhood, increasing their security and substantially reducing the likelihood that they will lose access to the land. This has been piloted in India and Rwanda.

In addition, it is important to ensure that women are allowed (by statutory law but also by socio-cultural norms) to inherit land and other assets from both their parents and their husband and to hold land in their own name. To ensure this, changes in property law need to be supplemented by stronger measures to ensure the implementation of existing legal provisions, policies and programmes and simultaneous and widespread cultural change alongside changes in the labour market. Policymakers need to look beyond legal rights to removing gender-based constraints to other services and rights, which combine to limit

women's access to property. Increased awareness of laws and the legal system can empower some women to demand their rights, but such demands are often made in an environment of rural male resistance, and success depends on male-dominated legal institutions passing and implementing reform. The implementation of reforms can also be constrained by limited budgets, administrative and institutional weaknesses and weak political accountability within parliament and/or civil society. Reforms also need to be implemented in an integrated way.

Overall recommendations to support greater gender equity in land rights to bolster against the intergenerational transmission of poverty are as follows:

- Where individualised tenure already exists, ensure that women have rights to buy, rent and inherit land (including through *inter vivos* gifts) and support the co-titling of land;
- Support efforts to ensure that it is legally and socially acceptable for women to purchase, sell, rent in or rent out land in their own right;
- Where communal land management systems exist, modify both customary law and practice to support gender equity. This should include enabling women to inherit land, receive a share of property following separation or divorce and receive *inter vivos* gifts of land and other assets;
- Under both statutory and communal land management systems, reform marital and divorce laws reform to ensure that women obtain equitable control over land and other assets during marriage and that they retain rights following separation and divorce.

This is a complex and demanding agenda, which will require complementary action to build the socioeconomic well-being of women; to inform people of their rights; to address barriers related to statutory law; and to improve the political and governance environment. Gender-equitable progress across these areas will depend on support from a strategic partnership of key actors (including relevant ministries, local government, community leaders, etc.) and support from women's groups in protecting women's land rights until legal and customary changes become embedded.

## Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CPRC	Chronic Poverty Research Centre
HIV	Human Immunodeficiency Virus
MDG	Millennium Development Goal
ODI	Overseas Development Institute
UN	United Nations
UNDP	Development Programme
UNECA	UN Economic Commission for Africa
UN-HABITAT	UN Human Settlements Programme
UNICEF	UN Children's Fund

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## 1 Why land inheritance matters for the intergenerational transmission of poverty

Poverty analysis increasingly recognises that income does not provide an adequate understanding of different kinds of poverty (Carter and Barrett, 2006; Osmani, 2007). A dynamic asset-based approach, incorporating both privately held productive assets and financial wealth, provides important information on the structural foundations of poverty and helps distinguish chronic poverty from poverty traps (Carter and Barrett, 2006). Further, access to and control over productive assets are clear determinants of individual and household income and consumption levels. Assets influence livelihood and investment options and have an impact on both short- and long-term well-being. Better-endowed households are more likely to maintain their children's food security, health and education. Assets can also be an important source of social mobility.

In low-income developing countries, land is the key asset, forming a large proportion of poor people's asset portfolios (Deininger, 2004). It is the primary source of wealth, social status and power and provides the basis for shelter, food and economic activities. In rural India, for example, poverty is highly correlated with the lack of access to land (Mearns, 1999), and in subsistence economies having land is fundamental to household well-being (Mtika, 2003). Meanwhile, access to resources such as water and services such as sanitation and electricity, as well as the ability to make long-term investments in land and housing, is often dependent on rights to access land (Cooper, 2010a).

In many cases, asset holdings are strongly unequal both within and between groups, embedding the long-term implications of social difference, feudal or colonial systems. Between-group differences may be addressed by land reform or dynamic approaches to redistribution.<sup>1</sup> Land scarcity driven by population growth, changing land use, environmental degradation and economic development have contributed to increased land contestation, accompanied by encroachments and invasions, alienation by international companies and the erosion of traditional norms and practices around land inheritance.

Between-group inequities have been discussed widely elsewhere in the literature. This paper focuses on within-group inequities and differentiation which result from asset inheritance norms and practice, and particularly women's rights to own and inherit land. This interest is

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<sup>1</sup> Land reform can be described as static redistribution, in that the redistribution is a one-off event. Progressive taxation and investment in public services, including education, health, water and sanitation and other infrastructure, plus social protection can be described as dynamic redistribution. Such measures can be repeated and adjusted as the economy and society change and can have a substantial impact in terms of improving equity.

driven by a desire to fill a gap in the literature on the intergenerational transmission of poverty, which commonly focuses on child poverty and investments in education, health and nutrition, and inadequately on factors occurring later on in the life-course – particularly where they are economically related. The paper focuses particularly on women’s ownership and inheritance of land because evidence (e.g. Deininger and Kirk, 2003) shows that intra-household allocation of resources and assets, including land, have a substantial impact on the well-being of both the individual woman and the wider family.

Inheritance and *inter vivos* gifts<sup>2</sup> are a key mechanism by which intergenerational transfers are made, and in this paper we look at both. Inheritance and gifts can see siblings inheriting very different amounts, with strong differentiation between brothers in some contexts and sisters often inheriting very little. Both within-group and between-group unevenness in asset holdings can result in intense inequality in the ‘initial conditions’ of households, making it much easier for asset-rich households to save, invest and accumulate than others.

Inheritance, or non-inheritance, of assets has been found to be linked integrally to a person’s level of wealth, their wealth or poverty trajectory and their likelihood of remaining in or moving out of chronic poverty. Indeed, the outcome document from the recent UN General Assembly on the Millennium Development Goals (MDGs) (September 2010) highlights the importance of inheritance for achieving gender equality (MDG3) through the promotion and protection of women’s equal access to land. It recommends promoting and protecting women’s ‘equal access to adequate housing, property and land, including rights to inheritance, and enabling them to secure access to credit through appropriate constitutional, legislative and administrative measures’. Acting on this to reform and enforce legislation guaranteeing women’s and girls’ property, land and inheritance rights has been identified for priority action, because of its potential for enabling attainment of MDG3 on gender equality and women’s empowerment (UN Millennium Project, 2005a; 2005b).

Inherited assets (particularly land) are a key determinant of non-labour income (Quisumbing, 1994). The accumulation of assets, which can enable the diversification of livelihood options, provide collateral for formal sector borrowing, enable investment including in human capital formation and reduce vulnerability to the impact of shocks or negative trends, can boost resilience and limit the need to adopt adverse coping strategies. When held by someone with both the necessary capabilities and the agency to use them effectively, therefore, assets can be an important source of social mobility. Further, where income is highly dependent on cultivable land and where land is scarce, the children of people who are poor

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<sup>2</sup> *Inter vivos* gifts can include payments of brideprice and dowry and other transfers of land, livestock and wealth at marriage. They can also include other gifts given at key points in the life-course. It is common in many low-income developing countries for *inter vivos* gifts to exceed *post mortem* transfers and for the majority of an older person’s assets to have already been disposed of by their death.

will grow up to be poorer unless income diversification occurs; successful diversification will occur only if higher investments in human capital are accompanied by improvements in labour and capital markets (Soto Bermant, 2008).

Loss of productive assets and property has been linked to the economic decline of individuals and their households, who can become trapped in long-term and chronic poverty. Combined with wider failures in policy or public provision and in markets, an absence of assets can lead to the conditions whereby poverty is transmitted intergenerationally.

A major dimension of differentiation in asset holdings is along gender lines. Less than 20 per cent of landholders are female. Rates range from lows of less than 10 per cent in West and Central Africa and the Middle East and North Africa to highs of nearly 50 per cent in Central and Eastern Europe (Jones et al., 2010). In Cameroon, while women undertake more than 75 per cent of agricultural work, they own less than 10 per cent of the land. Comparable disparities exist in other countries (UNICEF, 2006, in Jones et al., 2010).

Women have land *access* rights more commonly than *control* rights (Meinzen-Dick et al., 1997b: 1308). Although women control a minority of available land, they are heavily involved in agriculture in Sub-Saharan Africa and rural South Asia, particularly as labour (including on family farms). This suggests that, although women are central figures in producing food, they can often access land only through husbands, fathers, sons or brothers. Where women do have access to land, family members may exert their right to claim part of the output (Kevane and Gray, 1999). And despite improvements for women in some areas of their lives, women's access to land and security of tenure has declined (Sait, 2008: 6 in Cooper, 2010a).

Land is commonly obtained through inheritance or *inter vivos* gifts from one generation to another. Such transfers can have positive or negative effects on people's poverty status, through either property accumulation or the stripping of previously secure access to assets (Cooper, 2010a). On the positive side, the transfer of physical assets from the parent generation to the child generation has been shown to provide the start-up material for younger generations' more independent future livelihoods and economic productivity (Fafchamps and Quisumbing, 2005, in Cooper, 2010a). On the negative side, studies of the poverty trajectories of households and individuals in Sub-Saharan African societies have identified that exclusion from asset inheritance exacerbates vulnerability to chronic and the intergenerational transmission of poverty (Bird and Pratt, 2004).

Furthermore, inheritance is not always a route out of poverty: it can also restrict mobility. For example, sons inherit land equally in much of India, but the eldest son stays to farm it, while others are free to move into the non-farm sector or to migrate, enabling upward mobility (Stefan Dercon, pers. comm.). Outcomes depend on the relative returns to land and other assets and capabilities. And in India, women's land rights can simply increase their work burden without much change in terms of status or decision-making authority (Rao, 2006).

## 2 Women's ownership and inheritance of land

Women are rarely allowed to inherit land, and those who are widowed,<sup>3</sup> orphaned, unmarried, separated, divorced<sup>4</sup> or infertile<sup>5</sup> are at a significant disadvantage. Those in polygamous unions may be even more vulnerable (Cooper, 2010a). Even women who can access land and other resources through other people are disadvantaged by not having their own independent rights (Bird, 2007). Women's lack of control of this key resource influences their power within their household and wider society and their ability to leverage credit to invest in agriculture or other livelihood activities.

The meaning ascribed to owning land tends to be complex, with gendered differences apparent in how individuals perceive the rights that ownership gives them to sell, bequeath or rent the land that they have inherited, purchased as an individual or purchased jointly with their spouse (Doss, 2010). Of Ugandan women who describe themselves as owning inherited land (or co-owning it with their spouse), only 15 per cent believe they have the right to sell the land, even in consultation with their spouse; 54 per cent of men in the same situation believe they have a right to sell the land. These figures are mirrored in women's perceptions of their right to bequeath the land (women 19 per cent, men 62 per cent) or rent the land (women 19 per cent, men 61 per cent) (*ibid*). Even where the land has been purchased and is owned jointly, the majority of women do not feel free to sell, bequeath or rent the land, even in consultation with their spouse (*ibid*). This situation is not unusual – a woman's bundle of rights over land typically does not include any of the hallmarks of Western notions of ownership, in other words the ability to loan, rent, sell, bequeath or make permanent improvements (Whitehead and Tsikata, 2003: 92).<sup>6</sup>

This has implications for women's economic independence, particularly following shocks, where the sale of assets can form an important coping strategy (Jones et al., 2010). The consequences can be further asset depletion, resulting from overworking available land, with

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<sup>3</sup> See property grabbing, below.

<sup>4</sup> In much of Sub-Saharan Africa, when a woman divorces, her family is often expected to return any bridewealth that has been paid to the husband's family. In patrilineal societies, it is expected that children will be left to be raised by the husband and his kin. In Botswana, evidence shows that most women and their children experience economic hardship following divorce (Maudeni, 2000).

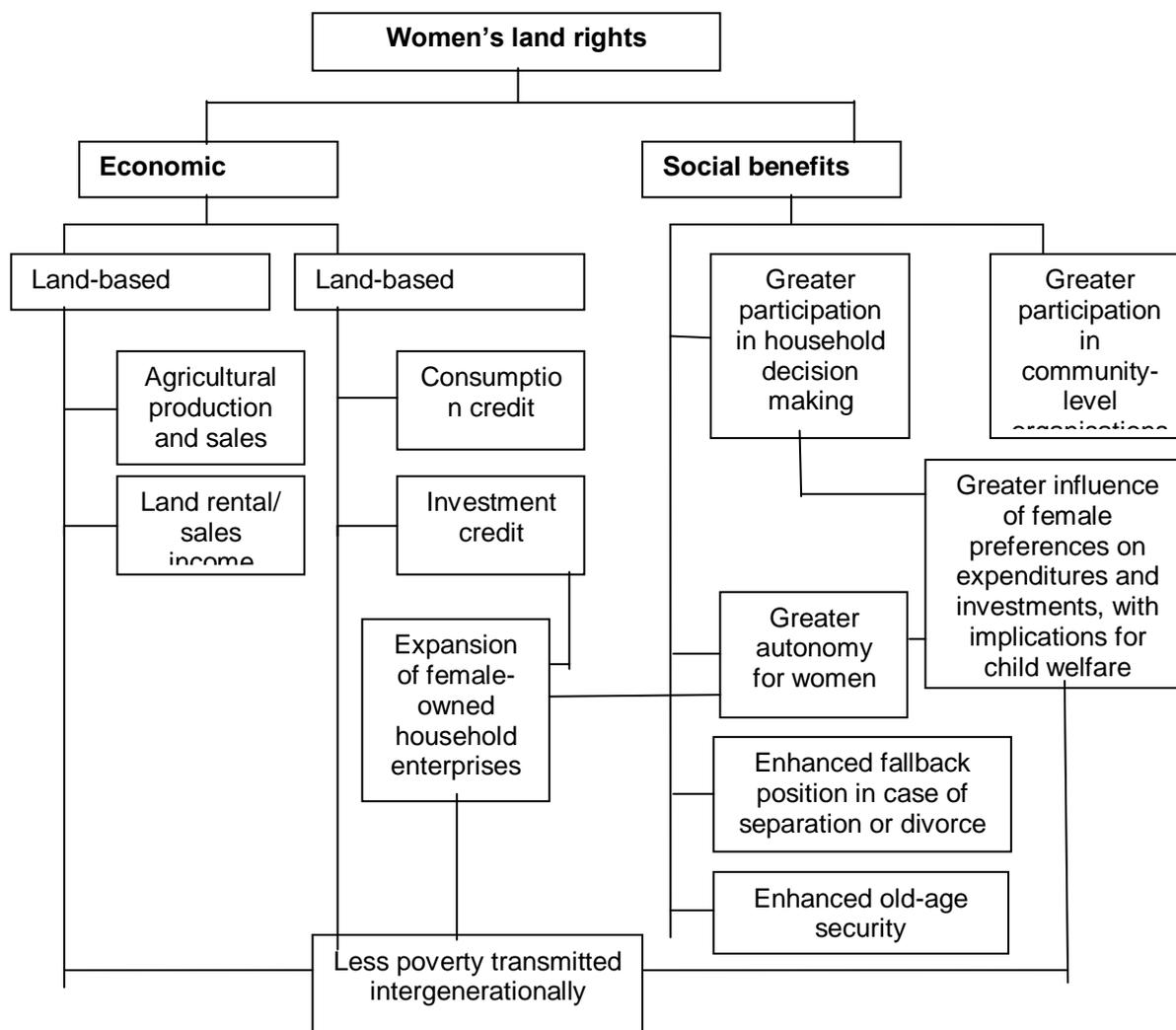
<sup>5</sup> A woman who has not borne any children at the time of her husband's death is also vulnerable to losing her claims to the home she shared with her husband (Cooper, 2010a).

<sup>6</sup> The idea of bundles of rights can be linked to the idea that rights or claims are ordered and gendered hierarchically (with women having the weaker 'use rights' and men the stronger 'ownership/control rights'). Some reject this idea and argue that there is no distinction between primary and secondary rights and that multiple claims are not ordered in a hierarchy (Whitehead and Tsikata, 2003).

impacts on long-term productivity (Scherr, 2000); borrowing, which can lead to debt traps (McKay, 2009); taking on supplementary employment, often at the expense of child care; and potentially engaging in hazardous employment such as prostitution (Harper et al., 2009).

Figure 1 shows the challenges women face in gaining secure and meaningful land rights, hypothesising as to how gaining property rights might provide women with both economic and social benefits. Economic benefits are derived through land-based income and the role of the land as a source of collateral. Social benefits are generated at both the household and community levels, improving bargaining power within the household, enhancing security in old age and increasing the likelihood of participation in community-level organisations.

**Figure 1: Conceptual framework for potential effects of women gaining secure land rights**



Source: Adapted from World Bank (2005).

Equitable access to, control over and ownership of land have instrumental value in terms of their positive impact on consumption (increasing spending on food, children's welfare and education) and productivity, particularly in countries where women are responsible for the majority of land cultivation. Deere and Doss (2006) draw on an array of evidence to show

that women's control of assets matter not just to the woman herself and her income, consumption and empowerment but also to her children and wider family. The assets brought to the marriage by each spouse affect household expenditure (Quisumbing and Maluccio, 2003, in Deere and Doss, 2006);<sup>7</sup> current asset distribution by gender affects household expenditure patterns on food, health, education and household services (Doss, 2006a; Katz and Chamorro, 2003; Thomas, 1999, all in Deere and Doss, 2006); women's asset ownership may increase the anthropometric status of children (Duflo, 2000, in Deere and Doss, 2006) as well as incidence of prenatal care (Beegle et al., 2001, in Deere and Doss); and reduce domestic violence (Friedemann-Sánchez, 2006; Panda and Agarwal, 2005, both in Deere and Doss, 2006).

When women own assets and have greater control over household decision making, children's welfare improves, particularly for daughters (Meinzen-Dick, 1997b; Quisumbing, 2003, in Deere and Doss, 2006). Gender equality in household decision making in South Asia could reduce the incidence of underweight children by up to 13 percentage points (Smith, 2003, in Deere and Doss, 2006).

This suggests that, where women do not have control over assets, the negative consequences have both immediate detrimental effects and long-run implications, contributing to damage in children which is costly or impossible to mitigate and increasing the likelihood that the next generation will live their lives in poverty. This is illustrated by the impact that the loss of a mother has on child well-being. In northwest Tanzania, an area deeply affected by HIV and AIDS, orphanhood affects long-run health and education outcomes. Maternal death results in stunting and lower educational attainment; paternal death also has an impact on educational attainment, but only for particular groups (Beegle et al., 2005). In Indonesia, young maternal orphans have worse educational outcomes than non-orphans. Here, the educational effects of maternal orphanhood not only increase over time but also are significantly worse than the effects of chronic poverty (Suryadarma et al., 2008). In KwaZulu Natal in South Africa, maternal orphans are significantly less likely to be enrolled in school and have completed significantly fewer years of schooling than children whose mothers are alive. They also have less money spent on their education and do less well than non-orphaned children with whom they live (Case and Ardington, 2006).<sup>8</sup> Evidence from the 2001 South Africa Census suggests that these effects are likely to be found throughout South Africa (ibid).

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<sup>7</sup> However, initial asset inequality between husband and wife may be mitigated by households' accumulation of assets over time, formal and informal transfer mechanisms, labour- rather than asset- related income and public redistribution policies (Quisumbing, 2008).

<sup>8</sup> The asymmetrical allocation of key assets such as education, food, land or health care among household members is now recognised as a critical factor in the emergence and persistence of poverty traps, as well as being an important driver of the intergenerational transmission of poverty (Soto Bermant, 2008).

Similarly, in rural Zimbabwe, maternal orphans have lower primary school completion rates than non-orphans and paternal or double orphans. This results from a lack of support from fathers and stepmothers and ineligibility for welfare assistance owing to residence in households of higher socioeconomic status. Sustained high levels of primary school completion among paternal and double orphans – particularly for girls – result from increased residence in female-headed households and greater access to external resources (Nyamukapa and Gregson, 2005).

South Asian Islamic states tend to constrict women's rights in relation to employment, property inheritance and marriage and divorce more than other Asian countries. In Pakistan, a 1995 survey in the Punjab indicated that nearly two-thirds of households' daughters did not inherit land, because it was customary for only sons to inherit property or because the women could not or did not exercise their rights (Mahbub ul Haq Development Centre, 2000: 89).

Meanwhile, Islamic law in India and Sri Lanka recognises women's rights to own land, but women are constrained in terms of making independent decisions about how to use these assets and resources (Mahbub ul Haq Development Centre, 2000). The Santhali women of South Bihar in India have no independent claim over property and do not inherit land from either their father or their husband. In these rural communities, land brings social, cultural and economic benefits, such as higher status, security against absolute poverty, capacity to challenge male oppression and domestic violence and access to credit, information and other services. In North India, widows are highly marginalised and vulnerable to neglect. Their ability to earn an income is severely restricted by patrilineal inheritance and the gender division of labour, with consequences illustrated by poor health and high mortality levels (Chen and Drèze, 1992). In Kerala in India, the gender gap in ownership and control over property has been identified as the single most important contributor to the gender gap in women's economic well-being, social status and empowerment (Arun, 1999). Traditional inheritance patterns and structures in India and Sri Lanka partially explain why hunger, malnutrition and poverty remain prevalent despite economic growth and increased food productivity (Ramachandran, 2006).

Women's lack of ownership of and control over land, farm planning and management both constrain agricultural productivity and weaken household consumption and nutrition (Anríquez et al., 2010; Cooper, 2010a; Kabeer, 2003; UNDP, 2008; World Bank, 2005). Agricultural output in Sub-Saharan African countries could increase by an estimated 20 per cent if more women had equal access to and control over farm income, agricultural services

and land (World Bank, in UNFPA, 2004),<sup>9</sup> partly because insecure rights inhibit women investing in productivity-enhancing inputs (Meinzen-Dick et al., 1997b: 1304).

Land ownership also enables access to other assets and resources, supporting investment and diversification (Anríquez et al., 2010; Desai, 2010; Dolan, 2002). Inability to own land creates an 'asset trap' which is reinforced by social norms and the gender division of labour to limit women's livelihood options and investment patterns. For example, in Ghana, women's weaker property rights mean that they are more likely to be subsistence farmers than cultivators of more profitable cash crops such as pineapples (Desai, 2010).

The lack of independent rights to land also makes women extremely vulnerable to downward mobility on separation, divorce or widowhood. Marital legislation and practice surrounding separation and divorce mean that women commonly lose housing and productive assets on separation. The absence of women's individual rights to land also influences the conjugal contract and women's ability to exercise agency. Without access to and control over assets and, in particular, productive resources, women's 'backstop position'<sup>10</sup> is diminished, and with it their negotiating power within the marriage.<sup>11</sup> This constrains their access to or control over productive resources, income and investment capital, limiting livelihood options and restricting their capabilities.

Rural women in particular have few choices but to accept the default option presented by their society, which is to accept a subjugated role within the conjugal contract and therefore the household. This has significant implications for their freedom of choice, economic independence, development and wider rights (Bird and Espey, 2010), including their freedom of movement; their involvement in their community and other public arenas; family planning; and investment choices in agriculture and non-farm enterprises, housing and children's health, education and nutrition.<sup>12</sup> This argument is supported by Agarwal (1997;

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<sup>9</sup> A study in Burkina Faso showed that where women farmers were given equal access to quality agricultural inputs and education, agricultural productivity could rise by as much as 20 %; while another in Bangladesh showed that targeting low-income women with specific inputs for agriculture and fish farming had a greater impact on poverty reduction than untargeted technology dissemination (Alderman et al, 1995; Hallman et al, 2003; IFPRI, 2005 in Jones et al., 2010).

<sup>10</sup> At the moment of marriage, women and men enter into 'a conjugal contract' (the terms under which spouses make joint or separate decisions around the exchange of goods; the allocation of labour, leisure and services; access to and control over productive resources; and distribution of income and investment). The backstop position is the minimum they are willing to accept in any situation before they assert their right to break the contract and exit the relationship. This will always be influenced by the relative power of the two negotiators, the alternatives they have if they exit the relationship and the cost to them if they concede.

<sup>11</sup> A study of asset ownership, agency and household-level investments in Ethiopia, Bangladesh and South Africa shows that differences in male and female power depend on male and female asset ownership and levels of human capital at marriage (Quisumbing and Maluccio, 2003).

<sup>12</sup> A review of data from demographic and health surveys indicates significant proportions of households where men alone make decisions on household expenditures – up to two-thirds in Malawi, for example (UNICEF, 2005, in Jones et al., 2010).

2001, both in Cooper, 2010a), who states that women's ownership of land leads to improvements in women's welfare, productivity, equality and empowerment, and by Doss (2005), who shows that women in Ghana with a higher share of asset ownership also have better health and nutritional outcomes.

Kumar and Quisumbing (2010) show that women's expectations of the likely distribution of assets following divorce affect their current welfare. Women who anticipate that their husband would gain all their land and livestock on divorce appear to be in a weaker position within the household during the marriage and as a result are more likely to report that their households spend too little on housing and health care. They are also less likely to feel in control of their own lives than women who anticipate receiving a share of assets on divorce.

On divorce, women in many countries lose access to their children, influencing their willingness to challenge their husband's authority or leave an unsuccessful marriage. Where children stay with their separated, divorced or widowed mother, their mother's loss of assets may mean they grow up in poverty as well as losing inheritance rights – increasing their chances of becoming poor adults.

Women's lack of power within their household has implications for their well-being and for their ability to invest in their children or pass on their wealth – with impacts on the life-long incomes of the next generation. This illustrates why understanding inheritance and other factors influencing asset dynamics is central to our understanding the intergenerational transmission of poverty. However, the literatures on the intra-household allocation of resources and the intergenerational transmission of poverty have remained largely separate until now.

### 3 Understanding inheritance

The transfer of property between generations needs to be seen in its social and cultural context if it is to be understood. Such property transfers interact with social institutions such as ‘marriage markets’ (Fafchamps and Quisumbing, 2005) and can support claims to intergenerational authority (Cheater, 1983, in Cooper, 2010a). The intergenerational transfer of property can be explored alongside other investments by the older generation in the younger, for example spending on their education (Estudillo et al., 2001; Quisumbing et al., 2004). This paper does not attempt to do this, instead focusing solely on the inheritance of assets (including *inter vivos* gifts), particularly land.

Quisumbing (2007) has developed an analytical framework which examines how families transfer assets to their children, and the barriers that poor people face in making such transfers. Four building blocks underlie core assumptions about asset transfers to children and investments in their human capital (education, skills and health). See Table 1.

**Table 1: Factors supporting or blocking the intergenerational transfer of assets within families**

	<b>Building blocks</b>	<b>Barriers</b>
<b>Preferences</b>	Parents care about the well-being of their children.	Parents can have different preferences about which child to invest in. Resources scarcity makes such trade-offs starker.
<b>Returns</b>	Parents assess the extent to which investments will make their children (and themselves) better off in the future, when making investment decisions.	Expected returns in labour and marriage markets, as well as provision of support in old age, may differ between children and lead parents to invest differentially in their children.
<b>Constraints</b>	Parents’ investments in their children are constrained by their access to resources (money and time) and prices plus their ability to trade off present versus future investments.	Poor households’ resources are limited. Greater constraints mean trade-offs may become critical when responding to adverse shocks.
<b>Bargaining</b>	Differences in parents’ relative bargaining power will affect these investments.	When exercising their bargaining power, the parent may exercise household decision making in a way that is not conducive to the transfer of wealth to children, or to some children rather than others. This in turn may reinforce patterns of discrimination embedded in parental preferences.

Source: Quisumbing (2007).

### 3.1 Inheritance and marriage

In many agrarian societies, substantial asset transfers are made at the time of marriage, allowing young couples to establish their own family farms. These *inter vivos* transfers can be understood as ‘advanced inheritance’ (Fafchamps and Quisumbing, 2005: 3, in Cooper, 2010a). Where people are poor and assets take a long time to accumulate, the assets brought together at marriage can strongly determine the future wealth of the couple and their family (Quisumbing, 2007).

Quisumbing (2008) applies the framework presented above in Table 1 to parental investments in sons and daughters in Bangladesh through investments in human capital, dowry and inheritance. She finds that the timing of intergenerational transfers is gender specific, with transfers to daughters occurring as dowries at the time of marriage and bequests, largely to sons, occurring at the death of the parent. Inheritance is strongly biased in favour of men within the patriarchal social structure, partly because of Islamic law and partly because of women’s practice of renouncing their inheritance in favour of their brothers (usually without compensation) in exchange for future economic and social support – particularly necessary if they are later widowed or divorced. Quisumbing concludes that *inter vivos* transfers, despite often being overlooked, are important. Transfers at marriage, while favouring brides in the Bangladesh example, do not compensate for the asset gap between brothers and sisters in terms of inherited assets and schooling. In addition, the assets received on marriage are often not controlled by the new wife but by her in-laws, and may be a source of intra-household gender violence.

Dowries can be a substantial drain on the parental generation’s resources and, in a society where consumption levels are already low, they represent forced savings, as households with daughters significantly reduce consumption to save for them (Quisumbing, 2007). In South India, where dowry payments are widespread, we can see that women’s property rights and customary practices are changing as traditional society is transformed alongside a process of broader socioeconomic change. The historical evidence, particularly from the Tamil region, suggests that women had considerably stronger customary rights to property compared with under the legal system, owning property through gifts and purchases. Changing social arrangements over the past few decades have had a profound impact on the status of women, and an example of this is in the spread of dowry payments. This has been accompanied by women’s loss of control over property, which traditionally remained hers on marriage but is now passed to her husband’s family, suggesting a regression in women’s status and perceived value within the family and broader society (Mukund, 1999).

Quisumbing (2008) also shows that, where women are restricted from realising monetary or economic returns to intergenerationally transferred assets, as in Bangladesh, their *investments* in non-monetary assets (their children) are particularly important, as are *returns* from non-monetary assets, such as their support networks of brothers. This highlights that

support networks are important alongside physical and financial assets in understanding the intergenerational transmission of poverty.

Statutory law has limited reach in terms of protecting women's inheritance and land rights in many developing countries. Cooper's five-country study of inheritance (Ghana, Kenya, Mozambique, Rwanda and Uganda) (2010b) found that women often have insecure land rights under statutory law, either because they have been married under customary practice<sup>13</sup> and this marriage has not been registered legally, meaning their rights to assets accumulated during the marriage are not recognised by statutory law, or because they are in a polygamous marriage and therefore are protected inadequately by statutory law.

For example, statutory laws in Ghana, Kenya, Rwanda and Uganda do not protect the rights of women in cohabitating unions to that union's shared property. So, if a woman's partner dies, she cannot use the law to claim inheritance of the house or other shared properties, even if she contributed toward their acquisition. Laws have been drafted in Ghana, Kenya and Uganda to extend property rights to cohabitating partners, but they face significant opposition. In these countries, courts have recognised cohabitating spouses and their shared property rights, setting a precedent, but rulings have been inconsistent. In Rwanda, a land titling pilot determines land rights on a case-by-case basis. Sometimes, the existence of children means that husband and wife are both registered as individuals with a joint interest in land; in other situations, children's land rights have been registered but not the rights of the children's unmarried, cohabitating mother.

### 3.2 Separation and divorce

In developing countries, separation and divorce can have a profound and long-run impact on household members, particularly women and children, as they result in the abrupt loss of access to productive resources (Bhuiya and Chowdhury, 1997; Bird and Pratt, 2004; Maundeni, 2000).

Impoverished women's inability to feed and provide for their children<sup>14</sup> may result in the children remaining in the marital home when their mother leaves. Children who are left behind may be cared for inadequately by their stepmother(s). They may be withdrawn from school and experience poorer nurturing, as well as decreased nutrition and health care (Bird and Shinyekwa, 2005). However, children who leave with their mother may lose inheritance rights and become poor adults (ibid).

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<sup>13</sup> In Ghana, an estimated 80 per cent of marriages are customary and 22 per cent of women are in polygamous unions. The vast majority of these marriages are unregistered (Cooper, 2010b).

<sup>14</sup> E.g. women without access to land may have difficulty identifying rewarding livelihood strategies and so may struggle to educate their children, afford health care and so on.

### 3.3 Land access policy

The role of the state is not always a benign one, and in a number of Asian countries land reform processes have seen women become worse-off (see below on Vietnam, Laos, Indonesia and India). State development interventions seldom take into account the fact that economic changes and the erosion of institutions can set off interlinked reactions, including changes in social and family relations, leading to differential gender effects. As a result, they may erode precisely those communal and social institutions that they should have strengthened (Agarwal, 1990).

In North Sumatra, increased state involvement in the privatisation of communal land undermined social and economic security (Simbolon, 1998). In Vietnam under the *doi moi* reforms, women farmers were given the same opportunities in terms of access to land as men (1988, 1993), but this was not matched by reform to the legislation surrounding marriage and divorce. This and the failure to involve women in the implementation of the reforms adversely affected women's secure control of land (Tran, 1999). In Laos, lowland women's power and decision-making ability in the home contrasts strongly with their lack of power outside the home. This sets the stage for their loss of traditional property rights as male-dominated government agencies formally allocate and register land use rights, with negative implications for women's decision-making power in the home and community (Vivarong, 1999). In Zhejiang province in China, changing economic and social conditions made possible by changes in policy have seen farming become the primary occupation for many rural women, particularly married women, while men look for better-paid off-farm employment. A deterioration in agricultural conditions has been shouldered largely by women who, although they have little or no control over land, are responsible for household subsistence and food security (Yunxian, 1999). A similar process is taking place in India where, although the vast majority of the population is still dependent on land-based livelihoods, there is a significant gender disparity in non-farm livelihood options, with men moving increasingly into non-agricultural work while women remain substantially in agriculture (Agarwal, 1998). This shift brings into sharper focus the challenges women face accessing land and agricultural support.

### 3.4 Land registration

Land registration has been promoted by many as resolving insecure tenure, providing poor people with stronger rights and greater access to credit and other markets. However, in Kenya it illustrates how individualised registration can harm women and others (like children) who hold secondary land rights: efforts since the 1950s to encourage land titling have led to the registration of land in the name of the male head of household without acknowledgement of other family members' property or usufruct rights. The process has not required consultation or the consent of spouses and has undermined women's land ownership and inheritance rights (Cooper, 2010b). Parts of Asia have seen similar problems. For example,

in Orissa in India, although joint land titling could improve women's access to and control over land, and their bargaining power with their husbands, poor coordination of land records and registration systems means transaction costs are high and enables land grabs by the powerful, undermining poor people's rights (Mearns and Sinha, 1999). In China, agricultural land management reform aimed to increase security of tenure but has made women's claims more uncertain, with a growing number of women experiencing loss of contract land when they marry (Hare et al., 2007).<sup>15</sup> So, in fact, land registration does not necessarily improve security of tenure; indeed, it appears that it has undermined women's use, ownership and inheritance rights.

These negative experiences contrast with Rwanda's recently piloted inclusive approach to land titling, which recruited local young people to walk boundaries with land occupants and to register everyone (including children) with an interest in it (Cooper, 2010b).<sup>16</sup> In 1988-95, Brazil, Colombia, Costa Rica, Honduras and Nicaragua passed laws supporting joint titling of land, with women benefiting from such measures (Deere and Leone, 2003, in Jones et al., 2010).<sup>17</sup> Many African countries have recently passed legislation to strengthen women's land rights (Jones et al., 2010).

A decentralised approach to land titling in Ethiopia has delivered mixed results, with some provinces seeing a much higher proportion of co-titling than others (Jones et al., 2010). However, across the country, almost all women with joint landholding certificates reported that this had improved their economic well-being (ibid). This illustrates the importance of practical considerations, like the design of the title document, for women (see Box 1 for further details).

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<sup>15</sup> Women are not guaranteed security when their household is given legal title to their land and housing. Nor does this process prevent gender differences in property ownership. Varley (2007) suggests that alternative strategies which emphasise local or customary authorities and procedures are used instead.

<sup>16</sup> Rwanda's exercise also produced inconsistent judgements of the rights of women who did not have a statutory marriage, because policy guidance did not cover customary marriage (Cooper 2010b).

<sup>17</sup> In Costa Rica, by 1992, women's share in land titles rose from 12 to 45 per cent. In Colombia, after the law changed in 1996, jointly titled land rose from 18 to 60 per cent (King and Mason, 2001, in Jones et al., 2010).

### Box 1: Land titling in Ethiopia

Ethiopia's land policy aims to provide people with a clear land title and secure tenure. The country is implementing a land titling and certification programme to provide rural households with robust land and property rights. As regional governments have considerable autonomy in this area, the programme is being implemented in four provinces: Amhara, Oromia, South and Tigray. In a two-year period, about 20 million land-use certificates were issued to some 6 million households. In provinces where there was no legal requirement to issue certificates jointly in the name of both spouses, most certificates were issued in the husband's name (71 per cent) or the wife's name (14 per cent) rather than jointly (13 per cent). Although there are important regional differences needing further analysis, the provisions for joint titling were found to be applied very widely when space was provided to include both spouses' photograph on the certificate, as in Amhara (under 9 per cent of certificates were solely in the husband's name) and the South (only 28 per cent solely in the husband's name) but not in Oromia (where 58 per cent of certificates were registered in the husband's name).

Source: *Deininger et al. (2007), in Jones et al. (2010).*

In India, social movements have successfully engaged men in a process of voluntarily including women on land titles (see Box 2). However, Agarwal (2003) prefers women to have sole title, to give them freedom to control produce and to bequeath the land as they want. Because many women lack investment funds, Agarwal proposes institutional innovations that bring women smallholders together to enable collective investment.

### Box 2: Social movements and inclusive titling in India

The Laxmi Mukti programme in Maharashtra promoted the transfer of landholdings and assets to women or the establishment of joint ownership. Villages in which 100 families had done so were called Laxmi Mukti villages. The programme was a voluntary movement initiated by Sharad Joshi, the founder of the Shetkari Sanghatana farmers' organisation. At least 200,000 documented transfers from husbands to wives were registered between 1991 and 1996.

Sources: <http://shetkari.in/main.html>; Agarwal (2003); Desai (2010).

## 3.5 Widowhood and property grabbing

In many parts of Sub-Saharan Africa, women marry patrilocally. In other words, they move to their husband's village on marriage and their natal family ceases to have obligations to care for them following a transfer of bridewealth. If widowed, their husband's family is responsible for material supporting them and any children. Traditionally, widows are allowed continued use of the marital home and other household assets, which are held in trust until their children become adult, but they are not allowed to sell land or to retain the land if they remarry.<sup>18</sup>

Customary practice is being eroded and pressure for land in many Sub-Saharan African countries has led to increased prevalence of asset grabbing from widows and orphaned

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<sup>18</sup> In some societies, widows are expected to 'marry' into a deceased husband's lineage. This practice, known as leverite or 'widow inheritance', is meant to secure the woman's affiliation with her husband's family (Cooper, 2010b).

children – where the family of the deceased claim all land, housing, productive assets and household goods, in sharp contravention of traditional norms<sup>19</sup> ( e.g. da Corta and Magongo, 2011 on Tanzania). Widows are seeing their husband's family take control of assets without providing balancing support of any kind. Changes in practice are not even: in some places in Kenya traditions have been maintained (Aliber and Walker, 2004; Yamano, 2008, both in Cooper, 2010a) while in others they have been eroded (Human Rights Watch, 2003, in Cooper, 2010a); in northern Uganda, a study among the Langi found that 63 per cent of households caring for orphans were headed not by paternal kin but by widows, grandmothers or other single women, receiving little support from the paternal clan. This is explained by changes in Langi culture, driven by conflict and HIV and AIDS, which have placed pressure on extended families (Oleke et al., 2005, in Cooper, 2010a). However, children's clan affiliation was not questioned, suggesting that, although they were growing up poor and without access to their father's land, they would eventually inherit.

In western Kenya, a childless widow (or a widow without a son or sons) has a weak claim to family land under customary law. Inheritance arbitration by clan leaders can be skewed by personal judgement, and so a woman of 'bad character' (accused of practising witchcraft, being sexually promiscuous, drinking alcohol or being rude or stubborn, particularly towards in-laws) is vulnerable (Henrysson and Joireman, 2009, in Cooper, 2010b), as are young widows who have not had time to cement relationships with their husband's family (Aliber and Walker, 2004, in Cooper, 2010b).

In India, patrilocality, patrilineal inheritance, restrictions on employment, social neglect and social isolation combine to make many widows insecure and disadvantaged (Chen, 1997). In this context, widows are found to prioritise having a house or land in their own name; a secure job, source of livelihood and maintenance; education for their children; and a positive social image (ibid).

The stories in Box 3 below illustrate the importance of having a physical presence on the land, or in the property, to secure the right to inheritance. What happens to children on the dissolution of their family through death of a parent or another event (e.g. divorce and subsequent remarriage of their mother) is important for the transfer of land and property, as well as the acquisition of human capital through education and the maintenance of their health (Seeley, 2008).

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<sup>19</sup> Overall more than 90 per cent of land in Africa is owned under some form of customary tenure and remains outside the statutory legal system. More than 50 per cent of the peri-urban population in Africa and more than 40 per cent in Asia live under informal tenure and therefore have highly insecure land rights (Deininger, 2004).

### 3.6 Children and inheritance

Children's land rights are generally subsumed under their mother's property rights (Cooper, 2010a).<sup>20</sup> Issues facing children in inheritance disputes may include the need to obtain proof of identity; the role of appointed guardians in relation to child care or trusteeship of property; gender inequity; and primogeniture (Sloth-Nielsen, 2004 in Cooper, 2010a). In several countries, children born to unmarried parents are not recognised as legitimate heirs. In Rwanda, the law ranks the rights of children of a dead parent ahead of those of other members of the extended family and states that children should inherit an equal share of all assets, irrespective of gender (Cooper, 2010a). Despite this, many orphans lose control of their parents' customary landholdings to their guardians (Rose, 2005). It is not just physical assets that are vulnerable, but also the children themselves. Evidence suggests that orphaned girls (particularly those without adult protection) are especially vulnerable to being victims of sexual exploitation and trafficking (Sloth-Nielsen, 2004).

Evans and Day (2010) find that changing familial responsibilities and inheritance practices in communities affected by HIV and AIDS in Tanzania and Uganda have resulted in child- and youth-headed households, with young people gaining access to land and property at a younger age than usual. Physical assets (land and property) are found to be crucial to the sustainability of their livelihoods, but both women and young people experience multiple layers of stigma that reproduce existing gender and generational inequalities, leading to disinheritance and loss of assets, with impacts on health and emotional well-being, a lack of investment in children's education and care and the intergenerational transmission of poverty.

Also in Uganda, a study of AIDS orphans found that the majority of children were staying with their maternal grandmother, despite norms in patrilineal Baganda society whereby children belong to the father's lineage and would normally be fostered with the father's extended family (Seeley, 2008). This suggests that the children were from unmarried unions and that their fathers had denied paternity and disinherited them (ibid).

### 3.7 Customary and statutory inheritance laws

Customary practice surrounding inheritance is not fixed and immutable. It is embedded in social relations and changes over time in response to other changes in society, for example intensifying pressure for land, increased mortality among the economically active age group owing to HIV and AIDS and increased nuclearisation of the family. Seeley (2008) shows that,

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<sup>20</sup> Some countries, such as Botswana, do not have specific legislation on children's inheritance. Others, 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 (Rose, 2006, in Cooper 2010a).

in Uganda, the transfer of land between siblings and across generations depends not only on customary practice but also on the nature of the personal relationships of those involved as well as outside influences (see Box 3).

### Box 3: Insecure tenure, land disputes and property grabbing in Uganda

Varista sought refuge with her brother when her marriage and subsequent relationships broke down. She was given a small piece of her father's land but her paternal aunt took it from her, claiming that she had bought it from her brother (Varista's father), leaving Varista with nothing. However, Varista's brother, who died of AIDS-related illnesses, left a will in which he said that his son should take care of his aunt (Varista) and provide her with a place to stay. Varista said that she thanked God that her nephew was understanding and put into action what his father told him before he died. He built a mud and wattle house for her free of charge and gave her land to cultivate.

Other women also had reason to be grateful to their brothers. Nazziwa's brother provided a refuge for her when her husband died, letting her use his house and land while she tried to raise money to build a house on the land her husband left their children. Betty was given access to land by her brother when the plot she had been given proved to be infertile.

But not all experiences are positive. Three daughters (Regina, Rose and Teddy) and a son (Charles) were all left land by their father. Each daughter received 4 acres but Charles received more. Charles sold some of his land, retaining some to cultivate and build a house. When Rose and Regina died, Rose's land was inherited by her children. Regina's land was passed to Teddy, as Regina did not have any children. Charles did not like this arrangement, and tried (and failed) to reclaim it through the local courts, saying his father had given him full control of all the land. Teddy's son (in his early 20s with a wife and young child) now lives on this disputed land to 'guard' it from his uncle and to build up savings so he can buy his own land. Teddy's son said very firmly that the land on which he lives is not his but belongs to his mother.

Grace's mother was 'chased' off her husband's land by her stepson (the son of her husband's other wife), and she and her mother sought refuge in a friend's house. Her mother tried to continue to harvest crops off her husband's land but her stepson went to a local court to force her to stop. In later years, Grace learned that her stepbrother had sold off their father's property, meaning she had no safety net through family property. Grace took him to court and the land was restored to the family. Grace and her sister were given a small amount of their father's land as a result.

Eva is dependent on relatives for land and housing following two failed marriages and other short-term relationships. She lived with her grandmother between relationships but in 1988, when her grandmother died, an aunt and uncle forced her out of the house. A maternal uncle helped her and negotiated with one of his sisters to lend her a house and some land elsewhere in the village, where she lived with her children. In 2003, when her eldest son died, she moved to the village where another son, a prominent local businessman, had bought land and built a house. She moved not only to care for the children but also to secure land and property for her grandchildren. In this, she was only partially successful. Her daughter-in-law (Maria) sold off some possessions before Eva could intervene. In 2005, Maria tried to sell the land around the house where Eva now lived and took Eva to the local administration, demanding she give it up. This did not work, so Maria went to the Association of Ugandan Women Lawyers, saying it was her right as the wife to sell the land. This organisation also disagreed, and ruled that the grandmother should have the land to keep for the grandchildren. Then Maria died of AIDS and two more children joined Eva's home: a granddaughter who had been living with Maria's mother and the youngest child who had been with Maria until she died. Eva commented that those children came 'without even a blanket' because everything else had been sold. To add to Eva's problems, in 2006 she was accused of witchcraft by her son-in-law's relatives, who wished to take land left to her daughter's children when she and her husband died of AIDS. Eva had tried to 'protect' the land for her grandchildren by burying some herbs given to her by a traditional healer. It was only through the intervention of a powerful man in her village that she was not subjected to rough justice and then a court case. The paternal relatives then agreed the land should be kept for the children.

Source: Seeley (2008).

When examining inheritance, policy analysts and policymakers tend to focus on the way patriarchal customary practices deny women the right to inherit land (Cooper, 2010b). Attempts by governments to influence these processes have met with mixed results, and customary systems governing land and inheritance tend to dominate in many societies throughout Sub-Saharan Africa (Cooper, 2010a). In Africa, this situation is compounded by many countries' constitutions allowing for discrimination against women in their customary and personal law (ibid). Commonly, they place inheritance under the control of customary law, and exclude it, as well as marriage and other so-called 'family law' matters, from non-discrimination or equality clauses.

In Botswana, property inheritance is exempt from non-discrimination clauses in the Bill of Rights. Instead, the Administration of Estates Act places inheritance firmly under the control of the customary practice of the various ethnic groups (Cooper, 2010a). For most Botswana, this means that all property owned or acquired by a couple during their marriage belongs to the husband and will pass to the eldest son when his father dies. In theory, a woman retains the right to certain property, such as her ploughing fields, which she can pass to her daughter when she dies. However, the male head of household can veto this (Richardson, 2004, in Cooper, 2010a).

In Lesotho too, customary law governs property inheritance. Women are treated as minors and cannot be allocated land, inherit it or make decisions about its management or use. Daughters cannot inherit their father's fields; 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, in Cooper, 2010a). 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, in Cooper, 2010a).

In contrast, 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 (Cooper, 2010a).

In Bangladesh, Cambodia, Nepal and Sri Lanka, the constitution guarantees equality and protection for women, providing a legal basis for protecting women's property and inheritance rights. However, discrimination and contradictions embedded within the law limit the protection of these rights. For example, under Islamic law, women are not accepted as the legal guardians of their own children. This means that, after the death of the husband, children are often removed from their mothers and raised by their paternal grandparents (Steinzor, 2003).

There is frequently a mismatch between the law and practice. People in developing countries, particularly those in rural areas, have poor access to information on their legal

rights, and they are often unable to afford to resolve inheritance disputes through the courts (Cooper, 2010a).

In Namibia, for example, legislation has had little impact because women do not know their rights under statutory law, and it is customary law that is generally used when deciding on inheritance cases (Joireman, 2008, in Cooper, 2010a).

In Uganda, there is a gulf between government rhetoric, legislation and policy and the reality experienced by rural women (Bird and Pratt, 2004: 31). Although commitments have been made in relation to gender equality and land rights, they have not been accompanied by measures to ensure their social legitimation, implementation and enforcement.

Some might assume that this does not really matter, as women and children are commonly part of a household or extended family which will provide them with access to resources and ensure they are properly fed, educated and cared for when ill. However, a study of household decision making in Bangladesh, Ethiopia, Indonesia and South Africa found that the household head did not necessarily make all decisions in order to maximise the well-being of all household members (Quisumbing and Maluccio, 2003). In Bangladesh and South Africa, women's ownership of assets increased household expenditure on education (although in Ethiopia it is men's assets that have this effect) (ibid).

Efforts to improve women's land rights have seen inheritance laws and customs change. For example, an attempt to codify Islamic inheritance doctrine in Indonesia was used as an opportunity to reinterpret the Islamic legal tradition, bringing it more closely in line with traditional inheritance practice (Cammack, 2000). So, Indonesian Islamic inheritance law gives male and female relatives equal status, breaking with the Islamic norm which gives women half the male inheritance (ibid).

## 4 Changing policy and practice in a pro-poor way

This paper shows the implications of excluding women from secure land rights. It argues that insecure rights for women in this area have implications not only for the woman's well-being and that of her children but also for agricultural productivity and wider development outcomes. This final section discusses alternative forms of policy and practice that might improve gender equity in access to and control over land (see also Cooper, 2010a-g). Issues related to land policy are complex, country specific and politically controversial, and policy reform takes a long time. However, evidence shows that positive change can occur where practical and policy solutions are tailored to specific tenure systems – as universal reforms tend not to work (Deininger, 2004: 13). Policy reform needs to be carefully sequenced, with attention paid to the country's political economy and the need to build support for reforms among the general public and traditional or customary leaders. This can be a challenge, as there is deeply engrained resistance to change in this area of policy in many countries. In addition, the coexistence of customary and statutory approaches to tenure has meant that male-dominated societies have been able to resist women's claims by postponing or neutralising reforms (Whitehead and Tskikata, 2003: 91).

### 4.1 Policy agenda

This section of the paper outlines the policy agenda for improving women's rights to land. The main issues discussed are whether it is better for women to have formal or informal rights to land, and why. It outlines the debate regarding the advantages and disadvantages of customary and individual land tenure systems for women; discusses some of the policy challenges linked to women's inheritance of land, marital law and women's rights to land and to purchase and hold land in their own name; and outlines a set of complementary measures which are needed in many contexts if statutory reform is to deliver the desired objectives.

#### 4.1.1 *Customary versus individual land tenure*

There are different schools of thought regarding how best to reform policy and practice relating to land tenure. The World Bank's approach has evolved considerably. In the 1980s, it regarded formal land titling as a precondition of 'modern' development and advocated the abandonment of 'communal' tenure systems in favour of freehold title and subdivision of the commons. It also sought the widespread promotion of land markets, as it was thought that this would bring about efficiency-enhancing land transfers (Whitehead and Tskikata, 2003: 81). Land titling was promoted as an approach to securing tenure, developing rural credit and land markets and increasing agricultural productivity through improved access to and adoption of new technologies (ibid). Customary or local-level systems of resource allocation were understood as providing poor incentives and failing to stimulate land and credit markets, thus preventing the distribution of land to the most efficient users (ibid: 82). Evidence in the early 1990s, however, showed there was no difference in productivity or

levels of investment between land held through customary tenure and that held through freehold: the constraints were elsewhere. This led to a change of policy at the Bank, and in the late 1990s land titling was described as an optimal solution only in limited circumstances. It was recognised that customary tenure systems could provide a 'cost-effective solution, if transparency and local accountability can be assured' (Migot-Adholla, 1999, in Whitehead and Tskikata, 2003: 81).

Divergent views remain within the Bank, with environmentalists and macroeconomists still tending to favour individual freehold. Gender specialists are divided. Some have sought to identify synergies between improved outcomes for women, poverty reduction and overall economic growth and have emphasised the need for top-down reform to give women better land rights and secure their access to land. Others re-emphasise the way individual titling damages women and ignores secondary rights, and identify customary approaches as having some merit (Whitehead and Tskikata, 2003: 83).

#### 4.1.1.1 Tenure reform and women's land rights

Women's rights to land are still threatened by discriminatory customary practices surrounding inheritance, marriage and divorce; a lack of statutory legislation; and a failure to implement measures that are supposed to protect their land rights. Many African women lawyers see the reform of statutory law and training to improve its implementation as offering a better possibility for securing women's land rights than simply allowing customary law to evolve (Whitehead and Tskikata, 2003: 91).

It is not clear how best to approach the reform of statutory law. Some advocate land redistribution, land ceilings, titling and registration; others argue that titling programmes are biased in assuming a nuclear family with a male household head and in commonly failing to recognise secondary interests.<sup>21</sup> They also argue that high levels of security can exist without legal title, and vice versa (Whitehead and Tskikata, 2003: 91). Where granting individual title is pursued, well-coordinated, efficient and transparent land administration institutions are crucial to delivering the benefits of secure tenure (Deiningger, 2004: 6).

Individualised tenure arrangements tend to ignore more marginal users and have been found to particularly restrict women's rights to resources. Partly because women generally access land indirectly (though their husband, brother, father or son), land titling processes often explicitly or implicitly discourage women's involvement, and women have lost the rights

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<sup>21</sup> Indigenous land tenure arrangements in much of South Asia and Latin America have been constructed on a unitary household model marked by unequal gender relations, which casts the male household head as the breadwinner-subject-citizen and thus the legitimate claimant, with women (along with children) subsumed as 'dependants' (Razavi, 2003: 22). Many 'progressive' political parties and social movements in the South replicate this male breadwinner–female dependant model through public policy (ibid).

they had under customary systems (Meinzen-Dick et al., 1997a: 1300). Evidence shows that women in Sub-Saharan Africa tend to lose the rights they once had when any form of private property regimes for land are developed (Whitehead and Tsikata, 2003: 79). In Kenya, the registration of individual land title was found to have promoted inequality, with land being captured by the educated economic and political elite, denying customary claims and effectively transferring wealth to the already wealthy, increasing the likelihood conflict and insecurity (ibid: 72).

Policies designed to deliver tenure are often considered gender blind but, as the analysis of property rights has often focused on the household, without recognising how such rights are differentiated between individuals based on gender, age or other intra-household characteristics (Meinzen-Dick et al., 1997b: 1304), this has influenced the ability of policy to support gender equity. Tenure reforms often have negative consequences for women because of pre-existing gender inequities, which lower their access to capital and labour, negatively affecting their ability to purchase and develop land (ibid: 1301). As such, instead of seeking a single 'owner' or holder of *de jure* title, processes need to identify the different bundles of rights men and women have to use and manage resources, as well as how these are negotiated or change over time (Meinzen-Dick et al., 1997a: 1300). More flexible arrangements are more likely to accommodate the needs of multiple users, but the shift from customary to private ownership generally results in individual title (Meinzen-Dick et al., 1997b: 1308). This reduces transaction costs and facilitates market exchange of the resource as a commodity but excludes many who previously had customary rights to use the land for the production of goods and services. Tenure reforms can also have negative implications for women, unless the reforms recognise and support their claims. Commonly, the claims that women had under customary systems are ignored, and tenure is passed to the male head of household. Women and girls may lose access and control rights as well as inheritance rights.

#### 4.1.1.2 Customary tenure

Customary practice is not static; its current form developed as a compromise between the power holders of African indigenous societies and colonial powers (Whitehead and Tsikata, 2003: 75). The management of land tenure through customary practices is admired for its consensual approach to decision making (ibid: 101). It is locally administered and recognised and is able to provide relative security to community members at lower cost than state-run structures. It allows different forms of access, enables common property to be acknowledged, considers the needs of poor people, recognises processes confirming land ownership, such as verbal contracts, and has the flexibility to permit individualisation and also respond to land scarcity (Toulmin and Quan, 2000; Whitehead and Tsikata, 2003). However, it does not necessarily support gender equity.

Under customary land management, conflicting claims are negotiated on the basis of a series of principles and not a series of rules (Whitehead and Tsikata, 2003: 94). Dispute

resolution decisions are made at the most local level, which some see as an advantage (ibid: 86).<sup>22</sup> However, the local level is also the site for gendered power relations, and it is not clear that local arbitration will always be advantageous to women, who may face local male elites, keen to preserve the *status quo*. In addition, it is important not to idealise ‘community’ and ‘tradition’ as defenders of women’s access to land because, in many contexts, local and customary institutions have exhibited the strongest biases against women’s control over resources (Meinzen-Dick et al., 1997a: 1300).

#### 4.1.1.3 Building on customary systems

Gender specialists working on land tenure and inheritance tend to be split. Some argue that problems with land tenure can be resolved by modification within customary law frameworks and with institutional innovation (Toulmin and Quan, 2000) and that a reformed and strengthened customary system is in women’s interests. However, the majority argue instead for women’s land and property rights to be enshrined in statutory law (Whitehead and Tsikata, 2003: 68). Land tenure reform is the core of land reform processes in most countries that are undertaking them at the moment. These could include a redistributive component, but do not necessarily do so, and the focus of policy discussions is on the extent to which tenure reform should build on existing customary systems or not.

The practices and institutions of customary law could be modified to reflect current social and political realities (Whitehead and Tsikata, 2003: 89). This would have the advantage of building in local management, devolution, subsidiarity and democratisation. Under such a system, the state would have a relatively limited role: to pass enabling legislation (and reform other legislation in line with this), to redistribute land where necessary and to establish the authority of the land management institutions (Toulmin and Quan, 2000).

#### 4.1.2 *Co-titling of land*

Some people favour joint titles for spouses, which would give women clear legal rights over marital property in the case of separation, divorce or widowhood, increasing women’s security and substantially reducing the likelihood that they will lose access to the land if widowed or divorced. This has been piloted in India and Rwanda, discussed above.

#### 4.1.3 *Inheritance and women’s rights to land*

Cultural practice on women’s rights to inherit land from their husband or their parents differs widely. In some countries, it is normal for women to own land and to leave this to their daughters rather than their sons. Elsewhere, it is unusual for women to own land or to inherit it from either their parents or their husband. For women to have secure rights to land, they

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<sup>22</sup> [www.oxfam.org.uk/resources/learning/landrights/index.html](http://www.oxfam.org.uk/resources/learning/landrights/index.html).

must be able to inherit land and other assets from both their parents and their husband. In many countries, this will require reforms to statutory law and shifts in customary practice.

#### 4.1.4 *Marital law and women's rights to land*

Marital law and customary practice around separation and divorce are crucial factors influencing women's rights to land. As this paper has shown, women commonly lose access to marital property following separation or divorce, even where the woman is not blamed for the breakdown in the marriage. This may mean that assets that a woman had access to, purchased or helped to accumulate during married life are lost to her. In order to correct the inequities inherent in this situation, marital law and customary practice will both have to change.

#### 4.1.5 *Women's rights to purchase land in their own name*

In many countries, either women are not permitted to hold land in their own name or this is frowned on culturally. As a result, women who accumulate capital and choose to invest it in landholdings must do so in the name of a male friend or relative, reducing the security of her tenure. Legal reforms and efforts to shift cultural norms and traditional practice are both necessary.

## 4.2 **Improving women's rights to inheritance and *inter vivos* gifts**

Changing the law can help improve local outcomes in terms of women's rights to land. For example, a study exploring inheritance patterns over three generations in India highlighted that recent changes to inheritance laws giving daughters equal rights to family property have significantly increased women's chances of inheriting land, despite a substantial bias against daughters remaining (Deininger et al., 2010). However, changes in statutory law do not necessarily translate into improved outcomes for women. For example, it is widely understood by both the judiciary and the general public in India that the law<sup>23</sup> enables women to inherit land. However, half a century after the law changed to allow this, most women are not given a share in family property, or refuse it when offered. Expectations of male and female heirs are affected by cultural norms, and families circumvent the rights of female heirs and deter women from pursuing claims. This is an example of women's ability to make effective claims to inherit and own land existing within the context of inequitable social relations and institutional and cultural biases which prevent them from succeeding in making claims and sustaining them (Whitehead and Tsikata, 2003: 92). It suggests that changes in property law need to be supplemented by stronger measures to ensure the implementation of existing legal provisions, policies and programmes and simultaneous and

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<sup>23</sup> The Hindu Succession Act (1956) – passed shortly after independence.

widespread cultural change alongside changes in the labour market (Basu, 1999; Jones et al., 2010). Also necessary is the development of stronger monitoring and evaluation frameworks and stronger mechanisms to enforce compliance with national and international standards (Jones et al., 2010).

Feminists supporting gender equality in access to and control over land often look to international conventions and instruments and adopt a rights perspective. They tend to have a positive view of the role of the state and to look to statutory law to deliver rights to women (Whitehead and Tsikata, 2003). But gender relations are known to have a powerful effect on formal and informal property rights. Also, where statutory law is favourable to women, it is often not enforced, because of women's lack of awareness and power, resistance from male relations, a fear of sanctions and a lack of political will on the part of government (ibid: 91). This suggests that policymakers need to look beyond legal rights to removing gender-based constraints to other services and rights, which combine to limit women's access to property (Meinzen-Dick et al., 1997b: 1308).

Table 2 outlines a range of complementary measures which seek to address a wide range of constraints, building the socioeconomic well-being of women, informing people of their rights, addressing barriers to rolling out statutory reforms and improving the political and governance environment.

**Table 2: Initiatives to improve the position of women in terms of owning and controlling land**

Building the socioeconomic well-being of women	Informing people of their rights	Addressing barriers related to statutory law	Improving the political and governance environment
<ul style="list-style-type: none"> <li>• <b>Education</b> and literacy campaigns.</li> <li>• <b>Economic empowerment of women</b> through the provision of credit and market access.</li> <li>• <b>Affirmative action</b> (e.g. waive fees for land registration).</li> <li>• <b>Agricultural extension services for women farmers.</b> Improving agricultural extension services for women farmers is vital if their incomes are to increase. This might include training and recruiting more female extension workers.</li> <li>• <b>Women-friendly financial services instruments.</b> Even where women inherit, own and control land, other barriers may mean they will have lower incomes and face greater poverty than men in a similar situation. Such barriers can be reduced by improving women's access to seasonal and investment credit through financial instruments directed specifically towards women.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Disseminate new land laws</b> and build capacity and knowledge of traditional leaders to avoid discrimination against women.</li> <li>• <b>Rights training for women and men in rights.</b> Education in legal rights for men and women (especially men in local power structures, such as chiefs and dispute settlement personnel) can improve women's chances of being treated fairly in inheritance disputes (e.g. Women's Voice in Malawi has conducted community sensitisation). However, it should not be assumed that women are not succeeding in gaining access to land because they are ignorant of their rights. More commonly, they are constrained by inequitable social relations.</li> <li>• <b>Paralegal training for women</b> to increase poor women's access to legal advice, enabling them to benefit from progressive statutory laws.</li> <li>• <b>Action to increase women's chance of inheriting:</b> Women's Voice in Malawi has run 'will-writing campaigns' in rural communities.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Gender-sensitive legislation and frameworks</b> to ensure land laws promote the land rights of women. For example, in Tanzania, the Women's Legal Aid Centre links land legislation, economic status and equal inheritance rights; in Namibia, the Legal Assistance Centre works to analyse and reform cohabitation and marital property regimes.</li> <li>• <b>Harmonise land laws with other laws</b> in the system in order to safeguard women's rights to inherit, harmonising – for example – land reform with a revision of inheritance law and the marriage and family code.</li> <li>• <b>Disseminate new lands laws</b> and build capacity and knowledge of implementers.</li> <li>• <b>Translate laws</b> into effective programmes for implementation.</li> <li>• <b>Build judicial capacity to uphold the delivery of women's rights.</b> For example, the Regional Trust for Women and Law in Southern Africa supports legal aid clinics in Zambia; the Kenya Section of the International Commission of Jurists works with the judiciary to domesticate the Convention on the Elimination of All Forms of Discrimination Against Women in national jurisprudence.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Improve participation of women</b> in decision-making bodies on tenure issues.</li> <li>• <b>Social movements and community mobilisation.</b> Social movements and community-level support groups to dissolve male resistance and help women overcome their fear of asserting their rights can both play an important role in supporting equity in land inheritance</li> <li>• <b>Improve women's access to public fora and legal institutions.</b> For women to achieve fair resolution of land and inheritance disputes, they need to be able to access the legal process.</li> <li>• <b>Reform democratic processes and structures to build state accountability.</b> This improves the enabling environment for equity and can support women's interests.</li> <li>• <b>Increase women's political voice.</b> Increasing women's political voice in local-level management systems can increase the likelihood that these will deliver equity for women.</li> <li>• <b>Increase women's political engagement.</b> Increasing women's ability to influence statutory law, government and civil society will increase the likelihood that these institutions act to support equity.</li> </ul>

Sources: Strickland, 2004; UNECA (2003), both in Jones et al. (2010); Whitehead and Tsikata (2003).

### 4.3 Implementation

Legislation sets a benchmark to measure progress against, but even when equity-promoting policies are in place alongside programmes to build women's legal literacy and access to representation, their ability to deliver can be limited by the pervasiveness of power relations in society and its institutions. Increased awareness of laws and the legal system can empower some women to demand their rights, but these demands are often made in an environment of rural male resistance, and success depends on male-dominated legal institutions to pass and implement reform (Whitehead and Tsikata, 2003: 93). In some countries, political elites have been found to collude with international companies to alienate poor rural communities from their land. This leads to an erosion of trust in government and a preference for local solutions, coupled with participatory approaches. However, in other countries, national government is seen as protecting poor rural people from rapacious local elites and unequal social relations, and decentralised approaches are not favoured (Razavi, 2003: 24). The implementation of reforms can also be constrained by limited budgets, administrative and institutional weaknesses and weak political accountability within parliament and/or civil society (ibid: 26).

Despite action to improve policy and cultural practice, formidable obstacles still prevent poor people, particularly women, from gaining access to land (Mearns and Sinha, 1999). Deininger (2004: 13) suggests that this is partly a result of blocking action by vested interests and the multiple changes necessary. For instance, changes are needed in both land tenure and inheritance arrangements, and require complementary improvements through gender-sensitive legislation and frameworks. They also depend on the country having the judicial capacity to uphold the delivery of women's rights and successful actions to build public awareness and understanding, which will improve the delivery of women's rights (Strickland, 2004, in Jones et al., 2010). Reforms also need to be implemented in an integrated way (Jones et al., 2010).

This illustrates why strategic partnerships are critical to the success of equitable reforms in land ownership and control (Jones et al., 2010). Such partnerships should include key national ministries; local government and community leaders – both male and female; the private sector; national and international research institutes and think-tanks and development partners; as well as women and men at community level and in organised constituencies or social movements. Others emphasise the importance of support from women's groups in strengthening women's access rights (Meinzen-Dick et al., 1997b: 1308).

## 5 Conclusion

This paper has shown that women's rights to land are important for their wealth, well-being and quality of life. It has also shown that mothers play an important role in ensuring that their children are educated, well fed and provided with medical care, and that they are more able to do this where they have a stable and reliable livelihood. In many low-income developing countries, land still plays a crucial role in livelihoods; land and other assets also provide collateral and a useful safety net to enable investments in off-farm enterprises. Land is usually transmitted by inheritance or through *inter vivos* gifts from one generation to the next. As such, a woman's ability to inherit or receive such gifts has significant implications for her current and future well-being and that of her children – and thus for the intergenerational transmission of poverty.

The paper has outlined the complex interrelationship between statutory law and customary practice. The headline recommendations, to support greater gender equity in land rights to bolster against the intergenerational transmission of poverty, are:

- Where individualised tenure already exists, ensure that women have rights to buy, rent and inherit land (including through *inter vivos* gifts) and support the co-titling of land;
- Support efforts to ensure that it is legally and socially acceptable for women to purchase, sell, rent in or rent out land in their own right;
- Where communal land management systems exist, modify both customary law and practice to support gender equity. This should include enabling women to inherit land, receive a share of property following separation or divorce and receive *inter vivos* gifts of land and other assets;
- Under both statutory and communal land management systems, reform marital and divorce laws to ensure that women obtain equitable control over land and other assets during marriage and that they retain rights following separation and divorce.

The paper recognises that this is a complex and demanding agenda, which will require complementary action to build the socioeconomic well-being of women; to inform people of their rights; to address barriers related to statutory law; and to improve the political and governance environment. Gender-equitable progress across these areas will depend on support from a strategic partnership of key actors (including relevant ministries, local government, community leaders, etc.) and support from women's groups in protecting women's land rights until legal and customary changes become embedded.

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## **Chronic Poverty Research Centre**

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### **The Chronic Poverty Research Centre**

(CPRC) is an international partnership of universities, research institutes and NGOs, with the central aim of creating knowledge that contributes to both the speed and quality of poverty reduction, and a focus on assisting those who are trapped in poverty, particularly in sub-Saharan Africa and South Asia.

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