

Safeguarding inheritance: challenges and opportunities in African societies

Key points

- Access to assets can be gained or lost through inheritance. Written wills are uncommon in Sub-Saharan African societies. Property inheritance is commonly based on local customary principles and interpersonal negotiations.
- Women are vulnerable to exclusion from inheriting property, particularly if they are cohabitating rather than married and childless (or without sons). Orphaned children's inheritance can be vulnerable to expropriation by elder family members.
- It is not enough to pass or amend a law on succession. Safeguarding inheritance rights requires systematic engagement with statutory laws, customary governance, local attitudes and behaviours as well as decentralised administrative and enforcement capacities.
- Local leaders are important – they resolve most inheritance claims and disputes, hence, efforts to ensure fair inheritance practices and outcomes should focus on them. Partnerships with locally active groups, such as with HIV/AIDS counsellors and farming associations, can be effective in encouraging proactive inheritance planning.
- The development, debate and passage of statutory law provide important opportunities for raising public consideration of inheritance principles and clear guidelines for action to administrative, judicial and enforcement offices. Monitoring and reporting of decentralised administrative procedures and outcomes is important in holding governments' policies to account.
- Building commitment amongst local level officers (e.g. police, land titling offices) to deliver social change in line with legal principles will take time and effort.

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 transiently poor, who move in and out of poverty, or only occasionally fall below the poverty line.

Inheritance is a social and economic issue

Inheritance is a major means for the transfer, or exclusion from the transfer, of people's accumulated capital. The transfer of physical assets from the parent generation to the child generation can provide the start-up material for the younger generation's more independent 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 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 Cooper, 2010). This has been linked to economic decline and poverty traps (Bird



et al., 2004; Human Right 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 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 Brief presents findings from a five country study commissioned by the Chronic Poverty Research Centre which explored how inheritance is practiced to enhance or prevent socio-economic equity and opportunities. The study focused on Ghana, Kenya, Mozambique, Rwanda and Uganda. Individual policy notes for each country and a combined working paper of key cross-cutting themes are available at the CPRC website: <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 review of research and policy literature.

Who is included or excluded from inheriting particular assets depends on legal property rights as well as cultural norms concerning social roles and relationships. Consequently, it makes sense to look at how inheritance is governed and practiced in people's lives, as this allows us to identify particular opportunities and challenges for property inheritance.

Women's unequal inheritance

Women in African societies face inequalities in property ownership and inheritance rights which must be addressed systematically. Statutory and customary laws combine, overlap and sometimes contradict each other in a problematic way. It is important to assess how legislation and its administration works in terms of women's inheritance rights and how changes in social practice might protect or damage people's livelihoods.

It is not enough to only address laws on succession. Other statutory laws and customary conventions also affect inheritance including

rights and practices surrounding marriage and cohabitation, divorce and separation, birth, parenting and registration plus civil procedures (justice and administration) and land access and tenure rights. For instance, under many countries' laws, it is often only as a 'wife' that a woman can claim inheritance of her deceased spouse's estate yet the majority of women in this study's five case study countries live in either customary marriages or consensual cohabiting unions, neither of which are registered legally as marriages. In Ghana, courts have recognised the gap between marriage registration law and reality, and so other criteria are used to recognise unregistered customary marriages as equal to legal marriages. However, Ghana's Constitution states that land is governed by customary law which usually dictates that it cannot be inherited outside of the lineage. Therefore, it is up to local customary systems of governance to establish whether a woman is a legitimate wife and consequently a member of the lineage with rights of access to lineage land. Such judgments are often made on a case-by-case basis thereby demonstrating flexible, subjective and inconsistent systems of governance over inheritance rights.

The vulnerable property rights of people in cohabiting and polygamous unions must be addressed. In Ghana, Kenya, Mozambique, Rwanda and Uganda, there are heated policy debates surrounding property rights, particularly those of women, even more so where customary marriages are not easily registered or recognised by statutory law. These must be addressed through new statutory law as courts in Ghana, Kenya and Uganda, and land titling exercises in Rwanda, are setting precedents without adequate inheritance laws to guide them. Legal reform needs to recognise consensual unions and address the following critical issues:

- How long should the partners have lived together before their union is legally recognised?
- Are there other criteria that establish the legitimacy of such a union?
- What kinds of contribution to a shared domestic livelihood establish property rights?

A significant challenge for this exercise in policy reform will be the opposition to cohabiting, unmarried unions from influential religious groups and customary rulers. This opposition requires a broader recognition and engagement of 'stakeholders'.



An agenda for public policy

Legal reform can motivate and support progressive change. It can provide a foundation for action by indicating both the direction and content of changes in practice. Many NGO personnel in the country studies describe how domestic processes of developing, debating and passing new laws can influence attitudes and behaviour. Laws can also be used to protect rights as they outlines what should be enforced and provide important guidance for any 'watchdog' roles. In Ghana, for example, child maintenance laws help government and NGO actors explain to separated parents (usually absent fathers) what their obligations are, and the courts or arbitration can be used to ensure that particular standards of child support are met.

Lawmaking processes can also raise public awareness which is a foundation for influencing practice. For instance:

- In Ghana, the drafting and debate of the Domestic Violence Bill provided opportunities for government and non-government sectors to raise public awareness on issues like women's access to justice as well as to question what constitutes economic violation. Galvanising public opinion is crucial for the successful implementation of practical changes, such as, for example, the use of the Women and Juvenile Units in local police stations and the receptivity of police officers to gender sensitivity training. It is also important in shifting ideas – for example, about the challenges and opportunities women experience in Ghanaian society. When policy is developed without public scrutiny and discussion, opportunities for raising awareness and affecting practice change are missed.
- In Uganda, as a result of the media's coverage of both a parliamentary review and NGO campaigns, the issue of whether land transactions must require spousal consent was debated in public. Some observers believe that as a result, more women have been asked for their consent.
- In Mozambique, media stories of women being dispossessed of property after years of living in a cohabitating but unmarried union have increased public concern. This may build political will to change the law to recognise the property rights of cohabitating partners.
- As well, attention and pressure from international media influences governments in Ghana, Kenya, Mozambique, Rwanda and Uganda to

change their laws and practice. Domestic NGOs can exert influence through publishing 'shadow reports', for example, which publicly monitor governments' progress on policy initiatives.

Policy reform must be followed by public education and capacity building. The proliferation of new laws and amendments means that money must be spent on public education and on focused capacity building among the judiciary, police, other administrative bodies and local leaders.

Local implementation matters

It is important to find practical ways to ensure that the most vulnerable members of society are not disinherited. People with land or family disputes, including disputes over inheritance will often go first to senior members of their family or to customary leaders to seek a resolution because they are socially legitimate and easy to access. Improving the accessibility and social legitimacy of local tribunals, including the involvement of local customary leaders, are worthwhile initiatives to ensure transparency and consistency in resolving inheritance claims. This requires providing adequate resources for decentralised access points, simplifying procedures, checking corruption and monitoring outcomes.

Proactive initiatives can yield important benefits for inheritance claims. Women need to be able to ensure that their rights are firmly recognised before crisis hits in the form of divorce or their husband's death. This security may be enhanced by registering marriages, children and rights to land and other assets. This can also be made easier by providing a decentralised infrastructure. For instance, automatic birth registration can help secure inheritance rights by providing children with evidence of their parentage. Allowing traditional marriages to be registered locally or by one party to a marriage, as allowed in Ghana, may increase the prevalence of registration which safeguards spousal inheritance rights.

Informal and proactive arbitration may reduce inheritance disputes:

- In Rwanda, participatory processes of determining land boundaries, recording land rights and resolving land claim disputes lay the groundwork for preventing legal disputes.
- HIV/AIDS home-based care and peer support provide opportunities for preparing wills or other mechanisms for safeguarding property and inheritance rights.



- Farming associations can support rural public education and capacity building
- Organisation of 'community watch groups' that connect widowed women and orphaned children with local elders and chiefs – as initiated in some areas of Kenya – may establish important alliances to protect inheritance rights.
- In Ghana, Community Reconciliation Centres have been established by non-governmental and governmental agencies working together. They aim to resolve local disputes using Alternative Dispute Resolution (ADR). Regular mobile courts are also organised for court judges to rule on ADR decisions to permanently resolve cases and prevent future recourse to the courts.
- In Uganda, Land Rights Information Centres were established in rural centres so that paralegals could provide local legal and administrative services. Linking paralegals with local leaders can bridge statutory-customary law divides and build both awareness and capacity in upholding the law.
- In Mozambique, NGOs have targeted Community Courts for legal training and have placed paralegals with these tribunals as 'consultants'. The government is seeking to bring Community Courts within the formal legal framework to prevent inconsistencies between statutory and customary rulings.

Equitable implementation of inheritance systems is more likely where all levels of government are held to account through transparent monitoring and reporting of procedures and outcomes. For instance, participatory exercises can register all of the people who have property access or interests, including minor children, so that these individuals can be considered in potential future transfers or disputes. Reviews of land transfers can then investigate whether or not the consent of spouses and dependents was obtained. Local tribunals' decisions can be analysed in terms of gender equity while local offices' procedures can be spot-tested for timeliness and corruption-free due process.

Due to the family-based character of property inheritance, it is rare for inheritance violations to be conceptualised as symptomatic of systemic discrimination and inequality. Yet inheritance outcomes are products of systems, and the security of women's and children's inheritance rights is undermined as a result of the confusion arising from the interplay of different systems of thought and action affecting social roles and property rights. Safeguarding inheritance for the most vulnerable to dispossession requires systemic implementation from statutory legal reform to

decentralised accountability mechanisms, including partnerships with customary governance systems, and ensuring the capacities of locally accessible judicial, administrative and enforcement services. These initiatives also warrant systemic monitoring of procedures and outcomes to ensure timely and equitable protection of people's access to heritable assets.

Policy Recommendations

The content presented in this policy brief provides several insights for policy and practice. The recommendations below draw some specific actions that may be targeted to safeguard inheritance among the potentially most vulnerable members of a society.

- **Laws can set clear guidelines with prohibitions and provisions to safeguard the rights to assets that individuals had access to while a deceased member of family was still alive.**

Inheritance laws need to prohibit basic violations of people's rights to inherit, whether inheritance occurs through statutory or customary procedures of administration. For example, it ought to be a punishable offence to eject a widowed spouse or orphaned child from the matrimonial home prior to the legitimate distribution of the estate. A prohibition against depriving a person of the use of any property to which the person has legitimately inherited (i.e. *post hoc* disinheritance) should also be included.

Inheritance (and divorce) laws ought to recognise the rights to property of people who contributed (financially and in kind) to their accumulation as well as to those who accessed or depended on this property during the lifetime of the individual.

Inheritance laws should require that 'reasonable provision' is made to meet the deceased children's costs of education prior to division of the rest of the estate. Laws governing land sales can prohibit transactions that have not gained the consent of all interested parties, including dependent children.

- **Participatory land titling exercises, such as initiated in Rwanda, can safeguard future inheritance claims.**

Including and documenting all people with an interest in a property may proactively resolve potential future inheritance disputes and makes



provision for the future inheritance of people's different rights to land.

- **Safeguarding inheritance rights can be done proactively through decentralised actors.**

Local leaders and local outreach organisations are important partners in advising people on the risks and opportunities related to inheritance: chiefs, schools, women's organisations, local farming associations and HIV/AIDS counsellors are some examples of networks that can raise awareness and interest in inheritance opportunities and challenges. Disseminating advice through public media is also important, for example: how to write a legitimate will; how to register a customary marriage; how to register the birth of a child; how to jointly register land; how to conduct legitimate *inter vivos* property transfers (e.g. gifting in Ghana).

- **Systematic review of local inheritance decisions can encourage a culture of accountability.**

Administrative procedures can be put in place to document and monitor the devolution of estates. Given that the majority of inheritance claims and disputes are resolved at local levels, local-level administrative bodies, such as chiefs or local councils, are best placed to prepare documentation within an appropriate period following a death. Reports listing identities of all interested parties, including the arbiter and the main properties devolved, could be checked in systematic or spot-check reviews to monitor and evaluate inheritance outcomes (e.g. whether widowed spouses and orphaned children of the deceased had been included).

This CPRC Policy Brief was written by Elizabeth Cooper

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Further reading

The resources below are available at <http://www.chronicpoverty.org/publications/details/challenges-and-opportunities-in-african-societies>.

- Cooper, C. (2010). 'Challenges and opportunities in inheritance rights in Ghana'. CPRC Policy Note.
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