



**Chronic Poverty**  
Research Centre

# Asset Inheritance

and the intergenerational transmission of  
poverty

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**Paper presented at the CRPC/ ODI Roundtable  
'Inheritance and the Intergenerational Transmission  
of Poverty', ODI, London, 11 October 2010.**

**First draft, for comment**

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**Chronic Poverty Research Centre  
October 2010**

*This document is an output from Chronic Poverty Research Centre (CPRC) which is funded by UKaid from the UK Department for International Development (DFID) for the benefit of developing countries. The views expressed are not necessarily those of DFID. The CPRC gratefully acknowledges DFID's support.*

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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# 1 Introduction

In many low income developing countries asset holdings are strongly unequal both within and between groups embedding the long-term implications of social difference, feudal or colonial systems. These between group differences may be addressed by land reform or dynamic approaches to redistribution. This is an important issue, however in this paper we focus on asset inheritance as a mechanism by which intergenerational transfers can be made. We explore the within group differentiation associated with inheritance norms and practices. These can see siblings inheriting very different amounts, with strong differentiation between brothers in some contexts and sisters often inheriting very little. Both sources of unevenness can intensify inequality in the 'initial conditions' of households, making it much easier for asset-rich households to save, invest and accumulate than others.

The inheritance or non-inheritance of assets has been integrally linked to a person's poverty trajectory and their likelihood to remain in or move out of chronic poverty. The gradual accumulation of assets, which can provide collateral for formal sector borrowing, enable investment and reduce vulnerability to the impact of shocks, can boost resilience and limit the need for the adoption of adverse coping strategies. Assets, when held by someone with both the necessary capabilities and agency to use them effectively, can therefore be an important source of social mobility.

Alienation from 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. Limited access to and control of productive resources can restrict livelihood opportunities; constrain coping strategies in the face of shocks or negative trends and inhibit investments in human capital formation. Combined with wider failures in policy or public provision, these can lead to poverty being transmitted intergenerationally.

A major dimension of differentiation in asset holdings is along gender lines. It is estimated that women worldwide own only 1-2% of individually titled land<sup>1</sup> (USAID, 2003 in Cooper, 2010a). This is despite making up more than 80% of farmers in Sub-Saharan Africa and in rural South Asia, few women own land and even fewer control it (Argarwal, 1994). This matters because assets can be an important source of social mobility and in low income developing countries land is the key asset. It is the primary source of wealth, social status, and power and provides the basis for shelter, food, and economic activities. In rural India 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). Also, access to resources such as water and to services such as sanitation and electricity, as

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## Supporting evidence

<sup>1</sup> In Cameroon, while women undertake more than 75 % of agricultural work they own less than 10 % of the land. Comparable disparities exist in other countries (UNICEF, 2006 in Jones et al., 2010). As a share of land overall – beyond agricultural holdings, women's land-holding remains even lower, at 1-2% of titled land worldwide (USAID 2003, in Jones et al., 2010).

well as the ability to make long-term investments in land and housing, are often dependent on rights to access land (Cooper, 2010a).

Limited access to and control of land can restrict livelihood opportunities; constrain coping strategies in the face of negative events and inhibit investments in human capital formation and the absence of secure property rights particularly affects poor people because land forms such a large proportion of their asset portfolio (Deininger, 2004). So, although women are central figures in producing food, they can commonly only access land through their husbands, fathers, sons or brothers. 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 and inheritance 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 the younger generations' more independent future livelihoods and economic productivity (Fafchamps and Quisumbing, 2005 in Cooper, 2010a). On the negative side, studies of poverty trajectories of households and individuals in Sub-Saharan African societies has identified that exclusion from assets inheritance exacerbates vulnerability to chronic and IGT poverty (Bird *et al.*, 2004). 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 migrate, enabling upward mobility. In Kenya, inheriting land can also act as a poverty trap (Miller, 2010 forthcoming). Outcomes depend on the relative returns to land and other assets and capabilities. And in India women's land rights can simply increase women's work burden, without much change in terms of status or decision-making authority (Nitya, 2006).

Women are rarely allowed to inherit land and women who are widowed<sup>2</sup>, orphaned, unmarried, separated, divorced<sup>3</sup> or infertile<sup>4</sup> are at a significant disadvantage. Women in polygamous unions may be even more vulnerable (Cooper, 2010a). Even women who are able to access land and other resources through other people are disadvantaged by not having their own independent rights (Bird, 2007) and women's lack of control of this key resource influences the power that they have within their household and in wider society, their ability to leverage credit to invest in agriculture or other livelihood activities and their vulnerability to downward mobility on separation, divorce or widowhood. This, in turn, has implications for women's ability to invest in their children or pass on

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### Supporting evidence

<sup>2</sup> See property grabbing, below.

<sup>3</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. It is expected that children will be left to be raised by the husband and his kin.

<sup>4</sup> A woman who had not borne any children at the time of her husband's death was also vulnerable to losing her claims to the home they had shared with her husband (Cooper, 2010a).

their wealth – with implications for the life-long incomes of the next generation. Unequal access to and control of assets affects patterns of expenditure on and investment in younger generations and the asymmetrical allocation of key assets such as education, food, land or healthcare among household members is now recognised as a critical factor in the emergence and persistence of poverty traps, as well as an important driver of IGT poverty (Soto Bermant, 2008).

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 intrahousehold allocation of resources and the intergenerational transmission of poverty have remained largely separate until now.

## 2 Why inheritance matters for the IGT of poverty

In this paper, we are particularly interested in inequality in assets due to the norms and practices surrounding inheritance and within that on women's rights to own and inherit land. This interest is 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 factors. We focus particularly on women's ownership and inheritance of assets because evidence shows that intra-household allocation of resources and assets, including land, have a substantial impact upon the well-being of both the individual woman and the wider family (Deininger 2003).

Land ownership enables women to access other assets and resources, such as credit, enabling investment and diversification (Dolan 2002) and increases their economic independence and power, which can have a positive influence on other areas of gender equality (Bird and Espey, 2010). For example, the Santhali women of South Bihar (India) – like many women - have no independent claim over property and do not inherit land from either their father or their husband. In their rural communities, land brings social, cultural and economic benefits, such as higher status, security against absolute poverty, the capacity to challenge male oppression and domestic violence, and access to credit, information and other services. This means that women without access to land, particularly widowed women who are unable to work, have a miserable existence and are often barely able to survive (Rao and Kumar, 1998).

Equitable access, control and ownership of land has instrumental value in terms of its positive impact upon 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. In addition, women's widespread alienation from land has negative consequences for their freedom and agency, their income and consumption levels. Combined, these negative consequences have immediate detrimental effects and have long run implications, contributing to inadequate child nutrition, education and health care creating irreversible damage which is costly or impossible to mitigate and increases the likelihood that the next generation will live their lives in poverty.

Pressure for land in many Sub-Saharan African countries, combined with changes to customary practice, has seen increased prevalence of asset grabbing from widows and orphaned children – where the family of the deceased claim all land, housing, productive assets and household goods, in contravention of traditional norms.

Marital legislation and practice surrounding separation and divorce mean that separated and divorced 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 of assets and, in particular, productive resources,

women's 'backstop position'<sup>5</sup> is diminished and with it their negotiating power within the marriage.<sup>6</sup> Women's limited agency locks together with more limited livelihood options (due to constrained access to or control of productive resources, income and investment capital) to restrict their capabilities.

So rural women, in particular, have few choices but to accept the default option presented by their societies; which is to accept a subjugated role within the conjugal contract and therefore the household (this being predicated on access to land and other productive inputs being available only via a husband). This has significant implications for women's freedom of choice, economic independence, development and wider rights. This is most clearly apparent for widows; unfavoured wives in polygamous households, separated and divorced women; orphaned children; and households affected by HIV/AIDS (Bird and Espey, 2010). This can influence factors as diverse as women's freedom of movement; their involvement in their communities and other public arenas; family planning; investment choices in agriculture and non-farm enterprises, housing and children's health, education and nutrition. This argument is supported by Argawal (2001, 1997, in Cooper, 2010a), who argues 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.

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

While these findings are convincing, systematic research into *how* inheritance rules and norms and its impact on poverty is rare (Cooper, 2010a). The Chronic Poverty Research Centre has attempted to fill this gap by exploring the relationship between inheritance norms and practices and the intergenerational transmission of poverty.

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### Supporting evidence

<sup>5</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, allocation of labour, leisure and services; access to and control of productive resources and distribution of income and investment). The back-stop position is the minimum that they are willing to accept in any situation before they assert their right to break the conjugal 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>6</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)

## 2.1 Understanding inheritance

To understand the transfer of property between generations we need to see them in their social and cultural context. Such property transfers interact with social institutions such as ‘marriage markets’ (Fafchamps and Quisumbing, 2005 in Cooper, 2010a) 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 (Quisumbing *et al.*, 2004 in Cooper, 2010a) however, we do not attempt to do this in this paper, focusing solely on the inheritance of assets, particularly land.

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

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

	<b>Building Blocks</b>	<b>Barriers</b>
<i>Preferences</i>	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.
<i>Returns</i>	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.
<i>Constraints</i>	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.
<i>Bargaining</i>	Differences in parents’ relative bargaining power will effect 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.

## 2.2 Inheritance and marriage

Substantial asset transfers are made in many agrarian societies at the time of marriage, allowing the young couple to establish their own family farm. These *in 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 and can strongly determine the future wealth of the couple and their family (Quisumbing, 2007).

Quisumbing applies the framework presented above in Figure 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 due to Islamic law, and partly due to women’s practice of renouncing their inheritance to 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 being often overlooked, are important. Transfers at marriage, while favouring brides, do not compensate for the asset gap between brothers and sisters in terms of inherited assets and schooling and 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 (Quisumbing, 2008, 2008a).

Quisumbing 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 (Quisumbing, 2008).

Cooper’s five country study of inheritance (Ghana, Kenya, Mozambique, Rwanda and Uganda) (2010b) has found that women often have insecure land rights because they have been married under customary practice<sup>7</sup>; their marriage is not legally registered; their rights to assets accumulated during the marriage are not recognised by statutory law or they are in a polygamous marriage and therefore inadequately protected 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

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### Supporting evidence

<sup>7</sup> In Ghana an estimated 80% of marriages are customary and 22% of women are in polygamous unions. The vast majority of these marriages are unregistered (Cooper, 2010b).



house or other shared properties, even if she had contributed toward their acquisition. In Ghana, Kenya and Uganda 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 mothers.

Laws have been drafted in Ghana, Kenya and Uganda have drafted laws to extend property rights to cohabitating partners, but they face significant opposition (Cooper, 2010b).

## 2.3 Dowry

Dowry can be seen as a form of *in vivos* gift or intergenerational transfer. However, the payment of dowry can represent a substantial drain on household resources and in a society where consumption levels are already low, dowries represent forced savings as households with daughters significantly reduce consumption to save up for dowries (Quisumbing, 2007). Focusing on south India, where dowry payments are widespread we can see that women's property rights and customary practices in south India are changing as traditional south Indian society is transformed in a process of broader socioeconomic change. The historical evidence from south India, particularly the Tamil region, suggests that women had considerably stronger customary rights to property compared their rights under traditional legal systems. Women owned property through gifts or sales. Changing social arrangements over the last few decades have had a profound impact on the status of women and an example of this has been the spread of dowry payments. This has been accompanied by women's loss of control over property, which traditionally remained hers 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).

## 2.4 Legal reform

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 for Vietnam, Laos, Indonesia, India). State development interventions seldom take into account 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 have eroded 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 the 'doi moi' reforms women farmers were given the same opportunities for access to land as men (1988, 1993). However, gaps in the legislation regarding marriage and divorce and the failure to involve women in the implementation of the reforms adversely affected women and land disputes within families have increased (Tran, 1999). In Lao PDR, lowland women's power and decision-making ability in the home contrast strongly with their lack of power outside the home. This contrast set the stage for their loss of traditional property rights as male-dominated governmental 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 (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 is 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 support to farmers.

## 2.5 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, land registration in Kenya illustrates how individualised registration can harm women and others (like children) who hold secondary land rights. Efforts in Kenya since the 1950s to encourage land title registration have led to the registration of land in the name of the male head of household without acknowledging 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). In parts of Asia similar problems have been experienced. For example, in Orissa (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 that transaction costs are high and land-grabs by the powerful are made possible, undermining poor people's rights (Mearns and Sinha, 1999). In China the reform of agricultural land management aimed to increase security of tenure but has made women's claims to land more uncertain, with a growing number of women experiencing loss of contract land when they marry (Hare, et al., 2007).<sup>8</sup>

These negative experiences are contrasted by Rwanda's inclusive approach to land titling and a pilot project, which has recruited local young people to walk boundaries with occupants of land and register everyone (including children) with an interest in the land has had a positive impact (Cooper, 2010b). Also, in Latin America between 1988–95, five countries (Brazil, Colombia, Costa Rica, Honduras, and Nicaragua) passed laws supporting joint titling of land, with women benefitting from such measures (Deere and Leone, 2003 in Jones et al., 2010). In Costa Rica, by 1992 women's share in land-titles rose from 12% to 45% and in Colombia after the law changed in 1996, jointly titled land

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### Supporting evidence

<sup>8</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.

rose from 18% to 60% (King and Mason, 2001 in Jones et al., 2010). Many African countries have also passed legislation recently which strengthens women's land rights (Jones et al., 2010).

## 2.6 Widowhood and property grabbing

Traditionally 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 materially supporting them and any children. Traditionally, widows are allowed continued use of the home and other household assets, which are held in trust until their children become adult, but they are not allowed to sell land nor retain the land if they remarry.<sup>9</sup> However, this customary practice is being eroded and widows are seeing their husband's family take control of assets without providing balancing support of any kind. Changes in practice are not even, and in some places in Kenya traditions have been maintained (Aliber and Walker, 2004 and Yamano, 2008 in Cooper, 2010a) while in others they have been eroded (Human Rights Watch, 2003 in Cooper, 2010a) and in northern Uganda, a recent study among the Langi found that 63 percent of households caring for orphans were not headed 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/AIDS, which has placed pressure on extended families (Oleke *et al.*, 2005 in Cooper, 2010a). But even in this case, the 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 are inevitably skewed by personal judgement and so a woman of 'bad character' (accused of practicing witchcraft, being sexually promiscuous, drinking alcohol or being rude or stubborn, particularly toward in-laws) is vulnerable (Henrysson & 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 were 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.*).

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### Supporting evidence

<sup>9</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 within her husband's family (Cooper, 2010b).

## 2.7 Children and inheritance

Children's land rights are generally subsumed under their mother's property rights (Cooper, 2010a)<sup>10</sup>. Issues facing children in inheritance disputes may include the need to obtain proof of identity, the role of appointed guardians for child care or trusteeship of property; gender equity 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 other members of the extended family and states that children should inherit an equal share of all assets, irrespective of gender (Cooper, 2010a).

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

## 2.8 Customary and statutory inheritance laws

When examining inheritance, policy analysts and policymakers tend to focus on the way in which 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 Sub-Saharan countries' constitutions allowing for discrimination against women in their customary and personal law (Cooper, 2010a). Commonly they place inheritance under the control of customary law, with the country's constitution excluding inheritance, 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,

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### Supporting evidence

<sup>10</sup> Some countries, such as *Botswana*, do not have specific legislation dealing with children's inheritance while other countries, such as *Lesotho*, *Malawi*, *South Africa*, and *Zambia*, have legislation that provides children with a portion of the deceased's estate in the case of intestacy (a person dies without leaving a will) (Rose, 2006 in Cooper 2010).

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* customary law also governs 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 and if there are no sons to inherit a man's land it can be claimed by the local chief to reallocate to others after the holder's death (Mutangadura, 2004 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).

Unfortunately, there is often a mismatch between the law and practice. Often, people in developing countries have poor access to information about their legal rights. This is particularly the case in rural areas. Poor people are also often unable to resolve inheritance disputes through the courts, because of the expense (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 *et al.*, 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 legitimization, 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 that 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 does not necessarily make all decisions in order to maximise the well-being of all household members (Quisumbing and Maluccio, 2003) and 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 has 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 Indonesian inheritance practice (Cammack, 2000). So, Indonesian Islamic inheritance law would give male and female relatives equal status, breaking with the Islamic norm which gives women half the male inheritance (ibid.).

### 3. Changing policy and practice in a pro-poor way

In this final section we outline shifts in policy and practice that might support poverty reduction and in particular reduce the intergenerational transmission of poverty. See also Cooper, 2010a,b,c,d,e,f,g.

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). Such changes require complementary improvements through gender sensitive legislation and frameworks, the judicial capacity to uphold the delivery of women's rights and building public awareness and understanding to 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).

#### **Box 1: Factors to secure women's ownership and inheritance of land**

**Gender-sensitive legislation and frameworks:** In Tanzania, the Women's Legal Aid Centre links land legislation, economic status and equal inheritance rights; while in Namibia, the Legal Assistance Centre works to analyse and reform cohabitation and marital property regimes;

**Judicial capacity to uphold the delivery of women's rights:** The regional trust for Women and Law in Southern Africa supports legal aid clinics in Zambia; while the Kenya Section of the International Commission of Jurists works with the judiciary to domesticate CEDAW in national jurisprudence;

**Building public awareness, understanding and application of women's rights:** Women's Voice in Malawi has conducted community sensitization and 'will-writing campaigns' in rural communities, and

An **integrated approach** is needed to safeguard the women's rights to inherit, harmonising – for example - land reform with a revision of the marriage and family code.

*Source: Strickland, 2004, Jones et al., 2010.*

Changing the law can help. For example, a study which explored inheritance patterns over three generations in India shows that recent changes to inheritance laws giving daughters equal rights in family property have significantly increased women's chances of inheriting land. However a substantial bias against daughters remains (Deininger et al. 2010). However, much policy on paper does not translate into improved outcomes for women. For example, in India it is widely understood by both the judiciary and the general public that the law<sup>11</sup> enables women to inherit land. However, half a century after the law changed most women not given shares in family property – or refuse it, when offered. This is due to a the cultural constructions of gendered entitlements on the part of both

#### **Supporting evidence**

<sup>11</sup> The Hindu Succession Act (1956) - shortly after independence.

male and female heirs as well as on the part of judges. Families also use a range of strategies to circumvent the rights of female heirs and deter women from pursuing claims. This example suggests that changes in property law alone will not have the desired effect without simultaneous and widespread changes in the labour market and constructions of kinship (Basu, 1999a)

This shows that cultural change is necessary alongside stronger measures to ensure the **implementation** of existing legal provisions, policies and programmes. This should incorporate the development of stronger monitoring and evaluation frameworks and stronger mechanisms to enforce compliance with national and international standards (Jones et al., 2010).

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