

Challenges and opportunities in inheritance rights in Ghana

Summary

- Customary law governs the majority of Ghanaians' cases of intestate (no will) inheritance due to customary governance of land and the limited reach of statutory structures.
- Land in Ghana belongs to lineage groups and therefore cannot be inherited without the approval of customary governance bodies. Policy and practical engagement with customary leaders to ensure protection of the land rights of vulnerable individuals, such as widows without children or very young orphaned children, is critical.
- Property and inheritance rights of individuals in cohabiting unions without registered marriages are not protected by statutory law in Ghana, which leaves many women's livelihoods insecure upon a union's dissolution or death of the male partner.
- Ghana's Intestate Succession Act requires revision to reflect current realities. A revised law must set out simple procedures to protect the inheritance rights of women and children.
- Decentralised access to administrative and judicial services is important to provide basic forms of support and protection for individuals to safeguard their rights, such as birth and marriage registrations, and alternative dispute resolution mechanisms.

Introduction

Inheritance is a major means for the transfer, or exclusion from the transfer, of people's accumulated physical capital. The transfer of physical assets from the parent to the child generation can provide the start-up material for the younger generation's more independent future livelihoods and economic productivity (Fafchamps and Quisumbing, 2005). However, exclusion from assets inheritance can exacerbate vulnerability to chronic poverty and the intergenerational transmission of poverty (Bird *et al.*, 2004).

In some countries, inheritance laws and customary practices can exclude individuals, and specifically women and orphaned children, from inheriting the property (including land, housing and other productive resources) that they had access to while their husbands or fathers were alive (see Cooper, 2008 and 2010).

This has been linked to economic decline and poverty traps (Bird *et al.*, 2004; Human Rights Watch, 2003; Strickland, 2004). Reforming statutory and customary systems can address gender discrimination in inheritance practices (Benschop and Sait, 2006; Bird *et al.*, 2004; Davies, 2005; Mutangadura, 2004; Rose, 2006). This is happening in many Sub-Saharan African countries, with several states recently amending their statutory laws, and rights-based organisations taking various initiatives to improve equity in inheritance practice. Nevertheless, much remains to be done to address the links between inheritance rights and practices and poverty.

This Policy Note presents findings from a five country study commissioned by the Chronic Poverty Research Centre, which explored how inheritance is practised to enhance or



prevent socio-economic equity and opportunities. Policy Notes for Uganda, Mozambique, Rwanda and Kenya, a working paper and a policy brief of key cross-cutting themes are available at: <http://www.chronicpoverty.org/publications/details/challenges-and-opportunities-in-african-societies>. Data were collected through interviews with representatives of governmental and non-governmental agencies working specifically on issues related to inheritance and property rights, as well as a review of research and policy literature.

Who is included and excluded from inheriting particular assets depends on legal property rights, as well as cultural norms concerning social roles and relationships. This Policy Note addresses how Ghanaian law currently affects property inheritance, the challenges and opportunities in existing law reform, and the issues surrounding how inheritance is governed and practised in people's lives in Ghana.

Box 1: Background on Ghana

Ghana, which has a population of 23.3 million people, gained independence from Great Britain in 1957 and has been governed democratically since 1993. Economic growth has increased steadily since 2000 with annual GDP increasing from 3.7 percent in 2000 to 7.3 percent in 2008 (Ghana Ministry of Finance and Economic Planning, 2008). Agriculture contributes about 35 percent of the country's GDP, employing approximately 55 percent of the labour force, mainly as small landholders. Other important contributors to GDP are services (37 percent of GDP, 29 percent of labour force) and industry (25 percent of GDP, 15 percent of labour force). The country's major exports include cocoa, gold, and timber. Income poverty has fallen from 52 percent in 1991/92 to 28 percent in 2007 (UNDP, 2008). Nevertheless, Ghana is presently under the Heavily Indebted Poor Country program and the Multilateral Debt Relief Initiative. The government's goal is for Ghana to be classified as a middle-income country by the year 2020. An estimated 80 percent of land in Ghana is held under customary land tenure, with traditional systems of governance (referred to as stools in northern Ghana and skins in southern Ghana) responsible for corporate land ownership and use (Sarpong, 2006).



Opportunities and challenges in policy

Several laws relating to inheritance rights in Ghana do not adequately reflect current realities. These gaps have triggered legal challenges and reforms. Ghana is a common law jurisdiction, and in recent years, judicial decisions have set precedents in what can constitute the establishment of property and inheritance rights, such as criteria for the recognition of customary marriages. These hold important implications for policy reform and implementation.

Constitution of Ghana

The Constitution of Ghana (1992) importantly states that 'A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status' (Article 17.2) and does not allow for exceptions from customary systems of governance. At the same

time, the Constitution acknowledges the customary corporate governance of land. Articles 36-8 state that 'ownership and possession of land carry a social obligation to serve the large community' and prohibits the creation of freehold interest out of stool or skin¹ land in favour of any individuals.

It is significant that a spouse's claim to part of the marital estate is enshrined as a constitutional right in Ghana. Article 22 provides that a spouse shall not be deprived of a reasonable provision out of a spouse's estate, whether or not there is a will; spouses shall have equal access to property jointly acquired during marriage; and assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage. However, there are limitations to this, as the portion to which a spouse is entitled to is subject to considerable judicial discretion. The Constitution also enjoins Parliament



to enact legislation to regulate the property rights of spouses 'as soon as practicable', but this has not yet been achieved. Hence, the pre-constitutional Intestate Succession Law of 1985 stands as the lead legislation for family inheritance rights.

Customary systems of rights and governance remain in Ghana's Constitution, but it stipulates that the National House of Chiefs will:

'undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin' (Article 272b)

and

'undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful.' (Article 272c).

Such undertakings, however, are highly contentious and have not yielded a unified codification of customary law nor an evaluation of how to eliminate those deemed 'socially harmful'. It is worthwhile to revisit the question of whether and how this initiative might be pursued in relation to the inheritance systems.

Inheritance law

The Intestate Succession Act (PNDCL² 111, 1985) remains the existing law to govern family inheritance when a property owner dies without a will. Since 1985, specific amendments have been made so that it is more consistent with recent legislation, in particular with the passage of the Intestate Succession Amendment Law (PNDCL 264).

The main opportunity provided through PNDCL 111 is the protection of the surviving spouse's property rights in intestate succession. It recognises that a surviving spouse and children face insecurity under customary law, that the nuclear family is of growing importance in the Ghanaian family system, and that a wife's role in a husband's economic activity requires legal recognition.

The major limitation of the existing law is that it only pertains to self-acquired property and not to any lineage property, which is the classification of the majority of land in Ghana. This distinction leaves no protection under the law for a spouse's or children's claims to the deceased's (lineage) land holdings. In cases where land has been inherited from the lineage, even if it was undeveloped land and later developed by the inheritor, it has been ruled that PNDCL 111 cannot apply (Woodman, 2004).

The Intestate Succession Act specifies that spouses and children are absolutely entitled to the household chattels (i.e. jewellery, clothes, furniture and household appliances, simple agricultural equipment, motor vehicles and household livestock). If the deceased's estate includes a house, the spouse and children are entitled to it and will hold it as tenants-in-common. If the deceased left multiple houses, the spouse and children are entitled to only one house. Amendments in 1991 have made it an offence punishable by fine or imprisonment to eject a spouse or child from the matrimonial home prior to the distribution of an estate, whether or not there is a will. Unlawfully depriving a person of the use of any property to which they are entitled under the statute, is also an offence. PNDCL 111 was amended following passage of the Children's Act to ensure that from the estate, 'reasonable provision' is made for any child who is a 'minor undergoing educational training'.

A significant challenge with the existing Intestate Succession Act is that it does not specifically address the reality of polygamy, despite more than one in five women aged between 15 and 49 years in Ghana living in a polygamous union (Statistical Service of Ghana, 2006).³ In cases where a deceased man has multiple wives, the courts interpret the succession law as granting the household chattels and one house to all of the deceased's wives and children as tenants-in-common. There also remains a significant restriction in the Intestate Succession Act's definition of a spouse, as it does not include cohabiting partners who are not married according to Ghana's marriage laws.

The Intestate Succession Act (Section 5) contains further complicated formulas for the division of the residue of the estate among various relatives. For instance, where the intestate is survived by a spouse and children, 3/16 goes to the surviving spouse, 9/16 to the surviving children, 1/8 to the surviving parent, and 1/8 is pursuant to customary law.

By drafting a will, an individual can provide for a distribution of estate other than that established by the Intestate Succession Act or by customary law. Written wills in Ghana are governed by the Wills Act, 1971 (Act 360). The Wills Act enables the High Court to make reasonable provision out of the estate for a spouse, father, mother, or child under 18 years if the High Court finds that the will does not contain reasonable provision for their maintenance, and that this neglect causes hardship.



Marriage law

Determining which law should be used in property and inheritance rights for spouses depends on the type of marriage: marriage under the Marriage Ordinance, which must be monogamous; marriage under the Marriage of Mohammedans Ordinance (for Muslims), which may be polygamous; and customary marriage, which may be polygamous. It has been estimated that 80 percent of marriages are customary in Ghana (Fenrich and Higgins, 2002).

The Intestate Succession Act applies to registered marriages, however, customary marriages have rarely been registered in Ghana. The amended Customary Marriage and Divorce (Registration) Law of 1985 (PNDCL 112) provides that only one person in a customary marriage needs to apply to register a marriage and that it can be registered at any time at the Registrar of Marriages office in the district in which the marriage took place. Registering a marriage does not restrict a customary marriage to monogamy although this is widely misunderstood in Ghana and regarded as a deterrent.

The amended PNDCL 112, however, is not straightforward to interpret. It states that the Intestate Succession Act can be applied to customary marriages that have not been registered, but 'where a court or tribunal is satisfied by oral or documentary evidence before it that a customary law marriage had been validly contracted between a deceased and surviving spouse.' This can result in disputes between the parents of a deceased individual and the individual(s) who claim to have been customarily married to the deceased. For instance, the parents of the deceased may claim that a woman claiming to be a wife under customary law is not a valid wife but a girlfriend. A judge must then try to determine whether the relationship constituted a customary marriage, and evidence is often dependent on witnesses' testimonies. For example, in a High Court case in 1992 (*Essellie v. Quarcoo*) the judge distinguished between two forms of valid customary marriage: in the first, the necessary customary rites and ceremonies are fully performed; in the second, the customary rites have not been performed but the parties have consented to live in public acknowledgment as man and wife, with consent from their families. Moreover, family consent need not be actual or expressed, but could be 'implied from the conduct, e.g., acknowledging the parties as man and wife or accepting drinks from the man or his family' (Fenrich and Higgins, 2002:

310). The case was affirmed by the Court of Appeal and is legally binding in Ghana; however, it has been applied inconsistently by lower courts. There is no legal recognition of cohabiting unions that do not meet the criteria of having earned the partners' families' consent and acknowledgment.

There is currently no provision in Ghana for joint ownership of property by individuals who are not part of the same lineage, including legally married individuals. Husbands and wives retain separately any property they own prior to the marriage and own separately, as individuals, any property acquired during marriage. Since 2002, the Ghanaian government has been developing a law to govern the property rights of spouses during, and upon dissolution of, marriages. The current draft of this law is discussed below under the section concerning a Law Reform Agenda.

Land laws

While the Constitution recognises that customary law and corporate trust is the basis for land tenure in Ghana, land rights and tenure systems remain subject to legal pluralism. Provisions in the Constitution, customary governance systems as well as several other pieces of statutory legislation may all be applicable. As such, there are many institutional and administrative bodies, each with different mandates for land.

Among some of the most pertinent statutory laws is the Land Title Registration Law 1986 (PNDCL, 152) which provides different types of tenure security to various types of landholders by issuing land titles for freehold, usufruct, lease and tenancy agreements. Under this law, land must be registered before any transfer can occur, and because the law allows for co-registration of land (for example, between a husband and wife), a land transfer requires the consent of all those registered. The Head of Family Accountability Law (1985) protects family property from being sold without other members being informed, giving consent or benefiting from the proceeds. If a family member who has a beneficial right to such property deems that the family head is mismanaging the property, they may file a claim against the family head in Ghana's High Court after first seeking redress at the family level. This law is a potential avenue for family members to safeguard their inheritance rights to family property, although it can be presumed to require significant social fissures.



Law reform agenda

Revision of the Intestate Succession Act

In 2008, a draft revision of the Intestate Succession Bill and an accompanying Memorandum was issued by the Attorney-General. The draft seeks to give a larger portion of the estate to the spouse and children, and acknowledges that the fractional distribution of the estate has been difficult to implement, that the lack of provision for polygamous marriages in the 1985 Bill creates a 'problem', and that the law should contain special provisions for spouses' jointly acquired property, as well as for dependent parents and children of the deceased who are still in school.

However, while there are revisions to the current procedure of proportionally dividing an estate, its percentage-based replacement remains complicated: a surviving spouse is entitled to 35 percent of an estate, a child (or children) 40 percent, a surviving parent(s) 15 percent and 10 percent is to be devolved in accordance with customary law. For polygamous marriages, surviving spouses are entitled to equal shares of 50 percent of the estate, the children 40 percent, five percent to the parent(s) and five percent to customary devolution. If a surviving spouse made a contribution to the acquisition of the matrimonial home, it is proposed that she be entitled to more than a 50 percent share of the matrimonial home. There are other rules included when there is no spouse and/or no children, and/or no surviving parent. There are also instructions that school fees must be provided for any children and dependants of the deceased who are still in school, before the deceased's estate is distributed.

These revisions reflect concerns among women's and children's rights organisations that the portions of spouses' property inheritance should be separate from that of the children in the distribution of the estate (i.e. all spouses and children should not be expected to share a portion of the inheritance, such as a house). But even so, this is still inadequate protection of wives in polygamous marriages. It is recommended that there should be protection for the rights of a wife and/or a child to inherit and continue to reside in the house (with its chattels) where a wife and/or child lived with the deceased. As well, further protection should be added to legislation for rights of individual wives to property they acquired, or contributed to the acquisition of, during the period of marriage. For example, the law could be amended to explicitly exclude a spouse's self-acquired property from the intestate's estate. To further protect the

property rights of women in polygamous marriages, women's groups recommend that the distribution of property upon a husband's death should take into consideration the duration of marriage, and provide greater property rights for those wives who have been in the marriage longer. As well, the property of a deceased wife in a polygamous union should be distributed equally among the husband and co-wives, rather than only inherited by the husband.

Nonetheless, there are important innovations in the draft bill, including recognising what constitutes 'contribution' to acquisition of property during marriage. A 'contribution' may include payment of money for acquisition or maintenance of the home, care of household members, and/or performance of household duties.⁴ This follows on judicial innovation in previous court cases concerning the distribution of assets upon marriage dissolution or death⁵, and provides increased protection for women's rights to marital property. Yet, who counts as a spouse under the Intestate Succession Act remains pinned to definitions of marriage set in other legislation as well as in courts.

Significant debate on the proposed draft may be expected between Ghanaian civil society and politicians, as much of the Act's current and proposed approaches run contrary to customary systems that privilege male and lineage property ownership and governance. There is also resistance to the property distribution laws for Muslims, as it contrasts with the laws set in the Qur'an. Under the Qur'an, a man will inherit 1/2 of the estate of his wife, upon her death, if she does not have children. If she has children, her husband will inherit 1/4 of her estate. In each case, a woman receives only half of what a man would receive under the same circumstances.

Draft law on property rights in marriage

There is no legislation to regulate the property rights of spouses during and at dissolution of marriage, despite the fact that the Constitution requires the soonest possible enactment of it. As a result, women's property rights in and out of marriage are unclear, and their access to property is restricted.

The draft law on property rights in marriage contains the first legal recognition of cohabitating unions and the property rights of people living in cohabitating unions in Ghana. It states that if a man and woman have been living together publicly for five years, the property rights of married spouses is presumed. Fierce opposition to this, however, is expected. Specifically, religious leaders publicly



oppose cohabitation as equivalent to marriage. The Christian Council of Ghana, for example, is vocal in their objection, and traditional rulers, such as the Queen Mothers of the Ashante, have voiced their opposition as they prefer to maintain customary rites of marriage, over which they preside.

Registration of marriages is importantly linked to property rights upon death of a spouse, or dissolution

of marriage. As such, improving accessibility is vital. It has been recommended that the Customary Marriage and Divorce (Registration) Law be amended to allow District Assemblies to delegate marriage registration functions to an appropriate local body or official (e.g. assemblymen, chiefs, queen mothers, local attorneys, pastors, head-teachers of local schools).⁶

Opportunities and challenges in practice

While statutory laws exist, they do not always, nor in most cases, set the standards for inheritance practices in Ghana. There are two main reasons for this: first, customary systems of governance remain more prevalent in Ghanaian communities, particularly among rural areas and primarily concerning land rights; and second, access to statutory laws, which includes knowledge of the law, remains restricted for many Ghanaians. This section reviews important aspects related to these two issues, starting with access to statutory law and then addressing customary governance, from the perspective of current and potential effects on inheritance practices.

Access to the law

Lack of awareness, illiteracy, and time and financial costs are most often cited as the key obstacles to people in accessing their rights as laid out in statutory law.

How well Ghanaians understand their laws, and deem them appropriate, is not systematically monitored or evaluated. However, a study conducted in the Volta region of Ghana found that the Intestate Succession Law is the best-known legislation⁷ although awareness levels are still low (Duncan and Brants, 2004). Among 300 respondents, a small percentage of men (22 percent) and women (13 percent) had either general or specific knowledge of the law, but a larger number (49 percent female, and 36 percent male) had no knowledge of the law. Almost two-thirds of respondents in the study were also unaware of any cases where the Intestate Succession Law had been applied in the absence of a will; rather, traditional inheritance practices had been used.

Decentralisation of offices and procedures is a deliberate strategy for improving access to administrative and legal services among Ghanaians. Magistrate courts have been established in every

district to rule on the distribution of estates (higher value estates are referred to circuit courts that serve clusters of districts). To support these courts, a programme by the Ghana School of Law trains junior magistrates (or lay magistrates, i.e. without law degrees) to serve as rural magistrates. There is also support given to Alternative Dispute Resolution (ADR) to facilitate timely access to the arbitration of disputes and avoid congestion that results in long delays in court hearings and decisions. This includes public endorsement of the ADR by the Ghanaian Chief Justice and other High Court Justices, a National Legal Aid Program which applies ADR, and the Ghana Association of Chartered Mediators and Arbitrators' provision of professionalised oversight of ADR. To support ADR processes, judges work with ADR mediators twice a year to endorse or rule on ADR resolutions to prevent later recourse to the courts. In attempts to realise better consistency among governance bodies, traditional rulers are also sometimes trained and targeted for positions as ADR mediators.

However, despite progress in decentralisation, challenges in access persist.⁸ There are time lags in processing legal documents and legal aid practitioners describe that the language used in court is often not well understood by claimants. One of the most common complaints is that resources are inadequate, especially among decentralised government and non-governmental legal aid services, which include ADR options. The existing National Legal Aid Program is reportedly very under-resourced, while other legal aid programmes, for example those run by WILDAF, LAWA, FIDA and the Arc Foundation, are dependent on international donors' financial support. Recent initiatives have plugged holes but have not achieved a comprehensive response. For example, the government introduced a one year paralegal service programme for university students but this has a high turnover, with students returning to their



studies after just one year of service. NGO-run legal aid programmes currently operate with very large scope in the country, but are not accessible in every region. Moreover, challenges include the reliance on volunteer staff and lack of basic resources.

Customary governance

The enduring social significance of customary systems of governance in Ghana is another important reason why statutory law has not been paramount. Customary rulers such as kings, chiefs and queen mothers retain their influence, especially in rural areas of Ghana, and particularly over issues related to land and family (i.e. inheritance and marriage). Customary rulers are chosen through succession, and not necessarily based on formal education or skills. In many cases, they govern according to tradition and socio-political interests, rather than statutory law.

Local leaders are often the first to be approached when claims or disputes arise. Yet, this does not mean that access is easy or equitable. For example, there are often fines to both parties involved, and the party who pays in full can be more favourably heard. This works to the disadvantage of women and children in situations where they have less access to money and other liquid assets.

There are important differences between customary groups in Ghana. Patrilineal communities (e.g. including the Ewe, Ga, Dangbe and Krobo in Ghana) derive the right to inherit property (including land use rights since land is not inherited *per se*) from membership in the family through one's father. In the past, daughters often had no property inheritance rights, and today, male children are still given preference over female children. Widowed women are allowed to stay in the matrimonial home; however, while there is no published systematic evidence of land grabbing practices in Ghana, it is reported that women have been evicted by their in-laws.

In matrilineal communities (e.g. the Fanti, Akyem and Ashanti in Ghana), the right to inherit property is derived from membership in the family of one's mother (e.g. property is inherited by children from their mothers' brothers). By matrilineal customs, wives and children of a deceased man are not considered members of the lineage and are therefore not entitled to inherit any specific portions of the deceased man's estate even though they may have certain limited rights to reside in and maintain the matrimonial home.⁹ In matrilineal systems, women may benefit as lineage

members of a deceased man (e.g. wives of a man's sister's sons), but not as a man's wives or children. Within customary governance systems, stability of marriages and good relations with male relatives are critical factors in maintaining women's land and inheritance rights (Sarpong, 2006). However, while a married woman may gain access to land through the allocation of her husband, she may lose this access upon divorce or the death of her husband.

Customary practices strongly determine an individual's access to land and control over land, including inheritance of land. In a study in Ghana's Volta region (WILDAF, 2000 cited in Duncan and Brants, 2004), 57 percent of 643 men and women obtained access to land through inheritance or as gifts from parents or grandparents (mainly men inherited from fathers while a smaller number, mainly women, inherited from mothers). Access to land was also obtained through sharecropping agreements, from lineage or stools, from spouses' allocated land (mainly for women), and a very small number (four of 643 people) bought land. Most men in the study and about half of the women considered the customary system governing property rights to be good. Most men and women also agreed that men and women had equal access to land in their communities, although focus group discussions revealed that women's rights to land are secondary; women's rights to land are accessed through men's rights. More females than males in the study indicated that the system could be improved and needed to be improved because it favoured men over women and children (ibid).

Further study in the Volta region (Duncan and Brants, 2004) found that there are differences in access rights to land, not only between men and women, but also between different categories of women, for example, between widows with children, widows without children, daughters, stepdaughters and adopted daughters, women in cohabitating relationships and women with physical disabilities. Out of 296 respondents, five percent of widows with children and 43 percent of widows without children had no access to their late husbands' land. Unmarried biological daughters often maintained full access to their father's land after his death, but step- and adopted daughters did not have the same secure rights.¹⁰ Very few women were allowed to keep their lineage land after marriage, although it was not unusual for divorced women and widows to return to their own lineages where lineage or household heads may or may not decide to provide access to land.



In different regions of Ghana, for instance where cocoa production is practised, there are indications of changing land relations among men, women and children (La Ferrara, 2007; Quisumbing *et al.*, 2004). Increasingly, men and women are negotiating exchanges of farming labour in cocoa production for rights in land. Under the process, which is called 'gifting,' there is evidence of married women being given land from their husbands in exchange for their work. However, such gifts can only be made permanent from self-acquired and not from lineage land (Duncan, 2010).

Land titling and registration

The majority of land registration is done in urban centres, where registration offices are located. There are significant gender disparities in the registration of land. A study of titles registered between 1989 and 2002 through Accra's Land Title Registry showed that nearly two-thirds were by sole males and a quarter by sole females; only one in ten were joint entries (GTZ, 2003). In many cases, women allowed property acquired by them solely or jointly with their husbands to be registered in the names of their husbands (GTZ, 2005). It is assumed that the proportion of land registered to women or jointly, is lower among rural populations than urban populations. A GTZ 2005 report concluded that very few customary interest holders or sharecroppers and tenants in the country have applied for registration of land occupied by them.

The FAO Volta study found that very few (six of 296 respondents) had registered household farm plots (Duncan and Brants, 2004). Most did not because they either did not know how to register, lacked interest in registering land, or were unable to register the land because it did not belong to them. Traditional land demarcation practices, such as the planting of permanent trees or the construction of concrete poles on the borders of one's land, were considered sufficient for securing their property rights. Some people fear that the registration processes could result in re-demarcations.

Secondary rights to land, such as rights to collect fruits, firewood and other forest products, can be 'swallowed' by the broader categories of land rights recognised in Ghana's land titling system.¹¹ To be more comprehensive and accountable to multiple uses and users of lands, making an inventory of all recognised arrangements and interests is recommended.¹² Improving understanding of, and access to registration, through employing more participatory methods of land demarcation and simplifying written records, are also recommended. For example, a pilot project by GTZ used oral testimonies to produce written documentation of land transactions under customary law, including grants, customary law freeholds and other contractual arrangements (Delville *et al.*, 2001). Such efforts to increase transparency and participation in processes may demystify the registration process for individuals and set secure foundations for future inheritance claims.

Agenda for practical change

Land in Ghana is subject to customary systems of governance, which means that the inheritance of land and associated properties (e.g. buildings, fencing, crops) must be considered in the context of customary practices. It is critical to engage with customary leaders to improve equity and consistency in recognition of inheritance rights. This can be done through engaging directly with customary leaders or through supporting broadly based public engagement with the relevant issues.

Providing alternative avenues for dispute resolution is equally important. Ensuring that there is access to locally relevant mediation of inheritance disputes, as well as appropriate legal advice can help protect the rights of the most vulnerable, including widowed women. The recent passage of the Domestic Violence Bill in Ghana has seen some progress in

criminalising economic violations, training police officers to understand and respond to such situations, and setting up Domestic Violence and Abuse Units in local police stations. It is important that local police can provide public guidance on inheritance rights, as this can ensure the rapid and local protection of people's property rights. Additionally, extending paralegal services can further disseminate ideas on standards of equity in inheritance and property disputes. Particularly targeting local and customary leaders for such roles may prove effective in guiding more systemic change. Other opportunities to improve the protection of inheritance rights to land and other properties include increasing birth and marriage registrations, which may strengthen claims to property rights when there are disputes within families. Making the registration of customary marriages easier by



improving physical access via decentralisation and delegation to local bodies and improving efficiency in application and waiting procedures are important areas for improvement.

Presently, there is a noticeable lack of engagement of Ghanaian civil society with land rights, and even less focus on women and land rights.¹³ While women's rights NGOs in Ghana have proven effective in mobilising advocacy and public engagement, particularly in controversial social issues such as domestic violence, they have yet to systematically

engage in women's economic, property and inheritance rights.

To date, inequitable inheritance practices have not been perceived as a systemic problem in Ghana and disinheritance has not been publicly acknowledged as linked with poverty. Thorough research on inheritance practices and outcomes in Ghana could address whether this perception is accurate and whether there is cause for concern at a systemic level regarding inheritance practices.

This policy note was written by Elizabeth Cooper

Notes

- 1 Traditional systems of governance are referred to as *stools* in northern Ghana and *skins* in southern Ghana.
- 2 PNDC stands for Provisional National Defence Council Law. The PNDC was the government of Ghana following a coup d'état in 1981 until 1993.
- 3 Nationally, 22 percent of Ghanaian women are in polygamous unions. In the country's three northern regions, approximately 40 percent of women are in polygamous unions (Statistical Service of Ghana *et al.*, 2006).
- 4 Sarpong (2006) notes that it is often a customary obligation of marriage for wives to help their husbands with their farm labour, which, when combined with women's other domestic work, leaves little time for women to develop their own farms.
- 5 As with recognition of evidence of customary marriages, judicial determinations concerning what constitutes rights to property acquired during customary or statutory marriages are dependent on individual judges' perspectives.
- 6 There is a precedent for such localised registration in birth registrations as governed by Ghana's Children's Act.
- 7 Respondents were asked to share their knowledge of relevant statutory laws affecting land rights, including the Intestate Succession Law, the Constitution of Ghana, the Land Title Registration Law, the Head of Family Accountability Law and the Administration of Estates (Amendment) Law.
- 8 By way of comparison, while birth registration has been decentralised and promoted throughout Ghana, according to the Ghana Multiple Indicator Cluster Survey of 2006, only 51 percent of the births of children under five years of age have been registered. There are no significant variations in birth registration across sex of children; however, there is a significant discrepancy between urban and rural, at 69 and 42 percent registration respectively. Only 41 percent of births to mothers with no education are registered. Asked to identify reasons for not registering births, respondents identify cost of registration, travel distance, and lack of knowledge as main reasons. Cost is particularly dominant in urban areas, whereas cost, travel distance and lack of knowledge play equally significant roles in rural areas.
- 9 Two studies among the matrilineal Akan society of Ghana find that while the customary inheritance system is organised to see a man's land automatically transfer to his sister's children upon his death, many people are resisting this by making *inter vivos* transfers to their own children and wives, thereby reducing the property left to be inherited by nephews upon the uncle's death (La Ferrara, 2007; Quisumbing, *et al.*, 2004). Such land transfers however can only be made of self-acquired land, and not lineage land.
- 10 63 percent of the respondents (n=187) were of the impression that biological daughters maintained full access to their father's land after his death, compared to a mere nine percent for adopted daughters and seven percent for stepdaughters.
- 11 There are significant regional disparities concerning access to land: the percentage of female landholders ranges from two percent in the north and 50 percent in the Ashanti region (CEDAW, 2005).
- 12 Similar lack or recognition of secondary uses of land has been present in government compensation schemes for land expropriations (for example, for mining interests). In such cases, compensation has been paid to chiefs and/or heads of families, but not directly to the end users of the expropriated lands.
- 13 In 2001 Land for Life was the only registered land NGO in Ghana but recent initiatives spurred by CARE International have encouraged other NGOs to focus on land issues. In 2009 the Civil Society Coalition on Land (CICOL) was launched, funded by CARE.

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