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## Inheritance practices and the intergenerational transmission of poverty in Africa

A literature review and annotated bibliography

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### What is Chronic Poverty?

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

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

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



## Abstract

This paper is comprised of a literature review and an annotated bibliography of past and current empirical and theoretical scholarship and policy analysis concerning the *de jure* and *de facto* rules and norms of inheritance practices in African societies, particularly with regard to physical assets, and their effects on the intergenerational transmission (IGT) of poverty. The paper has two complementary sections: 1) a literature review which provides a critical overview of the key questions, methods and findings of investigations concerning inheritance and poverty in African societies; and 2) an annotated bibliography, which lists and summarises relevant works on the same issues.

The literature review and annotated bibliography present recent scholarship which has contributed to the case for investigating the links between inheritance systems and IGT poverty. These foundational conceptual works address how inheritance systems may implicate poverty processes in African societies, the significance of physical assets to chronic and IGT poverty, and theoretical models of the correlations between inheritance structures and economic status that have been developed in non-African contexts. Studies of so-called 'traditional' inheritance practices among particular societies in Africa are then reviewed. Following this is a summary of research that discusses the legal and socio-political contexts within which inheritance systems in African countries operate, and attends to analysis of how and why inheritance rules and practices have changed. The last two sections of the literature review and annotated bibliography profile recent scholarship that explicitly examines inheritance rules and practices for their poverty implications in African societies. Central to questions of inheritance inclusion and exclusion are property rights, and the bulk of this body of poverty studies literature addresses women's exclusion from land ownership in Africa. As such, attention is paid to work that analyses gender equity in property and inheritance rights as well as opportunities for legal reform in particular African countries. The final chapters of the literature review and bibliography reflect the focus of recent poverty studies on identifying categories of people who are particularly vulnerable to chronic poverty, and specifically groups whose vulnerability is exacerbated by their exclusion or inequality in inheritance systems. The reviews account for those studies that focus on the poverty effects of exclusionary inheritance rules and practices for widowed women, children and households affected by HIV/AIDS.

**Keywords:** inheritance, intergenerational transmission of poverty, assets, Africa



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# 1 Literature Review

## 1.1 Background

This literature review has been undertaken to contribute to the third phase (2005-2010) of work of the Chronic Poverty Research Centre (CPRC), which is structured around three distinct themes that are strategically sequenced and integrated: thematic research, policy analysis, and policy engagement. In particular, this review is part of the foundation research theme *Empirical Methods for Studying Intergenerational Transmissions of Poverty (IGT)*. In providing an overview of the various inheritance practices of African societies and their effects on the intergenerational transmission of poverty, this synthesis of the literature will contribute to research being designed by the CPRC into inequality and assets and the intergenerational transmission of poverty in Africa.

## 1.2 Introduction

The transfer (or non-transfer) of different types of capital is understood as a crucial determinant of the transmission of wealth and poverty across generations. Recent analyses of chronic and intergenerational poverty have identified the significance of both private and public transfers, or lack of transfers, of material assets, physical health, psychological health, and social capital (Bird, 2007; Moore, 2001). Household and lifecourse poverty analyses have specifically highlighted the importance of different individuals' access to physical assets for their socio-economic wellbeing and security from economic shocks (Carter and Barrett, 2006; Bird and Shinyekwa, 2004). Physical assets, including land, livestock, and other productive assets (e.g. farm equipment, bicycles) are fundamental to individuals' and households' survival (e.g. housing) as well as their economic livelihoods (e.g. household food production and employment tools). The transfer of physical assets from the parent generation to the child generation has furthermore been shown to provide the start-up material for the younger generations' more independent future livelihoods and economic productivity (Quisumbing 2007).

Inheritance systems are crucial opportunities for the transfer, or exclusion from the transfer, of adults' accumulated physical capital. These systems are regulated by cultural norms concerning social roles and relationships which are in turn determined and maintained by power differentials among members of societies. Hence, the study of transfers of physical assets via inheritance practices is the study of social relations. Questions of who is included and who is excluded from inheriting particular assets address legal and political rights of property ownership in a society, as well as context-specific values, norms and dynamics of social organisation. In particular, kinship systems and gender roles and discrimination are integral to the ways in which inheritance in different African societies is practiced and how



these practices influence differential transmissions of wealth and poverty between parent and child generations.

### 1.2.1 *A history of inheritance studies in Africa*

Inheritance provides a window into some big ideas. Who passes what to whom communicates messages about relative worth, not just of 'property' but also of people, and of the bonds between them (Shipton, 2007:173).

The passing on of what humans have has been a central theme in sociological inquiry since Marcel Mauss' essay, 'The Gift' ('Essai sur le don'), published in French in 1923-24 and in English in 1925. The giving of things from one person to another has been conceptualised as a communicative act of both a personal and a socio-political nature. The material content of the gift has often been subsumed in such theoretical discussions in favour of interpreting the meaning of the action of giving. The study of inheritance practices among African societies has until quite recently fallen within this analytical rubric.

Anthropologists of the early twentieth century endeavouring to account for the entire social organisation of a 'people' or to investigate kinship systems in Africa were the first to draw some analytical attention to inheritance systems (Radcliffe-Brown and Forde, 1953; Fortes 1949; Evans-Pritchard, 1940; Kirchhoff, 1932). Ethnographic studies following this tradition have shown how property ownership and transfers have been significantly correlated with systems and structures of kinship among different African societies (Hakansson, 1989; Shipton, 1984; Lloyd 1966; Gray and Gulliver, 1964). The bulk of this work is primarily descriptive of the norms meant to govern, and the emergent patterns, of how households' properties were distributed among family members at moments of marriages, deaths and births.

What challenged this arguably more benign, descriptive approach to the study of systems of distributing goods, and specifically inheritance systems, in African contexts, was more critical engagement with questions of social change (Hakansson, 1994; Moore, 1986; Moritz, n.d.). A particularly significant advance in the study of inheritance rules and practices in African societies came from feminist investigations and analysis. Challenging the long-held assumption that family-based households provide equal access to resources and livelihood security, feminist scholarship argued that households should be studied as systems of social relations replete with power imbalances and struggles.<sup>1</sup> This conceptual and methodological starting point set in motion more critical analysis of how different individuals, and types of individuals based on societies' classificatory schema (e.g. gender, age, marriage status, economic status, etc.), fare according to the rules and governing structures of inheritance systems.

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<sup>1</sup> For a review of this literature, see Haddad, *et al.* (1997).



Within this postcolonial body of research, African societies' customary laws are no longer treated as indicative solely of tradition, but rather customary legal systems have been problematised for their role in creating and propagating unequal distributions of advantage and disadvantage within societies (Whitehead and Tsikata, 2003; Armstrong *et al.*, 1993; Moore, 1986). The body of legal studies of property rights in various African countries has also proliferated, particularly taking up questions of women's unequal rights to own, transfer and inherit property (Takane, 2007; Mutangadura, 2004; Lastarria-Cornhiel, 1997; Mtengeti-Migiro, 1991).

Dovetailing with legal analysis of unequal property rights is contemporary poverty-focused research which focuses on factors contributing to chronic and intergenerational transmissions (IGT) of poverty (Bird, 2007; Carter and Barrett, 2006; Osmani, 2007; Quisumbing, 2007; Shepherd, 2007; Bird *et al.*, 2004; Harper *et al.*, 2003).<sup>2</sup> This body of literature reflects two primary concerns: the role of material assets in breaking chronic and IGT poverty cycles, and the social structures that exclude particular individuals from accessing assets. The former interest indicates a preoccupation with the material content of the gift, or inheritance claim, while the latter reflects the need to attend to the rules and practices of property distribution. These considerations broaden analysis of inequity from the legal domain to address the power structure of a society in a broad sense, as well as everyday processes that mediate people's access to, and opportunistic use of, physical assets for poverty alleviation. Such 'social relations analysis' has been recognised as particularly useful for policy and programming (UNDP, 2003).

Poverty-focused research has revealed that particular categories of people are excluded from opportunities of wealth accumulation through inheritance, most notably women and children because in many African societies women and children do not experience secure rights to property. Even more specifically, widows, orphaned children and households affected by HIV/AIDS have been found to be particularly disenfranchised through rules and practices of inheritance (Rose, 2006; Oleke *et al.*, 2005; Bird *et al.*, 2004; Strickland, 2004; Human Rights Watch, 2003). How exclusion from inheritance interacts with chronic and IGT poverty remains an important area of investigation.

### 1.2.2 *Outline of the review*

The study of inheritance rules and practices in Africa surely has a history replete with empirical, methodological and theoretical lessons learned. Anthropologists, legal and human rights analysts, economists and pro-poor policy researchers have all contributed to insights about what inheritance systems in different African societies look like and what they do. The

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<sup>2</sup> For a select annotated bibliography on IGT poverty in Sub-Saharan Africa see Smith and Moore (2006).



following literature review reports in more detail about the key findings from this history of research with a concentration of how these findings inform the goal of improving understanding about the links between inheritance and the intergenerational transmission of poverty in African societies.

The rest of the review is organised into five parts, each of which complements a chapter of the following annotated bibliography. The first section reviews the setting of the problem of inheritance and IGT poverty as established in recent poverty research. The second section provides a synthesis of key contributions from early ethnographic studies of inheritance systems in different African societies. Section three discusses how changes in inheritance practices have been interpreted as reflections of societal-wide political, economic and religious transformations in some African contexts. The review's fourth section reports key findings from legal analyses of property ownership rights and inequalities in several different African countries. The final section draws from very recent scholarship that demonstrates how exclusion from inheritance is often linked to particular vulnerabilities and poverty among widowed women, children and households affected by HIV/AIDS.

### 1.3 Links between inheritance and IGT poverty

The deceptively simple question 'What makes people poor?' characterises the contemporary priority among poverty researchers. The response thrown back as a starting point is that the poor are not homogeneous and nor are the causes and consequences of different people's poverty (Shepherd, 2007; Hulme and Shepherd, 2003; Khan, 2000). Among the many different ways of understanding people's experiences of poverty is Hulme and Shepherd's (2003) distinction between the chronically poor and the transient poor. The causes of chronic poverty, which is defined by the Chronic Poverty Research Centre (CPRC) as absolute poverty that is experienced for an extended period of time – many years, or even over the life course – and which may be passed from one generation to another (Shepherd, 2007:3), are understood in this distinction as qualitatively different from causes of transient poverty, as are the interventions needed to eliminate chronic poverty.

One response to the question of what makes some people chronically poor is a poverty of material assets (Chimhowu, 2006). For instance, Baulch and Hoddinott (2000) suggest that transitory poverty may be due to an inability to cope with shocks, while chronic poverty may be due to a low endowment of assets and a lack of ability to translate these assets into income. Poverty research that has focused on household and individual livelihoods has illuminated that lack of access to physical assets is integral to chronic and IGT poverty (Wieggers *et al.*, 2006; Bird and Shinyekwa, 2004). At the same time, asset bundles have been linked to transitions out of poverty: a study in South Africa over the 1993–98 period showed that 60 percent of the households that made transitions out of poverty had initial period assets that strongly predicted well-being in excess of the standard poverty line while





51 percent of those who fell behind suffered asset losses that left them structurally poor in the latter survey period (Carter and May, 2001). Dercon's (1996) study of households' livelihood strategies in western Tanzania demonstrates that assets may perform a similar role to credit as higher initial asset holdings correlate with the allocation of more household labour to activities deemed simultaneously 'high risk' and 'high return': 'Therefore, household income is determined by initial endowments of land and labour and accumulated asset holdings in the form of cattle.' (Dercon, 1996: 25) The majority of studies focused on poverty processes in African contexts have specifically addressed the significance of land rights and access because land comprises such a large share of the asset portfolio of the poor, and particularly the rural poor, throughout Africa (Deininger, 2004; Khan, 2000). However, even among the few urban poverty studies that exist for African countries, asset ownership is shown to be critical: a longitudinal study of urban chronic poverty in Ethiopia over the mid 1990s indicates that the value of a household's assets has a significant positive (or negative) impact on the probability that the household was never poor (or was poor in one or more periods) (Kedir and McKay, 2004).

The body of economic analysis described above indicates that material assets or capital are integral to households and individuals' wealth accumulation and security while lack of access to material assets significantly contributes to poverty traps. This marks a departure from earlier poverty studies that focused primarily on household income and expenditure to delineate economic status. Focusing on access to assets is conceptualised as more appropriate to investigations of poverty dynamics over time, and hence chronic and IGT poverty, because assets are often used to generate and protect livelihoods (Carter and Barrett, 2006; Sabates-Wheeler, 2006). This body of economic analysis has produced models that aim to predict how access to physical assets or capital may affect poverty processes (Carter and Barrett, 2006) however much work remains to be done in this area of investigation.

Physical assets, however, are not presumed to have intrinsic value, but rather value that is mediated by social relations. Green and Hulme (2005), Sabates-Wheeler (2006) and Osmani (2007), for example, describe how translating opportunities, including access to assets, into upward economic mobility, can be significantly constrained by entrenched social relations (at household, community, national and international levels), thereby producing and reproducing chronic poverty. It is argued that the combination of asset inequality, market failure and unequal access to resources and institutions not only reproduces patterns of inequality, but can cause persistent poverty because the combination of these factors leads to differential productivity between asset rich and asset poor. Drawing from macro and micro economic studies, this body of research makes the case for a focus on assets rather than income distribution as well as attention to institutional factors that inhibit equitable outcomes, including property rights and inheritance systems.



Theoretical analyses of intergenerational economic mobility further support the case for examining intergenerational inheritance rules, norms and practices. Studies of correlations between particular parent characteristics and children's future economic status highlight not only the significance of material wealth transfers, but also the importance of inheritance systems' rationale and structural features for economic impacts of transfers from parents to children (Fan, 2005; Erikson and Goldthorpe, 2002; Bowles and Gintis, 2001; Collard, 2000; Corcoran 1995). While these theoretical studies mainly originate from the United States, the United Kingdom and other minority world contexts, the framing of intergenerational transmissions of poverty (or wealth) in terms of intergenerational relations and bargaining draws attention to the potentially deep entrenchment of norms that dictate why and how intergenerational transfers occur and impact poverty processes.

Inheritance is an extremely significant means of property transfer in many African societies. Platteau and Baland (2000:2) assert that the 'major mode of land acquisition in most African countries is inheritance' and cite in support of this claim the cases of Burundi, Kenya, Malawi, Rwanda Uganda, Zambia and Zimbabwe. Quisumbing's (2007) review of research concerning intergenerational transfers of assets in different countries, including her own research in Ethiopia and Ghana, leads to the conclusion that,

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

Particularly assets that are impartible upon inheritance have been conceptualised as providing households with an important 'cushion' for remaining out of poverty despite instances of economic livelihood fluctuations (Chimhowu, 2006). Correspondingly, studies of poverty trajectories of households and individuals in African societies have identified that exclusion from assets inheritance exacerbates vulnerability to chronic and IGT poverty (Rose, 2006; Oleke *et al.*, 2005; Bird *et al.*, 2004, Human Rights Watch 2003). These studies are reviewed in more detail in this paper's last section.

#### 1.4 'Traditional' inheritance systems in African societies

Given that kinship systems constituted a predominant study topic for many of the first anthropologists among African societies and that a common theme in this study was the rights and obligations that various kin members were assigned as members of a kinship group, there is much data about property ownership and distribution to be gleaned from earlier ethnographic manuscripts. Although not specifically focused on inheritance systems, many anthropological studies of the early twentieth century which sought either to account for the entire social organisation of a 'people' or to investigate kinship systems in detail



contain much data about inheritance rules, norms and practices. Among the most well-known of these early contributions are Evans-Pritchard's *The Nuer* (1940), Fortes' *The Web of Kinship among the Tallensi* (1949) and Radcliffe-Brown and Forde's edited volume *African Systems of Kinship and Marriage* (1953).

Before proceeding to review some of the key ideas and findings that developed out of these studies, it is important to note that while much of our current understandings of past inheritance rules and practices are dependent on early ethnographic contributions, these works have also provoked critical reappraisals by later social scientists. Like much of the anthropology of African societies done in the first half of the twentieth century, ethnographers' descriptive accounts of so-called 'traditional' systems of property ownership and inheritance have been critiqued by feminist and post-colonial scholars for neglecting to account for social and political change as well as power differentials among individuals in households and communities, and particularly the unequal social, political and economic rights of men and women in African societies.

Nevertheless, some very useful empirical data and classificatory distinctions were acquired through early studies that attended to inheritance systems in various African societies. Indeed, these early works have been influential in setting the methodological and theoretical precedents for studies of inheritance systems. Their findings also provide significant comparative data for current analysis of how present inheritance practices are both influenced by and influencing changes in social relationships.

Jack Goody's (1970) comparative analysis of African and Eurasian systems of descent and inheritance recommends that the terms patrilineal and matrilineal be used to address descent group membership (i.e. kinship is defined in accordance with recognition of descent from a common ancestor) while the terms agnatic and uterine be used to designate types of property and office transmission that occur either from parent to child (variously described as agnatic, direct and vertical transmission) or from sibling to sibling and/or to sibling's child (variously described as uterine, indirect or lateral transmission, often from a brother to his sister's children or from a brother to his brothers).<sup>3</sup> Goody does note in making this distinction, however, that matrilineal systems of succession (of office or status) and inheritance (of property) are 'intrinsically more lateral and hence more 'corporate'' (Goody, 1970:628).<sup>4</sup>

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<sup>3</sup> Goody's main argument against this sort of linking of inheritance to descent systems is to avoid analysis that regards change from uterine inheritance to some kind of direct transmission from parents to children as a change from matriliney to patriliney. He writes that such a transmission should rather be recognised as an attempt to conserve property, office or status within the nuclear family.

<sup>4</sup> The 'corporate' character of matrilineal systems refers to the kinship group continuing to exist as an entity beyond the existence of individual members. A common characteristic of the corporate kin group is the sharing of property as well as other economic assets and liabilities (e.g. bridewealth, sale revenue, payment of dues possibly incurred by only one member). See Caplan (1969).



Indeed, it is quite widely acknowledged that in many African societies inheritance systems have corresponded with patrilineal or matrilineal descent principles: in patrilineal cultures children are primarily considered members of their father's kin group and inherit the father's property at his death; and in matrilineal cultures kin membership is traced through the uterine line, so that children belong to their mother's kinship (matrikin) and not to their father's. In matrilineal systems then, a man's heirs are his sister's children, not his own.

Marriage and residence rules also figure prominently in determining kinship claims, including succession and inheritance rights. Matrilineal societies are characterised by uxori-local residence in which a husband moves to the wife's village. The household's economic livelihood is then based in the woman's village. Upon divorce or his wife's death, a husband is expected to return to his natal village and he loses the use rights to the land in his wife's village. Children in matrilineal societies remain in their mother's village even if their mother dies, because they belong to the mother's matrilineal kin. Rules of residence in patrilineal societies are virilocal, meaning that upon marriage a woman moves to live in her husband's village. A legitimate marriage in many African patrilineal societies requires payment of bridewealth<sup>5</sup> from a husband and his family to the wife's family (Shipton, 2007; Hakansson, 1994; Parkin, 1978; Goody, 1973). If bridewealth has been paid, it was traditionally expected that if the husband died his wife would remain in her late husband's village and in several societies she would be 'inherited' or 'remarried' to one of her husband's brothers and would raise her children among the deceased man's kin. If no bridewealth was paid upon marriage, a widowed woman was often expected to return to her natal kin with her children. In the case of divorce, women often had to return the bridewealth to the husband's family if it had been paid, and leave the children with the husband and his kin.

Of course, many exceptions to these general rules or patterns have also been recorded. For example, while the northern Yoruba of Nigeria have experienced agnatic descent groups, it was also recorded that a son might also inherit farm land from his mother's descent group. However, in doing so, this son would be expected to take up residence and membership with his mother's descent group, effectively renouncing his claim of membership to his father's descent group. Among the southern Yoruba of Nigeria, however, it was noted that men might farm different plots of land acquired through different descent groups. In this way, a man could exploit claims to membership of both his father's and his mother's kin groups as an economic strategy. The only effective limits to claiming simultaneous membership of

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<sup>5</sup> Bridewealth or bride-price refers to the transfer of assets from the groom's family to the bride's. Dowry is the term used when assets are transferred from the bride's family to the groom's or from the bride's parents to the bride at the time of her marriage. Bridewealth transfers are common in many Sub-Saharan African societies while dowries are common in societies across Asia (Fafchamps and Quisumbing, 2008; Goody, 1973).



many descent groups would be the ability of individuals to fulfill their membership obligations to these groups (e.g. time and money). This kind of system can result in the growing popularity and membership of descent groups with valuable property, and the corresponding diminishment of descent groups with fewer advantages for its members (Lloyd, 1966).

As the above examples from Nigeria attest, the availability or scarcity of resources, and mainly land, has been theorised to significantly influence inheritance rules and practices. A comparison of the environments and land inheritance systems of the Sukuma-Nyamwezi of northern and western Tanzania with that of the Luo of western Kenya highlights this correlation (Shipton, 1984). The Sukuma-Nyamwezi lived in an environment abundant in cultivatable land and rights to cultivate this land were permissive allowing a person to move to a new area to take up cultivation of land according to his own needs and his family's relative needs. This permissive land tenure system was credited in Shipton's analysis for allowing for the primogeniture (single-male heir) inheritance system since other sons/brothers could easily move to take up other lands for cultivation. In contrast, the Kenyan Luo experienced increasing scarcity of land and property and inheritance rights became increasingly strictly linked to claims of ancestry. Shipton reported in the early 1980s that competing claims for limited land among growing numbers of the descent group resulted in increasing rates of disputes and litigious action among members.

Another important observation that emerged from some of the early ethnographic studies of inheritance systems was the link between the family's developmental cycle and intergenerational transfers of property. Important transfers of property from parents to children were noted to commonly occur *inter-vivos* (transfer of property among living people) and were often instigated at the time of children's marriages. Cattle has been used by many different African societies as bridewealth and parents (specifically fathers) were observed by some researchers to strategically keep cattle from a son so that he could not marry and start his own household (Cheater, 1983; Hakansson, 1989). In this way, the parent generation retained the labour of their sons even into adulthood and hence the parents' household benefited through further capital accumulation. Further complicating decisions on father-to-son transfers of cattle was often the father's recognition that a married resident son has increased traditional claims on the use of the land for all forms of subsistence. As Cheater notes from her studies among rural farmers in Zimbabwe, fathers may not transfer cattle to sons for their bridewealth until the father's own physical capacity is diminishing and he is ready to concede larger portions of the farmland to others (e.g. his sons and their households). This research indicates that intergenerational transfers of property should be considered in terms of several different, and potentially competing, interests among family members and indeed between family members of different generations.

As clearly demonstrated from this brief overview, there is much of comparative analytical value to be taken from early studies of different African societies' inheritance systems. The importance of various defining features of kinship systems, including principles of descent



and rules of marriage and residence, as well as the availability of resources and economic livelihood strategies are key insights still pertinent to contemporary studies of inheritance rules and practices and their implications for the intergenerational transmission of wealth or poverty.

## 1.5 Changing inheritance systems in African societies

The 'traditional' or *de jure* rules and norms of inheritance systems in African societies have certainly not always been realised in practice. Not only have the rules that are officially meant to govern inheritance practices changed over time, but in many African societies legal pluralism and local governance have also influenced inheritance outcomes that are specific to individual cases' circumstances. As such, it is important to recognise the dynamic nature of inheritance systems, as well as the conditionality of inheritance determinations on broader political, economic and socio-cultural (including religious) trends.

The significance of political history, including the interventions of colonial administrations, is demonstrated in studies that focus on the laws that are meant to govern inheritance systems in African countries. Many African countries today are legally pluralist with different laws applying to different populations or appealed to at different stages of dispute resolution. State or common laws and customary laws, as well as in many cases religious laws (sharia in Nigeria, for example, or Hindu laws in Kenya), are simultaneously active in many African countries - and often in contradictory ways - thereby leaving many opportunities for innovation in outcomes of inheritance disputes.

Several legal historians and analysts have provided accounts of how inheritance laws have developed from colonialism to the present and how resultant inheritance systems theoretically and practically operate in different African countries (Emery, 2005; Mutangadura 2004; Kameri-Mbote, 2002; Odgaard, 1999; Cavin, 1998; Hilmy, 1998; Lastarria-Cornhiel, 1997; Mtengeti-Migiro, 1991). Kameri-Mbote's (2002) historical analysis of inheritance laws in East Africa, for instance, outlines how different laws were developed for different populations in the same country as well as how different laws meant to govern property ownership, marriage and inheritance often conflicted thereby leaving much interpretive and negotiating space for determining inheritance outcomes. For example, in Kenya, the British colonial government asserted in the Native Courts Regulations of 1898 that an African who had converted to Christianity was deemed to have technically abandoned African customary law and was therefore not subject to it and was instead subject to English laws of inheritance. Yet in 1904, the colonial government introduced the Native Christians Marriage Ordinance which stated that all Africans were to be governed by African succession law. Therefore, the different customary laws of different ethnic communities were meant to govern inheritance among African Kenyans. Muslims in Kenya, however, including Africans who converted to Islam, were recognised as having succession laws based on the Quran. Several



different laws were introduced over time in Kenya to provide separate laws to govern marriages and inheritance for Hindus in the country. This legally pluralistic and diffuse model created confusion in settling succession and inheritance cases since it often wasn't clear which law would apply (Kameri-Mbote, 2002). This lack of clarity and consistency continues into the present in Kenya.

Colonial administrations' attempts to formalise customary law provisions have been judged to have weakened women's property rights, and by implication weakened women's inheritance rights (Tsikata, 2004; Kameri-Mbote, 2002; Lastarria-Cornhiel, 1997; Mtengeti-Migiro, 1991). While precolonial customary practices were often dominated by male elders and property was transferred among male family members, these systems did seem to guarantee women land use rights. In introducing private property rights, colonial administrations implemented a land titling system that recognised only men's title deeds. Women's rights to use land received no legal recognition. With the commercialisation of land, women's security of land tenure was further put at risk as individual men could sell land without clan or family approval. Moreover, men as land titleholders had sole rights to agricultural surplus, despite the fact that in many cases this surplus would be due to women's labour. Some scholars posit that the individualisation of property contributed to a view that women are property (Kameri-Mbote, 2002). Certainly marriage laws have been demonstrated as essential to women's property and inheritance rights and the codification in law of women's unequal status in marriage has been a critical component in women's unequal claims to property, especially upon separation, divorce or the husband's death.

Customary and statutory property ownership, marriage and inheritance laws co-exist in many African countries today, including Kenya, Tanzania, Uganda, Burkino Faso, Nigeria, Lesotho, Zambia, Malawi, Botswana, Mozambique and South Africa. Most analysts agree that this co-existence tends to obfuscate property and inheritance rights because they often contain contradictory provisions. For example, in some countries, the provisions of customary law indicate that a deceased man's wife, children, and property should be inherited by one of his brothers, while the provisions of statutory law indicate that a deceased man's wife and children should inherit his property: 'although the provisions of statutory law are supposed to prevail when the provisions of customary law and statutory law are contradictory, the reality is that statutory law will be poorly implemented and possibly completely ignored.' (Rose, 2006:8) Tsikata (2004) further elaborates that recent local level studies have demonstrated that the empirical relation between statutory and customary law is very far from the legal centrist model of separation:

Statutory and customary law systems have been found to operate in more interconnected ways than is realised. In practice, people, including women, sustain their claims to resources by employing arguments from both the statutory and so-called customary law, the concepts and objectives from one system seem to slip quite easily to the other and that actors, including law enforcement officers, do not treat the legal ideas in the two systems as hermetically sealed off.' (Tsikata, 2004:4)



It is now firmly established among scholars that customary law can not be regarded as an unchanging timeless entity (Tsikata, 2004). Decades of revisionist analysis of African history have made evident that customary laws were ‘the joint creation of colonial officials and African leaders ... a reflection of the [then] contemporary situation’ (Peters, 2007:3). In the present, analysis of customary laws is most often rooted in social and political relationships.

It has been observed by various researchers that inheritance decisions are commonly based less on specific customs (or statutory law) than on people’s perceptions of what is right (Rose, 2006; Strickland, 2004). While it is quite widely acknowledged that local customary law adjudication is often male-dominated in contemporary African societies, in some cases women may prefer to take their inheritance claims to this local adjudication of uncodified, customary law because it is more flexible and takes extra-legal matters into consideration whereas codified laws can be too restrictive (Kameri-Mbote, 2002). A recent small-scale study in both patrilineal and matrilineal societies in Malawi finds that a variety of land transfer and inheritance practices occur and these do not always adhere to the ‘ideal constructs’ of matrilineal or patrilineal societies’ customary laws (Takane, 2007). For instance, it is noted that several widowed or divorced women who were household heads in patrilineal societies had gained access to land through transfers from a women’s father, mother, maternal uncle, paternal uncle or brother. In Burkino Faso, Cavin (1998) finds that there are often disputes and conflicts between different laws pertinent to inheritance claims and new procedures that combine tradition and modern ideas are developed. These findings lead Cavin to suggest that these new procedures may one day lead to the establishment of new laws to meet the needs of Burkinabé citizens.

Beyond the influence of legal systems in determining inheritance outcomes, researchers have derived from their case study material other explanations to account for changes in inheritance norms and practices. Various scholars have described how *de jure* and *de facto* rules and norms of inheritance systems have changed in response to conditions of urbanisation, new economic and educational opportunities, religious transformations, privatisation of land tenure, population pressure and the increasing prevalence of the nuclear family (Fafchamps and Quisumbing, 2008; La Ferrara, 2007; Quisumbing *et al.*, 2004; Platteau and Baland, 2000; Moritz, n.d.). These are theorised as reflecting changes in the social, political and economic roles of different categories of people in their societies. For example, Moritz (n.d.) theorises that the process of Islamic renewal experienced among FulBe populations in northern Cameroon has played a critical role in the individualisation of livestock ownership, with implications for inheritance and other transfers of property (e.g. dowry), because Islamic legal traditions, including inheritance laws, more clearly define individual rights than FulBe traditions which prioritised the continuity and integrity of the family herds. Moritz also notes that while traditional FulBe norms and practices concerning livestock rights and transfers persist among a rural FulBe population, FulBe people living in a peri-urban setting have changed their practices. Some of this change is attributed to the





increased costs of livestock production which has resulted in increasing individualisation and concentration of livestock ownership with fewer transfers of property rights. This analysis reflects the many different social, cultural, religious and economic factors that contribute to changes in property ownership and transfers

Findings from this body of scholarship encourage further consideration of inheritance norms and practices as products of changing socio-historical contexts.

## 1.6 Gender inequality and inheritance

Although inheritance systems' rules and practices have been described in some detail through ethnographic accounts and legal analyses, such studies has not tended to apply a poverty lens. More recently, however, researchers concerned with poverty processes in African societies have begun to focus on inheritance as an important mode of distributing assets.

As the methodological assumption of equitable and cooperatively altruistic households has been deconstructed,<sup>6</sup> more critical appraisals of inequalities in access to assets have been produced. This scholarship interrogates gender inequalities in rights to assets in different African societies, and the links between women's lack of equal property rights and women's (and in some cases, women's children's) poverty. The bulk of this body of poverty studies literature addresses women's exclusion from land ownership in African societies. Although inheritance practices are not directly addressed in much of this gendered analysis of property and poverty, there are clear linkages between property rights and questions of inclusion in, and exclusion from, property distribution through inheritance systems. Moreover, these analyses of the poverty consequences of lack of assets give more support to the case for focusing poverty alleviation research and interventions on inheritance rules and practices. Some contributions also highlight the causal links between discriminatory property and inheritance rights and poverty trajectories among African women and their children.

Women and children in many African societies are often excluded from inheriting physical assets due to gender discrimination in property ownership laws or customs and the organisation of kinship relations and customary roles (i.e. dependence on adult male kin). In many countries women do not have independent property rights. Instead, statutory and customary laws often stipulate that women are to access assets through their fathers, husbands or adult sons. As a result, women who are orphaned, unmarried, separated, divorced or infertile can be significantly disadvantaged as are the children who grow up in

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<sup>6</sup> See for example: Doss (1996:1597-1609) and Wolf (1997).



households headed by divorced, separated or widowed women.<sup>7</sup> Even women who have property access through other people are disadvantaged by not having their own independent rights to this property.

Legal reform has been an area of targeted intervention, often supported by international nongovernmental agencies, to improve gender equity in many African countries. One key challenge is to harmonise land, marriage and inheritance laws, as well as provisions in national constitutions, and to ensure consistency between those laws and international human rights treaties (Strickland, 2004). Mutangadura's (2004) review of land policies and laws in Lesotho, Zambia, Malawi, Botswana, Mozambique and South Africa highlights the complexity of having multiple laws and systems with various different, and often conflicting, implications for property and inheritance laws. In this review, Mozambique is singled out as having addressed gender discrimination in property ownership and inheritance laws by amending the country's constitution as well as land and family laws.

However, most analysts agree that gender equality can not be achieved through legal reform alone (Varley, 2007; Jütting and Morrisson, 2005; Mutangadura, 2004; FAO and Oxfam 2003; Human Rights Watch, 2003; Steinzor, 2003; Benschop, 2002; Women and Law in Southern Africa Research and Educational Trust, 2000; Cross and Friedman, 1997). A case study analysis of land rights of women in Uganda reflects: 'the gulf between government rhetoric, legislation and policy and the reality as it is experienced by, particularly rural, women; commitments have been made in relation to gender equality and land rights without being accompanied by measures to ensure their social legitimation, implementation and enforcement.' (Bird *et al.*, 2004:31). Access to legal processes is a major hurdle for women in terms of the time, money and skills such as literacy required. There is also the question of the legitimacy of local level legal fora (Tsikata, 2004). Male community members need to be accepting of inheritance claim resolutions in favour of women if these outcomes are to be respected and realised in practice. As Benschop (2002:180) has observed:

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

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<sup>7</sup> As Bird *et al.* (2004) note, research has demonstrated that equal access, control and ownership of land has instrumental value in terms of its positive impact on consumption (increasing spending on food, children's welfare and education) and productivity (particularly in areas, such as sub-Saharan Africa, where women are responsible for the majority of land cultivation).



## 1.7 Vulnerable groups and inheritance

As discussed above, women and children, and particularly those women and children who have experienced childbirth out of wedlock, dissolution of marriage or death of a husband have been identified as being particularly vulnerable to chronic poverty. Moreover, it has been found that the vulnerability of widowed women, orphaned children and households affected by HIV/AIDS in Sub-Saharan Africa may be exacerbated by their exclusion or inequality in inheritance systems.

Studies concerning the social roles of widows in African societies have predominantly highlighted their marginality and insecurity in terms of property ownership and economic livelihoods (Strickland, 2004; Ewelukwa, 2002; John-Smith, 2002; Human Rights Watch, 2003). This scholarship further emphasises the point that marriage is a key factor influencing women's economic security and inheritance rights. However, many researchers have also noted that widows cannot be understood as a homogeneous social category and indeed that widowed women are not always necessarily economically disadvantaged (Emery, 2005; Oleke *et al.*, 2005; Aliber *et al.*, 2004; Potash, 1986). These scholars note that the particularities of local historical-political-cultural contexts can result in significantly different outcomes for women as can more individual and personal qualities including age, skills, and personal relationships.

Nevertheless, changing norms and practices in the treatment of widows and their claims to household property and support have been noted. A recent study among the Langi of northern Uganda contrasts contemporary and traditional norms and practices concerning the support of widowed women (Oleke *et al.*, 2005). Traditionally, among the Langi, it was expected that a woman's natal kin would discontinue their role as providers to her at the time of her marriage. The transfer of bridewealth would mean the transfer of responsibility for the woman and her future children to her husband's kin. Patrilocal marriage also physically removed the woman and her children from the woman's natal family, making the continuance of claims upon a woman's natal kin more difficult. Investigating the cases of widowed women and orphaned children among the Langi in recent years, this study finds that sixty-three percent of the households caring for orphans in the study area were no longer headed by paternal kin in a manner deemed culturally appropriate by the patrilineal Langi society, but rather were headed by marginalised widows, grandmothers or other single women receiving little support from the paternal clan. The authors reflect that the rapid discontinuation of practices of widow inheritance (and care for the widow's children) is a consequence of local impoverishment and deaths of adults as a result of political violence or HIV/AIDS, which has drastically limited the availability of any potential inheritors (e.g. husband's brothers) to support widowed women and their children.

Very limited research focuses specifically on children's inheritance rights and experiences although this is a topic that is garnering increasing interest among poverty analysts as they



seek to understand opportunities for alleviating childhood poverty (Rose, 2006) . Increasing numbers of orphaned children in many African countries, predominantly as a result of HIV/AIDS and conflict, has led to calls for more research focused on the specific consequences of parents' deaths. Central to these concerns for orphaned children's wellbeing are questions about the economic status and security of their households, most notably including households headed by elderly grandparents or comprised of child siblings.

In her review, Rose (2006) reflects that most African countries' constitutions make little or no mention of children and closer examination of several land laws to discern children's land rights indicates that these also scarcely acknowledge children's rights. Children's rights are often subsumed under a mother's property rights. In her comparison Rose records that some countries, such as Botswana, do not have specific legislation dealing with children's inheritance while other countries, such as Lesotho, Malawi, South Africa, and Zambia, have legislation that provides children with a portion of the deceased's estate in the case of intestacy (a person dies without leaving a will). In several countries, children born out of wedlock are not recognised as legitimate heirs. Rwanda's 'Law on Matrimonial Regimes, Liberalities and Successions' of 2000 is cited as one example of several laws that have been passed in the region with the aim of enhancing and ensuring women's and girls' property and inheritance rights. This law stipulates that children of a deceased parent will, in accordance with the civil laws, inherit in equal parts without any discrimination between male and female children. Rose notes that the law addresses several issues of importance for children's rights: the rights of children born within three types of marital regimes; the ranking of children's rights within the regime of separation of property (i.e. children's rights are ranked ahead of other members of the extended family); and the penalty to be imposed in the event that a surviving spouse fails to fulfil his/her duties to raise the children of the deceased. A different analysis of the rights of children in child-headed households in South Africa (Sloth-Nielsen, 2004) identifies the most significant issues to be addressed include: the importance of children acquiring proof of identity to secure his or her recognition as a person before the law, which may help to protect inheritance rights; the role of appointed guardians for child care or trusteeship of property; and the review of customary laws' privileging of primogeniture inheritance to establish gender equality in inheritance rights.

The AIDS pandemic in Sub-Saharan Africa is undoubtedly contributing to poverty among households and families with people living with, and dying as a result of, HIV/AIDS (Wiegers *et al.*, 2006; Strickland 2004; HelpAge, 2003; Sloth-Nielsen 2004; Cohen, 1998). Research indicates that households affected by HIV/AIDS are facing specific challenges of access to, and protection of, assets, and consequently are particularly vulnerable to chronic poverty. Moreover, households that have experienced illness and death as a result of AIDS may face specific vulnerabilities as result of social stigma and financial expenditures associated with AIDS-related illness and death. The consequences of this stigma and marginalisation have been documented to include denial of inheritance and property grabbing (Wiegers *et al.*, 2006; Human Rights Watch, 2003; John-Smith, 2002). As Rose (2006: 8) writes, 'The main



point is that the AIDS pandemic has changed the local contexts in which customary norms operate.'

Property grabbing has been widely reported as a way in which widowed women and orphaned children lose access to property that they had inheritance claims to either under statutory or customary law (Strickland, 2004; Human Rights Watch, 2003). Indeed, it has been observed that in Swaziland where most of the land is held under customary tenure, an informal market has emerged as tribal leaders repossess communal land from the widows of AIDS victims (SAPRN, 2003 cited in Chimhowu, 2006). Legal reform has been identified as one way of preventing property-grabbing. In Zambia, for example, the 1989 Intestate Succession Act was introduced to cover those cases in which a deceased spouse had not left a written will. The act contains provisions for the division of inheritance: widows are to be given 20 percent, parents 20 percent, other dependents 10 percent, and children 50 percent. The act also states that a 'surviving spouse or child or both [are] entitled to [the] house,' that 'the surviving spouse shall have a life interest in that house which shall determine upon the spouse's remarriage,' and specifies the penalty that will be imposed on any person who denies any person his/her right to the property to which he/she is entitled under the act.

Research in Kenya (Aliber *et al.*, 2004) draws attention to the importance of the agency of influential individuals (e.g. sub-chiefs) who intervene to mediate local-level disputes plays a critical role in protecting, or not, vulnerable people's property rights. While the study shows that Kenya's statutory tenure system does offer protection to women and orphans, it also shows that this protection is not consistently nor automatically applied, and often requires the person who believes her/his rights have been violated to initiate engagement with local officials and for these local officials to decide to act. This research finds that there are various factors at play in the security of households' property rights including, in cases of AIDS affected households, the degree of local AIDS-related stigma, and local leaders' attitudes towards enforcing the statutory tenure rights of women and children. As such, the authors argue that possibly constructive interventions would be directed at combating HIV/AIDS-related stigma and strengthening the system of property claims administration. Importantly, this research once again reiterates the significance of analysing inheritance rules and practices in terms of local social, economic and political realities.



## 1.8 Conclusion

This literature review reflects that an important body of research about inheritance rules and practices in many different African societies exists to draw from for analysing the linkages between inheritance and chronic and IGT poverty. Yet, taken together, this literature also makes clear that the study of inheritance rules and practices remains a priority and a challenge since these rules and practices continue to change in accordance with societal-wide transformations as well as contextually-specific circumstances. Consequently, the ways in which inheritance systems are currently being experienced, and the ways in which these particular experiences interact with poverty processes, are extremely critical questions to be further researched in contemporary African societies.



## 2 Annotated Bibliography

### 2.1 Introduction

#### 2.1.1 *Background*

This annotated bibliography has been undertaken to contribute to the third phase (2005-2010) of work of the Chronic Poverty Research Centre (CPRC), which is structured around three distinct themes that are strategically sequenced and integrated: thematic research, policy analysis, and policy engagement. In particular, this bibliography is part of the foundation research theme *Empirical Methods for Studying Intergenerational Transmissions of Poverty (IGT)*. In providing an overview of the various inheritance practices of African societies and their effects on the intergenerational transmission of poverty, this bibliography will contribute to research being designed by the CPRC into inequality and assets and the intergenerational transmission of poverty in Africa.

Transfer (or non-transfer) of different types of capital is understood as a crucial determinant of the transmission of wealth and poverty across generations. Recent analyses of chronic and intergenerational poverty have identified the significance of both private and public transfers, or lack of transfers, of material assets, physical health, psychological health, and social capital. Household and lifecourse poverty analyses have specifically highlighted the importance of different individuals' access to physical assets for their socio-economic wellbeing and security from economic shocks. Physical assets, including land, livestock, and other productive assets (e.g. farm equipment, bicycles) are fundamental to individuals' and households' survival (e.g. housing) as well as their economic livelihoods (e.g. household food production and employment tools). The transfer of physical assets from the parent generation to the child generation has furthermore been shown to provide the start-up material for the younger generations' more independent future livelihoods and economic productivity.

Inheritance systems are crucial opportunities for the transfer, or exclusion from the transfer, of adults' accumulated physical capital. These systems are regulated by cultural norms concerning social roles and relationships which are in turn determined and maintained by power differentials among members of societies. Hence, the study of transfers of physical assets via inheritance practices is the study of social relations. Questions of who is included and who is excluded from inheriting particular assets implicate legal and political rights of property ownership in a society, as well as context-specific values, norms and dynamics of social organisation. In particular, kinship systems and gender roles and discrimination are integral to the ways in which inheritance in different African societies is practiced and how these practices influence differential transmissions of wealth and poverty between parent and child generations.



### 2.1.2 *A guide to the structure and contents*

This select annotated bibliography reflects the key themes found in the literature concerning inheritance systems in African societies. Within each section the resources are presented and summarised in alphabetical order according to the author's name. Keywords have also been identified and these can be found in the corresponding index.

The bibliography is organised into five chapters. The collection begins by profiling those recent works by poverty analysts that make the case for a focus on the rules and practices of assets inheritance to improve understanding of the intergenerational transmission of poverty in African societies. Following this conceptual introduction, the bibliography reviews earlier studies of various African societies' inheritance systems and then profiles studies concerning how specific inheritance norms and practices have changed over time according to legal, social, political and economic developments. The bibliography's focus then shifts to present studies that explicitly examine inheritance rules and practices for their poverty implications. These entries attend to questions of inclusion and exclusion and consequently focus on categories of people in African societies whose vulnerability to poverty is exacerbated by inheritance rules and practices. Specifically, works summarised investigate the implications of current inheritance rules and practices for women, widows, orphaned children and households affected by HIV/AIDS in African societies.

## 2.2 **Definitions, concepts and frameworks**

This introductory chapter provides summaries of scholarship theorising the significance of material assets inheritance for chronic and IGT poverty research and policy. This chapter is divided into three parts. The first part reviews recent works that argue the case for chronic and IGT poverty research and policy in Africa to focus on rules and practices of asset inheritance. Correlations between household and extra-household level factors and the transmission of poverty from parents to children are indicated in these works which bridge empirical data with theory development. The next section profiles scholarship which elaborates theories and models concerning the significance of physical assets for poverty and/or wealth. The works included in the last section of this chapter provide further theoretical support for the study of inheritance systems as processes of intergenerational transfers affecting poverty and/or wealth outcomes.





2.2.1 *Conceptual frameworks for research and policy agendas on inheritance and IGT poverty*

**Bird, K. (2007). 'The Intergenerational Transfer of Poverty: An Overview'. Chronic Poverty Research Centre Working Paper 98. Manchester, UK: Chronic Poverty Research Centre (CPRC).**

Available at: <http://www.chronicpoverty.org/pdfs/99Bird.pdf>

This paper reviews the international literature on the intergenerational transmission of poverty (IGT poverty) and seeks to identify gaps in knowledge and to suggest a research agenda for work on IGT poverty within the Chronic Poverty Research Centre (CPRC). All kinds of transfers that may contribute to chronic poverty, including private and public transfers (or not) of material assets, physical health, psychological health, and social capital, are incorporated into this overview as are factors that moderate or mitigate the effects of transfers, such as social and cultural processes (e.g. systematic inequalities) and individual responses (e.g. children's resilience) that affect poverty trajectories. Rooting this discussion is a preoccupation with how transfers generate 'irreversibilities', support resilience or otherwise fundamentally mould the life-course of the individual (and their household).

The paper is organised into four parts. The first section introduces the livelihoods approach to the study of IGT poverty. In the next section, Bird summarises longitudinal study findings from the United States (US) concerning children's experiences of poverty, and particularly chronic poverty (ten years or more of poverty), and reviews theories that have been developed to explain IGT poverty in the US. The paper's third and largest section draws widely from findings of studies in low and middle income countries to discuss correlations between household and extra-household level factors and the transmission of poverty from parents to children. The overview concludes with an outline of a research agenda for the CRPC's work on IGT poverty including proposals for empirical research focusing on the themes of assets, inheritance and resilience, a series of comparative studies using panel data and life histories that explore the role of social exclusion and links between household dynamics and IGT poverty, as well as policy analysis concerning possible entry points to support resilience and to limit potentially irreversible damage of IGT poverty. The author also includes a list of other identified research gaps which are outside of the CRPC's planned work that would contribute to enhanced understandings of the intergenerational transmission of poverty.

*Keywords:* assets, household, intergenerational transmission of poverty, livelihood analysis, social exclusion



**Bird, K. and O’Neil, T. with Bolt, V. (2004). ‘Illustrative Case Studies of the Fracture Points in Social Policies for Chronic Poverty Reduction’. London: Overseas Development Institute and the Chronic Poverty Research Centre (CPRC).**

Available at: [http://www.chronicpoverty.org/pdfs/47ANNEXBird\\_et\\_al.pdf](http://www.chronicpoverty.org/pdfs/47ANNEXBird_et_al.pdf)

As a companion piece to the policy analysis paper profiled below, this paper provides detailed case study material from Uganda and India concerning the chronic poverty implications and policy responses to the issues of disability, mental illness, alcohol dependency, male-biased inheritance systems, and the lack of social protection for older people. A focused review of inheritance practices in Uganda demonstrates women’s experiences of land rights insecurity. Analysis of attempts to change women’s land tenure rights in Uganda (with specific attention to the policymaking processes and provisions of the 1995 Constitution and the 1998 Land Act) illustrate both the challenges in redressing gender inequality in policymaking as well as the inadequacy of policy reform without accompanying social legitimation, implementation and enforcement. Recommendations for addressing these shortfalls are presented.

*Keywords:* chronic poverty, land rights, policy, vulnerable groups, women, Uganda

**Bird, K. and Pratt, N. with O’Neil, T. and Bolt, V. (2004). ‘Fracture Points in Social Policies for Chronic Poverty Reduction’. Chronic Poverty Research Centre Working Paper 47. Overseas Development Institute Working Paper 242. Overseas Development Institute and the Chronic Poverty Research Centre (CPRC).**

Available at: [www.chronicpoverty.org/resources/cp47.htm](http://www.chronicpoverty.org/resources/cp47.htm).

This paper discusses the policy contexts and possible ‘fracture points’ in policy processes aimed at poverty alleviation in developing countries. It uses five illustrative case studies from Uganda and India to identify issues that are integral to the chronic poverty of particular populations and the administrative barriers to policy innovation and implementation concerning these issues. The issues taken up are: disability; mental illness; alcohol dependency; inheritance systems that privilege inheritance through the male line and consequently dispossess women; and the near destitution of older people without support (the full case studies are presented in Bird and O’Neil with Bolt, 2004). On the issue of inheritance, the authors include in their outline: the potential links between women’s dependency on husbands, fathers or sons for land and asset ownership; social practices that alienate women from asset claims upon divorce, separation or widowhood; and the consequences following property alienation that lead to women’s severe and chronic poverty as well as the intergenerational transmission of poverty. These links are illustrated with Ugandan case study examples.

Women’s land ownership and inheritance rights are identified as feasible issues for policy change with substantial benefits for the chronically poor. The last half of the paper identifies possible explanations for policy neglect and implementation failure concerning particular



poverty issues, with focused review of policy responses to the five selected issues, including Ugandan women's land rights. In this specific case, the conclusion reached is that due to failures in the legitimisation process, '*policy as practiced lags behind policy as written.*' The paper closes with a summary of the general implications concerning poverty alleviation policy making and implementation reform.

*Keywords:* chronic poverty, land rights, policy, vulnerable groups, women, Uganda

**Bird, K., Shinyekwa, I. (2004). 'Multiple Shocks and Downward Mobility: Learning from the Life Histories of Rural Ugandans'. Chronic Poverty Research Centre Working Paper No 36. London: Overseas Development Institute and the Chronic Poverty Research Centre (CPRC).**

Available at: [www.chronicpoverty.org/resources/cp36.htm](http://www.chronicpoverty.org/resources/cp36.htm).

Analysis of qualitative and quantitative livelihoods data regarding poverty trajectories in rural Uganda is the focus of this paper. In addition to re-analysis of the LADDER study dataset (see: [www.uea.ac.uk/dev/odg/ladder](http://www.uea.ac.uk/dev/odg/ladder)) the researchers undertook in-depth life history interviews with the heads of nearly 25 households in three villages. The researchers used the content of life histories to identify and describe factors and processes affecting individuals' and households' trajectories into and out of poverty.

The research reflects that individuals and entire families can experience the decline from relative prosperity into severe and chronic poverty by covariant and idiosyncratic shocks. Indeed, the researchers note that many of the poorest interviewees in this study originated from non-poor families. A recurrent finding, the authors observe, was that the poorest individuals and families had suffered recurrent and composite shocks and personal tragedies. Shocks and tragedies that appeared most significant and widespread for leading to severe and chronic poverty included conflict and dislocation, ill-health, abandonment in old age, death of the head of household, alcohol abuse and household disputes and breakdown. The authors recognised that those individuals and families who retained non-poor status seemed to have done so by simply managing to avoid personal disaster, thereby retaining their assets and even accumulating more. These findings match with the conceptualisation of vulnerability as the lack of buffer against shocks (including lifecycle events such as death and marriage dissolution) which put people at risk of severe poverty.

There are several ways in which this research indicates that inheritance practices are implicated in poverty trajectories. For instance, the study identifies widows and orphans due to AIDS as particularly vulnerable groups in that they often lack asset ownership to buffer against shocks (e.g. a husband's or father's death) and also experience stigma which leads to social exclusion thereby further reducing support for their responses to shocks. Marriage dissolution is also identified as significant in setting downward economic mobility trajectories for the children of the broken marriage who often find themselves separated from a parent or



parents and similarly dispossessed of the parent's home. Such separation may reduce the likelihood of future inheritance.

*Keywords:* AIDS, chronic poverty, divorce, orphans, poverty trajectories, widows, Uganda

**Blackman, R. and Litchfield, R. (2001). 'Child Poverty: Notes No. 1'. Sussex: Poverty Research Unit.**

Available at: [www.sussex.ac.uk/Units/PRU/notes1.pdf](http://www.sussex.ac.uk/Units/PRU/notes1.pdf)

This paper briefly outlines child poverty, with a special focus in intergenerational transmissions and education. Children are described as the nations' future, and the arguments for this outlined. Sections on measuring child poverty, poverty dynamics and intergenerational transmission of poverty are included. IGT poverty is defined as the process by which children of poor families are more likely to be poor adults. The authors assert that first and foremost this is due to educational achievement, which is influenced by parents' income, household financial dynamics, parents' education and family size. Children in developing countries are more likely to be required to work and therefore sacrifice their education, with long term consequences for their well being.

Other factors identified as important in relation to IGT poverty are maternal malnourishment and periods of poverty during childhood. Policies to intervene and break the poverty cycle during the early years of development are highlighted as vital (Smith and Moore, 2006: 47).

*Keywords:* childhood poverty, education, intergenerational transmission of poverty, policy

**Harper, C., Marcus, R. and Moore, K. (2003). 'Enduring Poverty and the Conditions of Childhood: Lifecourse and Intergenerational Poverty Transmissions'. *World Development*, 31 (3), 535-554.**

This paper defines IGT and life course poverty as emphasising the linked set of processes that may result in, or entrench, childhood, adulthood or chronic poverty, rather than outcomes or experiences during a specific period of time (pp. 535-536). IGT is seen to involve either the private transmission of poverty (within a family) or the public transfer (or lack of transfer) of resources across generations. Negative transmissions and negative poverty cycles can be interrupted, but the specific contexts determining poverty transmissions must be understood. A gap is identified in available data for the Developing World, particularly panel data which has led to a dearth in the quantitative analysis of such that has been seen in the Developed World. Policy recommendations focus on enabling environments which both make possible individual participation in society through positive social relations and socio-political structures, and also present opportunities for development. Three areas of policy integration are highlighted: substantial consideration of the potential



impact of different policy choices on children; greater integration between sectoral priorities; a process of policy design which promotes coordination between different government departments; citizen voice; and reduced transaction costs to governments of coordinating with donors (Smith, 2006: 15).

*Keywords:* children, childhood poverty, chronic poverty, family, IGT poverty, life course poverty, policy

**Moore, K. (2001). 'Frameworks for Understanding the Intergenerational Transmission of Poverty and Well-Being in Developing Countries'. Chronic Poverty Research Centre Working Paper 8, Manchester, UK: Chronic Poverty Research Centre (CPRC).**

Available at: <http://www.chronicpoverty.org/resources/cp08.htm>

This paper defines chronic poverty as IGT poverty, and seeks to open a space for a discussion of this concept in the developing world context. Through problematising the concept of IGT poverty, this work seeks to position it in a broader meaning of the transfer (or non transfer) of different types of capital. It highlights both private versus public transmission, the differing directions of transmission, the transfer or absence of transfer of different types of capital, and the question of other factors and processes which interact to ensure IGT poverty. It concludes with a section on policy implications, hypothesising that policy interventions will depend on both the type of capital transmitted and the general approach to poverty reduction. A literature gap is also highlighted: the intergenerational transmission of socio-cultural and socio-political assets, including coping strategies, in the developing world (Smith and Moore, 2006: 18-19).

*Keywords:* capital, chronic poverty, IGT poverty, policy, private transmission, public transmission

**Quisumbing, A. (2007). 'Investments, Bequests, and Public Policy: Intergenerational Transfers and the Escape from Poverty'. Chronic Poverty Research Centre Working Paper 98. Manchester, UK: Chronic Poverty Research Centre (CPRC).**

Available at: <http://www.chronicpoverty.org/pdfs/98Quisumbing.pdf>

This review article focuses on how obstacles for the accumulation of wealth and the intergenerational transfer of wealth among families perpetuate the intergenerational transmission of poverty. It focuses primarily on challenges in the accumulation and transfer of human and physical capital from parents to children. A loose lifecycle framework is applied that emphasises various stages of a child's life as opportunities for transfers or investments from parents. Parent-to-child transfers are conceptualised in terms of four 'building blocks' and their corresponding 'stumbling locks': 'preferences' (i.e. intra-household selection preferences for investments among children); 'returns' (i.e. perceived returns to investments



in children); 'constraints' (i.e. parents' abilities, according to resources, to invest in children); and 'bargaining' (i.e. parents' differential power, interests and attitudes in determining investments in children). In fleshing out these four factors with empirical examples, the significance of various intra-household and lifecycle stage-specific decision-making considerations are brought forth, including societal values concerning child outcomes, links between livelihood and marriage strategies and livelihood and risk distribution strategies, as well as how gender affects parents' child investment strategies. In the paper's second section, Quisumbing reviews how credit constraints, inheritance practices, marriage practices and associated wealth transfers at marriage, and asset ownership rights impact on parent-to-child transfers. Findings of studies from different developing countries enrich the discussion and underscore the importance of these factors in affecting the intergenerational transfer of poverty. The paper concludes with a brief overview of public policy recommendations for addressing the constraints in parent-to-child investments which include strengthening property rights, improving access to formal financial markets and capital (including social capital) as well as saving mechanisms, providing safety nets to minimise the negative effects of shocks, encouraging parent-to-child investment opportunities, and reforming legal systems to ensure transparency and equity in rights to inherit assets.

The paper builds from an earlier publication by Hoddinott, J., Quisumbing, A. (2003). 'Investing in Children and Youth for Poverty Reduction'. Washington D.C.: International Food Policy Research Institute.

*Keywords:* assets, children, intergenerational transfers, parents, policy

**Shepherd, A. (2007). 'Understanding and Explaining Chronic Poverty – An Evolving Framework for Phase III of CPRC's Research'. Chronic Poverty Research Centre Working Paper No 80. Manchester, UK: Chronic Poverty Research Centre (CPRC).**  
Available at: [www.chronicpoverty.org/pdfs/80Shepherd.pdf](http://www.chronicpoverty.org/pdfs/80Shepherd.pdf)

In order to explain chronic poverty and determine how best to interrupt it, a clear and coherent conceptual framework is necessary. The framework presented in this paper has been developed based on work undertaken both by the Chronic Poverty Research Centre (CPRC) during its first two phases (2000-2005) and by others, and is intended to inform CPRC's ongoing research and policy analysis in Phase III (2005-2010).

The framework has three levels. The first is a statement of the problem 'chronic poverty' (Section 2). The second is an elaboration of how we are looking at this problem through the lenses of poverty dynamics and intergenerational transmission (Sections 2 and 3). The third level proposes concepts which are most useful in understanding and explaining chronic poverty, poverty dynamics and intergenerational transmission (Section 4). In particular this suggests that there is an inter-disciplinary meeting point between concepts of 'poverty traps'



and ‘adverse incorporation’, and suggests that the cutting edge of research on chronic poverty lies in the interaction of asset dynamics and changing social relations. Key components of the context are explored in Section 5. One of these – the performance of the state, and in particular the under-performance of ‘fragile states’ or chronically deprived countries – is the subject of Section 6, which suggests both that research on chronic poverty has something to say to the ‘fragile states’ discourse, and that dealing with chronic poverty may be an important task in ‘fragile states’. Section 7 concludes with a reflection on how this paper changes the way we see chronic poverty.

The current working paper provides an overview of the entire framework. Elements of the framework are elaborated upon in a set of companion papers (Author’s own).

*Keywords:* assets, chronic poverty, fragile states, IGT poverty, policy, poverty dynamics; poverty traps, social relations

**Smith, B. with Moore, K. (2006). ‘Intergenerational Transmission of Poverty in Sub-Saharan Africa: A Select Annotated Bibliography with Special Reference to Irreversibilities associated with Poor Nutrition, Health and Education’. Chronic Poverty Research Centre Working Paper 59, CPRC Annotated Bibliography 3. Manchester, UK: Chronic Poverty Research Centre (CPRC).**

Available at: [www.chronicpoverty.org/pdfs/59Smith\\_\(Moore\).pdf](http://www.chronicpoverty.org/pdfs/59Smith_(Moore).pdf)

This select annotated bibliography is part of the of the Chronic Poverty Research Centre’s foundation research during their third phase (2005-2010) on the theme of empirical methods for studying intergenerational transmissions of poverty (IGT poverty). As such, it attempts to identify the contributing factors and lasting effects of processes that result in poverty being passed from one generation to the next.

The bibliography is divided into sections which correspond to key themes in the IGT literature. The first section covers IGT definitions, concepts and frameworks and in doing so it documents a series of processes and factors that are theorised to contribute to IGT poverty. These include material disadvantage, social disadvantage, transfer of capital and assets, family background in terms of family size and racial status, gender, kinship, and economic reforms. The author notes that the majority of this work has been undertaken in the United States of America, the United Kingdom, Latin America, and Asia. Smith and Moore note that despite an emerging literature on Sub-Saharan Africa, this is still a gap which needs to be filled. The second section of this annotated bibliography identifies key texts presenting a range of quantitative, qualitative and mixed methods used to research IGT poverty. The third section focuses on studies concerning child and maternal nutrition and health status as critical factors in determining the irreversibility of poverty transfers. This section incorporates studies which focus on the implications of HIV/AIDS on nutrition and



health statuses. The fourth section summarises studies that analyse education as an important intervention to interrupt IGT poverty. The final section of this collection accounts for recent texts that examine poverty processes specific to Sub-Saharan African contexts that are not covered in the bibliography's previous sections. In particular, these works focus on IGT issues related to agricultural livelihoods, conflict, ageing, street children, and social capital.

*Keywords:* AIDS, annotated bibliography, assets, childhood poverty, education, households, IGT poverty, poverty measures

### 2.2.2 *Significance of assets for chronic poverty*

**Carter, M., Barrett, C. (2006). 'The Economics of Poverty Traps and Persistent Poverty: An Asset-based Approach', *Journal of Development Studies*, 42 (2), 178 – 199.**

Available at: [www.informaworld.com/smpp/content~content=a 741607994~db=all~order=page](http://www.informaworld.com/smpp/content~content=a 741607994~db=all~order=page)

This paper discusses the conceptual foundations for a forward-looking (rather than retrospective) asset-based analytical approach to investigations of what factors structure the persistence of poverty. The presumed advantages of this kind of analytical approach for gauging chronic poverty are discussed in comparison to other poverty research approaches. The authors observe that the most common (first generation) approach to poverty measurement relies on household expenditure (or income) data from a single point in time. What the authors refer to as a second generation of poverty analysis is based on longitudinal or panel data that offer repeated observations over time on a single cohort of individuals or households which allows distinctions to be made between the chronically, transitorily and never poor. Despite this advantage, Carter and Barrett note that such analysis can not account for different types of poverty transitions. They argue that the establishment of an asset poverty line can be used to distinguish stochastic from structural transitions, making it possible to decompose poverty transitions. However, since measuring poverty based on the asset poverty line cannot identify the long-term persistence of structural poverty, Carter and Barrett also argue for models that factor in the underlying patterns, including behavioural foundations, of asset dynamics.

The asset poverty line is meant to identify those households that lack the assets that, on average, generate a non-poor level of expenditure or income. Such identification can be used to guide pro-poor interventions. The authors reflect that the assets poverty line was demonstrated to have relevance for poverty in South Africa over the 1993–98 period as research showed that 60 per cent of the households that made transitions out of poverty had initial period assets that strongly predicted well-being in excess of the standard poverty line





while 51 per cent of those who fell behind suffered asset losses that left them structurally poor in the latter survey period.<sup>8</sup>

Much of the paper's content describes and tests the development of new mathematical models for predicting the correlations between assets and poverty over time. The authors conclude with a summary of the policy opportunities of this approach to poverty measurement which include: identification of whether there is a minimum asset bundle required for households to work themselves out of poverty; identification of enabling conditions necessary to assure that households can use their assets bundle to escape poverty (e.g. credit, insurance, saving); and indications of how to target safety nets in response to shocks so as to ensure the minimum asset bundle is restored.

Investigation into whether there is a minimum asset base that households require to be able to escape chronic poverty is a meaningful area of investigation for evaluating the effectiveness of the distribution of assets through inheritance.

*Keywords:* assets, chronic poverty, poverty traps

**Deininger, K. (2004). 'Land Policies for Growth and Poverty Reduction: Key Issues and Challenges Ahead'. Paper presented at the Inter-regional Special Forum on the Building of Land Information Policies in the Americas, Aguascalientes, Mexico October 26-27, 2004.**

Available at: [www.fig.net/pub/mexico/papers\\_eng/ts2\\_deininger\\_eng.pdf](http://www.fig.net/pub/mexico/papers_eng/ts2_deininger_eng.pdf)

The purpose of this paper is to provide an overview of how land rights are crucial to economic growth and poverty reduction. It discusses how insecurity of property rights can negatively affect economic growth and poverty reduction by impeding investment, diversification of land use, market credit access, and local government revenues (through land taxation). The author focuses, albeit indirectly, on several pertinent issues related to chronic poverty and the intergenerational transfer of poverty including: how a lack of a secure system of property rights mostly affects poor people since land comprises such a large share of the asset portfolio of the poor; how women are specifically affected since they have historically been disadvantaged in terms of property rights; how land can serve as a safety net thus freeing governments from providing individual crisis assistance and instead directing limited resources to more 'productive infrastructure'; and how a system of land rights can improve overall accountability and transparency in local governance. To support a following discussion of possible land rights policy actions, the author reviews the historical evolution of property rights, identifies desirable characteristics of land rights, and briefly reports some of

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<sup>8</sup> Carter, M. and May, J. (2001). 'One Kind of Freedom: The Dynamics of Poverty in Post-Apartheid South Africa', *World Development*, 29, 1987–2006.



the evidence and observations regarding the impact of tenure rights (e.g. increases in land use investments). The last section of the paper identifies ways to increase tenure security in different kinds of situations including those governed by customary laws, those where most access is to state land holdings, as well as systems with individual titling. Summary notes regarding particular issues for donors to consider in the development of 'tools', policies and monitoring and evaluation of land security reform conclude this paper.

Despite this paper's focus on potential reforms to produce land policies that are 'equitable, effective, and efficient', it does not include a focused discussion on how inheritance implicates property rights and correlated economic growth or poverty. While noting that particular populations, notably the poor and women, are more disadvantaged in terms of insecurity of property rights, the main level of analysis is at the macro- or state-level of economic effects of property rights systems.

*Keywords:* economic growth, land rights, land policy, poverty reduction

**Ford Foundation. (2002). Building Assets to Reduce Poverty and Injustice. City: Ford Foundation.**

Available at: <http://www.eldis.org/cf/search/disp/docdisplay.cfm?doc=DOC9678&resource=f1>

This report outlines the ideas behind, and practice of, the Ford Foundation's Asset Building and Community Development Program. Assets are defined as 'a broad array of resources that enable people and communities to exert control over their lives and to participate in their societies in meaningful and effective ways' (p. 4). They include: financial holdings; natural resources; social bonds; and human assets. The Ford Foundation, over the last few years, has made grants available in Africa, Asia, Latin America and the United States in order to help build assets. This report identifies some of the key projects, outcomes and lessons learned from this program thus far, including natural resources for sustainable development in Brazil, alliances between the industrial and non-profit sectors in South Africa, individual development accounts in the United States, and recycling in Egypt.

When outlining the benefits of an asset approach, the focus is on the benefits produced for future generations, and thus breaking IGT poverty. It is argued that the economic, psychological and social benefits of an increased asset base provide the circumstances under which poverty can be interrupted and both individuals and households are able to plan for the future, laying a more secure foundation for subsequent generations. It is claimed that an asset building approach seeks to change the way assets are developed, distributed and passed on from generation to generation.

The selected examples are used to demonstrate the role of people and institutions in the creation, distribution and use of key assets, as well as to reveal the importance of organising



civil society, securing human rights, making education available to all, good governance and cultural stewardship. Three key new opportunities for asset bundling around the world are identified: a new equation for power sharing in communities produced by the trends towards decentralisation, globalisation, and increased communication; an increasing willingness to include social and environmental values in the fundamental operations of business and markets; and a new movement which is emerging to mobilise governments, international agencies and other public systems to be the base for equitable treatment of citizens (Smith and Moore, 2006: 47-48).

Keywords: assets, human rights, intergenerational transfers

**Khan, M. (2000). 'Rural Poverty in Developing Countries: Issues and Policies'. IMF Working Paper 00/78. Washington, DC: International Monetary Fund.**

Available at: <http://www.imf.org/external/pubs/cat/longres.cfm?sk=3544>

This paper indirectly addresses issues of chronic poverty and land inheritance through its identification of the features and causes of rural poverty as well as the different groups among the rural poor who are impacted by different factors, including exclusionary land rights and inheritance laws. There is not a regional focus to this discussion, but rather the author draws from existing research to develop general theories about the rural poor in developing countries across the globe.

The paper first briefly reviews the history of poverty research and policy, including poverty measurements, and discusses key emergent concepts and definitions of terms. An emphasised point is that understandings of poverty and the poor require examination of the context of the economy and society, including institutions of the state, markets, communities and households. Next, the paper identifies the rural poor. The author asserts that a possible criterion for classifying the rural poor into groups is their access to agricultural land, and notes that landlessness is a major feature and cause of rural poverty in developing countries. Causes of landlessness include unequal distribution of land, rapid growth of population, exclusionary laws of inheritance, privatisation of communal lands, periodic economic (price) shocks, indebtedness, and resource (land) degradation. The author discusses the various implications of landlessness including dependence on seasonal labour opportunities, labour migration to urban centres, and associated vulnerabilities to fluctuations in demand for labour, wage rates, and prices of food commodities.

The author also argues that another major difference among the rural poor is found in their links to the economy, use of their assets, and participation in the production process. As such, Khan applies a suggested policy framework for interventions with four groups of the rural poor, namely: small landowners who cultivate their land; landless tenants who cultivate other people's land; landless labourers who depend on casual or long-term employment in



the farm or nonfarm sectors; and rural women who could be part of any of these groups. Several policy options for poverty alleviation are discussed including stable macroeconomic management, transfer of assets, access to credit, jobs and infrastructure, and safety nets. The paper closes with suggestions for 'strategic guideposts' for reducing rural poverty and appendices summarise in tabulated format some of the key points made in this paper.

*Keywords:* developing countries, land access, policy, rural poverty

**Osmani, S. (2007). 'When Endowments and Opportunities Don't Match: Understanding Chronic Poverty'. Chronic Poverty Research Centre Working Paper 78. Manchester, UK: Chronic Poverty Research Centre (CPRC).**

Available at: <http://www.chronicpoverty.org/pdfs/78Osmani.pdf>

Attempts to understand the causes of chronic poverty have largely centred on the concept of the poverty trap. In this perspective, the main focus is on the paucity of initial wealth or endowments, which under certain plausible conditions can create a trap from which a poor person will find it hard to escape without help from outside. While acknowledging the value of insights gained from this perspective, this paper proposes to draw attention to a different perspective that can also prove useful in both understanding the causes of chronic poverty and looking for its solution. Instead of focusing on the level or the magnitude of endowments possessed by the poor, this new perspective focuses on the structure or composition of endowments. The crucial insight offered by this perspective is that chronic poverty can arise not just from low level of endowments but also from a mismatch between the structure of endowments possessed by the poor and the structure of opportunities open to them. This paper is an attempt to elaborate on this insight and to draw out some of its implications, especially its implication for the relationship between growth and poverty (Author's own).

This theoretical analysis of how the relationship between endowments and opportunities may be critical to chronic poverty provides important rationale for a focus on different populations' access to different types of assets, which is often reflected in inheritance practices. Osmani defines chronic poverty as 'a characteristic of the timepath of expected income generated by the constrained choices made by individuals at each point in time as to how to allocate his income between consumption and accumulation of assets of various types (including human capital), given the constraints of initial conditions and exogenous factors.' As such, he theorises that chronic poverty can exist without a poverty trap simply because some human beings may be unable to amass what they need to escape poverty during the finite time period of their lives. How an income trajectory develops over time is based on the evolution of two sets of factors:

- the portfolio of assets, i.e. the quality and quantity of various types of physical, natural and human capital that a person can employ; and



- rates of return on different types of assets.

The turn of attention to rates of returns of different types of assets indicates the significance of macro-level and structural constraints, the former relating to market size which affects decreasing rates of return on assets (overall lack of opportunities), and the latter relating to mismatches between the structure of opportunities that become available and the structure of endowments possessed by a specific individual.

Osmani notes that the mismatch between endowments and opportunities is particularly acute for the experience of poverty among women in Africa because availabilities of both assets and economic opportunities are often gendered. As such, chronic poverty alleviation efforts in Africa, and particularly among women in Africa, should focus on what assets and opportunities are available to whom, and how these two sides of the equation of income generation match or mismatch. Social action to remedy mismatches between assets and opportunities must attend to structural conditions that differentiate the availability of assets and opportunities (for example, although not mentioned by the author, discrimination in property rights).

The policy implications of Osmani's theory are that (1) detailed knowledge is required of the nature of structural mismatch, including attention to what structures availability of assets and opportunities of different groups among the chronically poor; and (2) design of a policy regime that will guide the economic growth process in a way that aligns the structure of opportunities more in conformity with the structure of endowments of the chronically poor. Finally, Osmani notes that acting at the assets endowment end of the equation may be amore cost-effective and durable method of tackling the problem of chronic poverty. Targeted interventions could include: redistribution of assets; special programmes for enhancing the human capital of specific groups of people; and removing various kinds of entry barriers that certain groups of people might face while trying to access markets and government services.

*Keywords:* assets, chronic poverty, endowments, poverty traps

**Sabates-Wheeler, R. (2006). *Asset Inequality and Agricultural Growth: How Are Patterns of Asset Inequality Established and Reproduced?*. Washington, DC: World Bank.**

Available at: <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/AgricInequalityRachelSabatesWheeler.pdf>

The purpose of this study is to explore the relationship between distributions of asset inequality, how these distributions are created and maintained, and agricultural growth. We intend to investigate what policies and institutions tend to promote equally shared growth.



The motivating question that guides our study is: How does differential access to productive assets in the agricultural sector, at various levels (regional, community and household), effect inequalities in agricultural outcomes in terms of productivity and poverty? The dominant discourse on agricultural productivity and distribution has been largely technocratic, focusing on input-output relationships, defined and measured with a yardstick specific to the discipline of economics. We review certain strands of this literature in depth. A less well-known strand of literature emphasises the social and political constructions and reproductions of a variety of inequalities. While this is a relatively small literature we use it to broaden our understanding of the processes and institutions that link inequality and productivity. Furthermore, we use Ethiopian agriculture as a case study to highlight the persistent nature of inequality as causally related to historical choices and path dependency. Rather than unidirectional causalities, what we observe is a complex system whereby inequality affects growth which in turn reinforces processes that exacerbate and reproduce inequalities (Author's own).

This paper is a literature review with an annexed case study paper on land, livestock and agricultural productivity in Ethiopia. It focuses on asset inequality in the agricultural sector (with a primary focus on land and other natural assets such as livestock, and financial assets, such as credit) and aims to identify how policies, processes and institutions, both in terms of market failures and structural inequalities (e.g. discrimination, cultural norms), affect agricultural outcome indicators (such as land and livestock distribution, gendered rights to assets, locational inequalities, agricultural productivity). The author conceptualises the causes of inequality as more than simply distributions, but as the processes that create distributions. As such, the ways in which people acquire, maintain or accumulate assets are discussed in terms of equity (access, control and empowerment) as are the institutions that affect this inequality (or equity). The author concludes that the combination of asset inequality, market failure and unequal access to resources and institutions not only reproduces patterns of inequality, but can cause persistent poverty because the combination of these factors leads to differential productivity between the asset rich and asset poor. Pointing to findings from macro and micro economic studies, this analysis argues for a focus on assets rather than income distribution and, consequently, attention to policies concerning institutional factors that inhibit equitable outcomes, including land reform and property rights systems.

*Keywords:* agriculture, assets, exclusion, gender discrimination, land, livestock, poverty processes



### 2.2.3 *Inheritance theories and models and IGT poverty*

**Bowles S., and Gintis, H. (2001). 'The Inheritance of Economic Status: Education, Class and Genetics'. In Feldman, M., (Ed). *Genetics, Behavior and Society, A volume in Smelser, N. and Baltes, P., (Eds). International Encyclopedia of the Social and Behavioral Sciences. Oxford: Elsevier.***

This paper investigates several theories regarding the intergenerational transmission of economic status. The authors note that it has generally been understood that the intergenerational correlation of incomes reflects the combined effects of the genetic and cultural transmission of traits, such as cognitive functioning, that contribute to economic success, as well as the inheritance of income-enhancing group memberships and property. Yet, they argue that theories of how genetic and cultural transmission and the inheritance of property and memberships correlate with economic status are currently over-simplified and actually obscure other factors that may be contributing to the intergenerational transmission of economic status. This paper mainly draws from, and applies to, the recent situation in the United States, but the content retains significance for general theoretical and methodological considerations.

Bowles and Gintis identify that there are few income generating traits with strong parent-offspring similarity for which both economic relevance and parent-offspring similarity have been empirically demonstrated. Among these are cognitive performance, the level of schooling, and ownership of wealth, each illustrating distinct transmission processes. As such, they question these three correlations in turn. As a result, the authors argue that the significance of general cognitive skills (commonly measured by IQ tests) as a determinant of earnings has probably been overstated in previous research because researchers have identified test-taking skills and traits (e.g. disposition to follow instructions, persistence, etc) as also amenable to employment for income. Regarding levels of schooling, the authors judge that the persistence in school attainment levels across generations likely results from actions taken by parents and offspring, and these are influenced by beliefs and preferences (as well as rates of return experienced or expected) that are themselves subject to intergenerational transmission. Bowles and Gintis also conclude that the intergenerational persistence of wealth is not explained simply by bequests but reflects as well parent-offspring similarities in traits influencing wealth accumulation, such as orientation towards the future, sense of personal efficacy, work ethic, schooling attainment, and risk-taking. The importance of group effects on intergenerational persistence of economic status is included in the theoretical discussion.

The authors conclude that some combination of environmentally and genetically transmitted noncognitive personality traits probably accounts for most of the correlation between the economic positions of parents and children, but that 'both genetic and environmental influences remain black boxes. We know they are important but we do not know why.' To address this lack of knowledge, the authors recommend that researchers focus less on the



literal handing-down of things such as good genes and material wealth, and pay more attention to what parents and children do. They suggest research be aimed as answering the question 'What does transmission require?'. The identification of a list of variables contributing in an accounting sense to intergenerational correlations, while not producing an explanation of how transmission works, will, according to these authors, provide a useful start for further insights.

The paper contains mathematical models calculating correlations and mechanisms of the intergenerational transmission of economic status.

*Keywords:* cultural transmission, economic status, genetic transmission, intergenerational transmission, school attainment, wealth inheritance

**Collard, D. (2000). 'Generational Transfers and the Generational Bargain', *Journal of International Development*, 12, 342-351.**

Available at: <http://www3.interscience.wiley.com/cgi-bin/abstract/72509660/ABSTRACT?CRETRY=1&SRETRY=0>

This simple paper discusses how the generational bargain may be a helpful framework for thinking about different social and economic issues in rich and poor countries. A three-generation model is used which positions the working generation as predominantly owning goods and services and determining allocations to older and younger generations. These transfers are made according to the working generation's expectations that the young will make similar transfers to them when they become old. As the author points out, if the pattern of transfers is to be sustained there must be at least an *implicit* generational contract or bargain. The author also notes that different motives may be at play for such transfers and that the nature of the bargain and its strength differ across cultures and societies.

Several issues raised in the paper's sections regarding the robustness of the bargain against 'bad' behaviour by particular generations and possible fractures in the generational bargain highlight potential implications for the intergenerational transfer of poverty. For instance, the author discusses how a 'missing' working generation (due to warfare or illness) would not be able to make transfers to either the young or to the old. In response, the old generation may step in to fill this void ('mend' the generational bargain) by continuing to work to assure the protection and development of children while the young themselves may also work. However, such a system may result in too little investment in the human capital of the young unless outside help is available, and the author theorises that the generational bargain could only be re-stabilised after one such incidence of a missing working generation. Such concerns are obviously pertinent to the current rates of HIV/AIDS-related illnesses and deaths among working-age adults in Sub-Saharan Africa. In addition, the author discusses





how negative bequests, in the form of the carrying over of loans or debts, from one generation to the next can also result in poverty persistence.

Collard encourages the use of the concept of the generational bargain for both positive research (e.g. 'what are the consequences for other generations of one generation's actions?') and normative exercises ('how ought a generation to behave?'). The framework's attention to assets and longer time frames makes it particularly useful for thinking about potential conflict between the interests of different generations and how these may be resolved.

*Keywords:* assets, generational bargain, generational transfers

**Corcoran, M. (1995). 'Rags to Rags: Poverty and Mobility in the United States.'** *Annual Review of Sociology*, 21, 237-267

Available at: <http://arjournals.annualreviews.org/doi/abs/10.1146/annurev.so.21.080195.001321>

Early arguments over the 'culture of poverty' assumed considerable intergenerational transmission of poverty but differed over whether this was due to cultural inadequacies of the poor or to structural barriers and discrimination faced by the poor. These arguments subsided in the 1970s when quantitative social stratification studies such as Blau and Duncan (1967) found that intergenerational socioeconomic mobility was considerable and that there was little evidence for a 'vicious cycle of poverty'. In the 1980s the issue of intergenerational poverty re-emerged when research on new longitudinal datasets suggested that both intragenerational and intergenerational poverty were more persistent than analyses based on cross-sectional data had suggested. Four new theoretical perspectives were developed to explain intergenerational poverty: the resources model, the correlated disadvantages model, the welfare culture model, and the underclass model. This review summarizes and evaluates recent empirical research on the extent to which being raised in poor families, in non-intact families, in welfare-dependent families, and/or in underclass neighbourhoods facilitates or hinders children's adult attainments. The review assesses how well each of the four new models are supported by this research (Author's own).

The studies used strongly support the economic resources model, that is, that parental economic resources consistently predict children's adult attainments. However, whilst this relationship can be identified, the author acknowledges that the route by which parental income matters is less clear. Evidence for the welfare culture model is weak, whilst evidence for Wilson's underclass model is strong. A further key finding is that being born into a black family rather than into a white family dramatically reduces a child's adult economic prospects. The author suggests that further research on intergenerational transmission of poverty should focus on how and why parental poverty itself diminishes children's adult attainments (Smith and Moore, 2006: 11-12).



*Keywords:* economic resources model, intergenerational transfers

**Erikson, R. and Goldthorpe, J. (2002). 'Intergenerational Inequality: A Sociological Perspective', *Journal of Economic Perspectives*, 16 (3), 31–44.**

Available at: [www.ingentaconnect.com/content/aea/jep/2002/00000016/00000003/art00002](http://www.ingentaconnect.com/content/aea/jep/2002/00000016/00000003/art00002)

This paper provides a critical analysis of the existing theoretical literature and research findings regarding intergenerational social and economic mobility and inequality in what the authors term 'modern societies' (examples include the United States, United Kingdom and northern European countries). It responds in large part to the 2001 paper by Bowles and Gintis entitled 'The Inheritance of Economic Status: Education, Class and Genetics' also summarised in this bibliography.

While the focus is on so-called 'modern societies', the key points raised in this analysis and discussions of future research and public policy implications provide useful theoretical and methodological considerations for contemplation of different potential correlations in intergenerational equality in other contexts, including developing countries. In opening, the authors note that economists usually work with intergenerational correlations of income or wealth treated as continuous variables, while sociologists more often work with intergenerational patterns of association between class positions that are treated categorically. They recommend operationalising the concept of class by defining employment relations (e.g. professionals, non-manual employees, self-employed, farmers, technicians, skilled and non-skilled manual workers, agricultural workers), which can serve as a good proxy for permanent income.

The authors report the following key points from their review:

- in all 'modern societies', significant associations between class of origin and class of destination prevail;
- there is a general propensity for intergenerational class *immobility* through the operation of what might be called class-specific inheritance effects. To illustrate, the authors use the example that the odds of a man originating in the salariat employment class being himself found in the salariat rather than in the nonskilled working class, relative to the same odds for a man originating in the nonskilled working class, would, across modern societies, be of the order of 15:1;
- within particular societies, mobility regimes show a high degree of constancy over time and in some cases (e.g. Great Britain and Japan) over periods extending to the start of the twentieth century;
- educational attainment is likely the most significant mediating factor in class mobility;



- 'modern societies' are not meritocracies in the sense that, once educational qualifications and other 'merit' variables are controlled, a significant and often substantial correlation between class of destination and class of origin remains;
- the mediating role of education varies significantly in its importance from one type of intergenerational transition to another. For instance, educational qualifications have been shown to be of no importance at all in mediating intergenerational immobility (for which there is a high propensity) among small employers, self-employed workers or farmers. What appears crucial in such situations is the direct intergenerational transmission of 'going concerns' or of economic capital in other forms. An important qualification, however, is that several recent studies indicate that educational qualifications are more important for 'long-range' upward mobility (e.g. from working-class origins into the salariat) than they are in intergenerational immobility within the salariat.

The paper concludes with discussion of two concerns: the so-called 'black box' problem which refers to the lack of understanding of explanatory variables for the intergenerational transmission of income; and the limited success of public policy in reducing intergenerational inequality. Regarding the former, the authors suggest that researchers concern themselves with a wider range of individual attributes than has so far been considered and particularly focus on 'demand-side' attributes, i.e. the attributes of potential employees that employers are looking for and how these are transmitted to child generations, as well as 'group membership' effects. On the latter point, Erikson and Goldthorpe recommend study of parent generations' strategies and reasons for these strategies. They contend that intergenerational inequality has important self-maintaining properties in that it creates conditions under which individuals in less advantaged positions choose and act in ways that can in themselves be understood as adaptively quite rational (rather than, say, being the expression of 'dysfunctional' subcultures) yet which, in aggregate, serve to perpetuate the status quo. As such, this paper concludes with the advice that public policy needs to extend beyond educational expansion and reform to address inequalities in economic security, stability and prospects.

*Keywords:* education, intergenerational mobility

**Fan, C. (2005). 'Survival of the Gene, Intergenerational Transfers and Precautionary Saving'. *Journal of Development Economics*, 76, 451-479.**

This paper provides a model of bequest and investment in children's human capital at low incomes. It posits that parents and children are linked through their common concern of grandchildren and intergenerational transfers provide a material basis for the perpetuation of the family line. The model characterizes intergenerational strategic interactions in a dynamic game theoretical framework. Moreover, it explores intergenerational uncertainty as a source



of precautionary saving. In contrast with the existing literature, the model implies that there are qualitative differences between precautionary saving from one's own income uncertainty and precautionary bequests from children's income uncertainty (Author's Own)..

Keywords: bequests, children, game theory, IGT poverty, intergenerational transfers, parents

## 2.3 'Traditional' inheritance systems in African societies

The entries in the first section of this chapter reflect accounts, mainly provided by anthropologists, of how inheritance systems functioned, or were expected to function, in the past among different African societies. The rules and practices described in these accounts may be considered 'traditional' in that they were documented as the ideals or actual experiences of people in earlier times. However, as the next chapter's entries concerning African societies' customary laws and norms document, 'tradition' is often a highly malleable and dynamic construct. As such, it is often misleading to conceptualise past practices as dictated by unchanging principles. Indeed, it has proven more useful to understand the embeddedness of rules, norms and practices in their particular socio-historical contexts. This kind of context-specific analysis, while not necessarily practiced in early ethnographic accounts of African societies, has been taken up in more recent studies of inheritance systems, as the entries in Chapter 3 demonstrate.

The studies summarised in this chapter are more descriptive of inheritance systems rather than framed in terms of the poverty effects of different inheritance rules and practices. Nevertheless, they provide significant comparative data for current analysis of how present inheritance practices are both influenced by, and influencing, changes in social relationships. For instance, they record how different rights to heritable assets have been determined according to social roles assigned by gender, birth order, and particular features of marriage and kinship systems. Most of these studies report on land inheritance, perhaps because this is a more obvious and easy property type to trace, however, several studies included in this chapter also account for the distribution of other materially and symbolically significant assets, including livestock and usufruct rights.

### 2.3.1 *Traditional systems of land inheritance*

**Goody, J. (1970). 'Sideways or Downwards? Lateral and Vertical Succession, Inheritance and Descent in Africa and Eurasia', *Man*, 5 (4). 627-638.**

Goody introduces this paper with the contention that given western European succession, inheritance and descent systems that practice vertical or lineal or 'direct' (agnatic) transmissions (from parents to children), too little attention had been paid by scholars to practices of lateral or 'indirect' (uterine) transmissions (transmission among siblings' children)



which were found to be much more prevalent among African societies. In making comparisons between Euroasian and African systems of succession, inheritance and descent explicit, Goody first provides several definitions of terms including 'diverging devolution' to denote the practice found in European and Asian societies whereby property is transmitted between both sexes and 'homogenous transmission' to denote the practice of male-to-male and female-to-female transmission as practiced in some African societies. He also asserts the usefulness of reserving the terms patrilineal and matrilineal to address descent group membership (relatedness based on descent from a common ancestor) while using the terms agnatic and uterine for the transmission of property and office.

Goody's review of data from the Ethnographic Atlas (1967) indicates a very strong association between patrilineal systems with vertical transmissions and matrilineal systems with lateral transmissions, particularly with movable property. His comparison between Eurasian and African societies leads Goody to confirm his previous assertion (Goody, 1969) that matrilineal and lateral systems are more common in Africa than in Eurasia, and hence that African kinship systems practice greater 'corporateness' than Eurasian societies.<sup>9</sup> Drawing from other empirical case study material, Goody also notes that in some African societies, there are less automatic, and more 'electoral', succession practices than found in Europe. In some African societies, for instance, there are only very 'usual lines' to guide elders in deliberating upon who among a large group of potential candidates is the most appropriate successor or inheritor and that succession and inheritance decisions may be revoked if elders deem that the successor or inheritor is not fulfilling his obligations.

In summarising his analysis, Goody revisits his argument that differences between land ownership and inheritance systems are related to the higher productivity of traction plough and irrigated farming as practiced in Eurasian societies which result in greater differences between households' property accumulation and associated socio-economic statuses. This internal differentiation in turn encourages interests in retaining property within the elementary family (through lineal transmissions) so as to preserve these differential earnings and social statuses. Goody hypothesises that agricultural and industrial modernisation processes in Africa will likely result in more differential accumulation of property which will in turn encourage changes from corporate tendencies, and hence lateral transmissions, towards direct lineal inheritance and succession practices.

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<sup>9</sup> The concept of 'corporateness' refers to the kinship group continuing to exist as an entity beyond the existence of individual members. A common characteristic of the corporate kin group is the sharing of property as well as other economic assets and liabilities (e.g. bridewealth, sale revenue, payment of dues possibly incurred by only one member).<sup>6</sup>



*Keywords:* agnatic inheritance, agriculture, 'corporateness', descent, land, succession, uterine transmissions

**Goody, J., and Buckley, J. (1973). 'Inheritance and Women's Labour in Africa', *Africa*, 43 (2), 108-121.**

This article analyses data contained in the *Ethnographic Atlas* (1967) and the *Ethnographic Survey of Africa* concerning the hypothesised links between women's agricultural labour contributions and societies' inheritance practices. In introducing patterns of gendered labour differentiation Goody and Buckley first note that women often do not have property rights to land and livestock in African societies, but that they contribute significant labour to land farming and animal husbandry. They also record data reflecting women's roles as the primary agricultural labourers in hoe-based farming as predominantly practiced in Sub-Saharan Africa and men's predominance in plough farming as practiced in North Africa. They set up their analysis with the question 'What are the implications of this difference in the sexual division of labour?'

The article first accounts for relationships between the distribution of agricultural labour and inheritance practices. It is noted that there are associations between intensive agriculture (i.e. North African plough agriculture) and monogamy and diverging devolution (the passage of property to both sons and daughters), and between extensive farming (i.e. Sub-Saharan hoe farming) and polygyny and 'homogeneous' inheritance (whether patrilineal or matrilineal). The authors also note a tendency for female predominance in hoe agricultural labour to be associated with matrilineal systems of lateral inheritance whereby a woman's brother inherits before her children. Among different patrilineal societies both lateral and vertical inheritance systems are identified, however, vertical inheritance (inheritance by children) is often found in societies where women make the major contribution to agriculture whereas male farming is more likely to be associated with lateral inheritance. As such, the authors conclude that 'In patrilineal societies, the distribution of lateral or linear inheritance is influenced by the sexual division of labour' (p. 117).

The link between female farming in patrilineal societies and vertical inheritance is investigated in more detail. The authors note that while assignment of property (i.e. land for farming or livestock for husbandry) from a husband to a wife does not give the woman the right to inherit, it does seem to affect the position of her children. In many cases, from which the authors draw particular examples, a man inherits rights to the particular plots of land that his mother cultivated, or the particular livestock that she husbanded. Particularly significant in polygynous societies, while sons of the same father inherit directly from this father, their mothers provide the 'differentiating links' in the establishment of their own livelihoods.



In a postscript, Goody and Buckley test Gluckman's hypothesis that the type of property transmission influences the strength and durability of the marriage tie with filial inheritance resulting in virtually no divorce and 'true levirate' (widow inheritance by a brother of the deceased husband) and lateral inheritance resulting in higher frequencies of divorce and lack of widow inheritance by a husband's brother(s). Using Ethnographic Survey data (which they find 'scanty' on this point), the authors find that there is some support for Gluckman's hypotheses.

**Keywords:** agricultural labour, matrilineal societies, patrilineal societies, polygyny, property transmission

Also see:

Goody, J.R. (1969). 'Inheritance, Property and Marriage in Africa and Eurasia', *Sociology*, 4, 55-76.

Goody, J.R. (1973). 'Bridewealth and Dowry in Asia and Eurasia'. In Goody, J., Tambiah, S.J. (Eds.) *Bridewealth and Dowry*. Cambridge: Cambridge University Press.

Goody, J.R. (1976). *Production and Reproduction: A Comparative Study of the Domestic Sphere*. Cambridge: Cambridge University Press.

**Gray, R., and Gulliver, P. (Eds.) (1964). *The Family Estate in Africa: Studies in the Role of Property in Family Structure and Lineage Continuity*. New York: Boston University Press.**

*The Family Estate in Africa* is a collection of essays describing the interplay between land resources, property rights, and family organization in seven areas of central and eastern Africa. Each essay is written by an author who is analyzing his or her own field data: E. Winans on the Shambala of Tanzania; R. Levine, the Gusii of Kenya; I. Kopytoff, the Suku of the Congo; A. and G. Harris, the Taita of Kenya; E. Krieger, the Lobedu of South Africa; P. Gulliver, the Arusha of Tanzania; and R. Gray, the Sonjo of Tanzania. Robert Gray also contributes an introduction which outlines the theoretical framework within which the essays were written and summarizes the essential similarities in family processes which emerge from the descriptive essays. ...

Despite the argument for a new approach in the introduction, the essays all rely to some extent upon structural analysis. Each concentrates upon family organization from two aspects: the attachment of the family group to property, especially fields and stock, and the changes families undergo as their members mature, marry, undergo the other vicissitudes of human life, and die. In this they follow, quite consciously, the models supplied by Gulliver's study of Jie and Turkana in *Family Herds* and by the essays edited by Jack Goody under the title *The Developmental Cycle of the Domestic Group*. ...



*The Family Estate* leaves some questions unanswered about the possibilities of family patterning under varied circumstances. Each author describes in detail possible repercussions of the death of husband and father at various stages of family development upon the subsequent fortunes of the family. Not one treats of the consequences of the death of a wife and mother. Perhaps in many societies the death of a woman has no implications for the future control of an estate nor need it influence the groupings which will emerge from the old family unit. In some of the societies here described, it does; for sons expect to inherit land and perhaps stock allocated to the house of their mother and their wives expect to receive fields from her. Her death must have different implications for the control of property and its distribution if she dies when her children are very young than if she dies after they are adults. The important role that women may play as foci for property rights even in patrilineal societies does come out clearly in the essays, especially in the descriptions of Taita and Lovedu. (Summary from excerpts of published review by: Colson, E. (1965) *American Anthropologist*, 67 (5), 1315-1317).

**Keywords:** estate, family, household, land, marriage, patrilineal inheritance, Congo, Kenya, South Africa, Tanzania

**Kirchhoff, P. (1932). 'Kinship Organization. A Study of Terminology'. *Africa: Journal of the International African Institute*, 5 (2), 184-191.**

This paper marks a very early contribution to the definition of terms for different types of inheritance systems, with a predominant focus on the organisation of African societies. Distinctions between, and implications of, different systems of patrilinearity, matrilinearity, patrilocality, and matrilocality are made in an effort to clarify a conceptual framework that accounts for the variety of anthropological findings regarding various African societies' systems of social organisation and inheritance. Examples of different types of systems are drawn from the pre-existing body of ethnographic research.

**Keywords:** matrilineal inheritance, matrilocality, patrilineal inheritance, patrilocality, succession

**Lloyd, P. (1966). 'Agnatic and Cognatic Descent Among the Yoruba'. *Man*, 484-500.**

This anthropological study of the descent systems of the Yoruba of northern and southern Nigeria describes systems whereby property is a right accorded to membership by birth. A woman who marries outside of her descent group, for example, retains her rights in the land of her group, and is not counted as a member of the descent group into which she has married. Property is inherited or rotated among the children or junior members of parents' descent groups. Among the northern Yoruba agnatic descent groups exist which makes





descent group membership exclusive: while a son may inherit farm land from his mother's descent group, in doing so, he is expected to take up residence and membership with this descent group, effectively renouncing his claim of membership to his father's descent group. Among the southern Yoruba, however, cognatic descent groups are found, and men may farm different plots of land acquired through different descent groups. In this way, men can exploit their claims to descent group membership as an economic strategy. As Lloyd notes, the only effective limits to claiming simultaneous membership of many descent groups is the ability of individuals to fulfill their obligations as members (i.e. allocations of time and money). This kind of system can result in the growing popularity and membership of descent groups with valuable property, and the corresponding diminishment of descent groups with fewer advantages for its members.

*Keywords:* agnatic descent, cognatic descent, descent, group membership, kinship, Yoruba, Nigeria

**Shipton, P. (1984). 'Lineage and Locality as Antithetical Principles in East African Systems of Land Tenure'. *Ethnology*, 117-132.**

Shipton offers a comparison of two different populations experiencing different degrees of property (land) availability and an interpretation of how abundance or scarcity of property affects societies' organisation of relationships and rights, in these cases, either along descent or locality-based identities. Reporting on the example of the system of the Sukuma-Nyamwezi of northern and western Tanzania, Shipton describes a population living in an environment abundant in cultivatable land. Rights to cultivate land were permissive and the population allowed a person to move to a new area to take up cultivation of land according to his own needs and his family's relative needs. This permissive land tenure system allowed for the primogeniture (single-male heir) inheritance system as other sons/brothers could easily move to take up other lands for cultivation. In contrast stands the system of the Kenyan Luo which restricted land cultivation rights to those who lived among relatives. As Shipton describes, over time, with land becoming scarcer for the expanding Luo population, this set of rules enhanced the importance of claims of ancestry as a means of ensuring rights to land and land inheritance was regarded as an inalienable right. As well, the scarcity of land for expansion resulted in some lineages ceasing their subdivision and expansion, and instead living close together with the physical positions of land plots (extending out from the original holding) representing genealogical ranking. Shipton reports that this sharing of land among growing numbers of the descent group eventually resulted in increasing rates of disputes and litigious action among members with competing claims.

*Keywords:* kinship, land, social relations, Kenya, Tanzania



**Shipton, P. (2007). *The Nature of Entrustment: Intimacy, Exchange and the Sacred in Africa*. New Haven and London: Yale University Press.**

The central theme of this book is the borrowing and lending that takes place in African societies, between both relatives and strangers. It is presented by the author as the first book in a series of three (two forthcoming) which as a whole take up various issues related to the simultaneity of social and economic processes in matters of what the author terms 'entrustment' (reciprocity). In this volume the author terms his focus 'fiduciary culture' and the book addresses economic, political, social and cultural meanings for exchanges between people as well as their processes and effects. The main thrust of the thesis is that processes of credit and debt are as much cultural as they are economic and political. As such, relationships existing or created between borrowers and lenders are given much analytical attention. Most of the empirical data is drawn from Shipton's years of ethnographic study of the Luo people of western Kenya.

The focus on borrowing and lending leads into discussions about intergenerational relationships and in some cases specific processes and meanings of transmission of assets and debts between generations (one chapter is devoted to 'Inheritance of Things and Persons'). For instance, Shipton notes that a man's death and the distribution of his property are the occasion that is more likely than any to sharpen family animosities and lead to lineage fission. He also explains that among the Luo livestock credits and debts are fully heritable and that traditionally elders were expected to inform their respective heirs of these before they died. A debt will continue to be claimed from offspring of the original borrower until the satisfaction of the offspring of the original lender. Shipton's and others' research has indicated that most creditors of money and food debts seem to forgive them at funerals however whether other debts are forgiven or not varies according to circumstances (social relations, economic status, etc). In discussing the various cultural norms that dictate inheritance obligations, Shipton notes that if a father withheld family herds from a son, thereby preventing the son's marriage (through payment of bridewealth with this livestock), and the unmarried son died, it was believed among the Luo that the son would return as a malevolent ghost. Shipton also details various beliefs that support the practice of widow inheritance among the Luo, and discusses different practices followed to ensure widowed women's continued claims to property access. Practices have included a widow marrying a brother of the deceased husband or if the widow was without a male child she might marry another woman in the name of her husband who could give birth to sons to be recognised as the property heirs of the deceased man.

Among the most important points Shipton makes in this very useful contribution to the understanding of inheritance practices among the Luo is that for the Luo inheritance is most certainly about social relationships: 'What land you inherit, and from whom, helps define who you are' (p. 184). He also makes the important point that there are no simple rules for Luo



inheritance. The book's discussions of various 'rules' and actual practices of inheritance are helpfully and interestingly illustrated with detailed examples from Shipton's long-term fieldwork.

*Keywords:* exchange, intergenerational transfers, kinship relations, land, livestock, marriage, parents, widows, Luo, Kenya

### 2.3.2 *Traditional inheritance systems of land use and livestock rights*

A man's herd is a complex organization of individuals tied to one another in diverse ways; quite as complex as the community of people in which he lives and in many ways reflecting that community. His herd depicts the household structure, lineage, and clan; expresses the network of social relationships as they extend to his father's father and the yet unborn son of his son; and also reflects the ties that have been established through the marriages of his aunt and his sisters and the no less tenuous ties arrived at through contractual relationships, all of which bind him to widely scattered fellow tribesmen.<sup>10</sup>

As the above passage describes, livestock ownership, and in much of East Africa, cattle ownership in particular, is fundamentally determined by social relationships. Rights to livestock are offset by responsibilities to people and as such there are societal norms that guide who can own, control and have access to livestock and under what conditions. The following references describe sources that reflect some of the diversity in systems that have traditionally governed the distribution, including distribution by marriage and inheritance, of livestock rights.

**Cheater, A. (1983). 'Cattle and Class? Rights to Grazing Land, Family Organization and Class Formation in Msengezi'. *Africa: Journal of the International African Institute*, 53 (4), 59-74.**

In this paper Cheater reports on data related to the distribution of grazing rights in a rural area of freehold tenure in Zimbabwe in the early 1980s. In this region 'squatting' is officially disapproved and land is legally inherited by a single heir but allocation to others of rights to arable land for cultivation and grazing commonly occurs. Cheater notes that such practices often offset customary inheritance rules in providing means for subsistence and capital accumulation among individuals, such as younger brothers, sisters, wives and children, who would not traditionally be provided for through customary land inheritance rules. For

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<sup>10</sup> Goldschmidt, W. (1986) *The Sebei: A Study in Adaptation*, New York: Holt, Rinehart and Winston, p. 80.



instance, non-inheriting offspring of the deceased owner of the land would theoretically have been displaced from that land upon the heir's inheritance, but in practice, Cheater finds that significant numbers of collateral kin remain on inherited farmland. And where brothers, sisters, their spouses and their offspring remain on inherited land, Cheater records that they very frequently cultivate arable land in their own right. Regarding grazing rights, Cheater finds that the major categories of recipients include, in order of their prominence, brothers, sons, wives, mothers and sisters, and that together, these relatives account for 85 percent of all recipients' grazing rights. Wives and mothers, however, were not found to be the primary beneficiaries of husbands' and sons' allocations of grazing rights: only one wife in twelve had been allocated grazing rights on their landowner husbands' farms and less than 40 percent of landowners' mothers grazed cattle on their sons' land. Brothers and sisters (indicating a difference from customary patrilineal traditions) held the majority of grazing rights.

This paper also discusses the possible strategic timing of decisions to transfer livestock, and especially cattle. In particular, Cheater describes a father's considerations regarding the transfer of cattle to his sons. Cattle are important to young men because they (should) form part of bridewealth payment and to older men because they are a form of capital that is used as draught power in the fields as well as constituting a nucleus of capital that generates cash returns. Further complicating decisions on father-to-son transfers of cattle is the father's recognition that a married resident son has increased traditional claims on the use of the land for all forms of subsistence. As such, Cheater theorises that fathers may not transfer cattle to sons for their bridewealth until the father's own physical capacity is diminishing and he is ready to concede larger portions of the farmland to others (e.g. his sons and their households).

Cheater's study's findings are important for considerations of inheritance systems. They demonstrate that analysts must investigate beyond the title of a land deed to know who may be benefiting from land inheritance because usufructuary allocations are also significant and may be made in ways that are not consistent with customary inheritance norms.

*Keywords:* bridewealth, cattle, customary inheritance, grazing rights, livestock, usufruct rights, Zimbabwe

**Hakansson, T. (1989). 'Family Structure, Bridewealth, and Environment in Eastern Africa: A Comparative Study of House-Property Systems'. *Ethnology*, 28 (2), 117-134.**

This paper discusses different types of systems governing rights to cattle among extended families that have patrilineal descent systems in eastern and southern Africa. Hakansson distinguishes between what he calls centralised, decentralised and intermediate systems of the 'house-property complex' which is the term used to refer to the system of rules of property ownership and inheritance. He first conceptualises the extended family as a



property holding unit in relation to other extended families which is further divided into relatively autonomous household units each with their own allocated property. However, whether ultimate authority over the households' property actually resides with the household members or with the extended family head is an important distinction.

Hakansson describes a centralised system as one in which the extended family head has extensive rights of control and distribution over all family property. In a decentralised system ownership and control of extended family resources are divided between the family head and members of the houses. The property of houses and individual members (e.g. co-wives, sons) is protected by customary law, and this property cannot be alienated from these members by the family head. Hakansson notes that a centralised system provides many opportunities for conflict within the extended family because individual households' interests are often not the same as the interests of the whole extended family (as pursued through the discretion of the family head). Decentralised systems may avoid such intra-family conflicts because property and inheritance rights are explicitly assigned and protected. However, this more individualistic system may not serve the whole of the family well in times of risk (e.g. famine) when pooling resources is a good strategy.

Hakansson draws empirical examples from several ethnographies. He uses the Jie of Uganda, a transhumant herding population, as an example of a centralised system and explains how the household head allocates and reallocates cattle among different households according to changing needs (i.e. households' changes in size and composition, as well as pooling of resources for meeting high bridewealth payments or in times of food scarcity). The agriculturalist Gusii of western Kenya are used as an example of a decentralised system of the house-property complex while the pastoral Samburu of Kenya are presented to describe what Hakansson judges as an intermediate system between centralised and decentralised. Hakansson then compares seventeen different patrilineal descent systems and identifies correlations between the relative centralisation of authority over family property, intra-family conflicts and ecological conditions of risk (e.g. likelihood of widespread food scarcity). He concludes that centralised systems reflect a strategic response to high risk environments: 'Instead of specific property rights, only rights of use are assigned; i.e., the right to marry and to obtain food from the total herd rather than from specific beasts' while decentralised systems have lower incidents of intra-family conflicts but are not commonly found in high-risk environments. Based on his analysis, Hakansson concludes that systems of property rights do not occur randomly but are context-specific responses to problems that occur in the course of managing resources to meet the goals of the corporate group as a whole and the conflicting interests of its constituent parts.

*Keywords:* bridewealth, extended family, livestock, patrilineal descent, property rights, Kenya, Uganda



## 2.4 Changes in inheritance systems in African societies

This chapter summarises contributions that have enhanced understandings of African societies' inheritance systems by focusing on the wider political, legal, economic, religious and social structures that have influenced their development and applications. This body of scholarship represents a shift from more functionalist/structural functionalist approaches to the study of inheritance systems by orienting analyses in processes of change and recognising that interpretation of inheritance rules and norms is often contingent on context-specific negotiations. As such, this literature begins to address questions of power dynamics in the determination of inheritance rules and practices.

### 2.4.1 Customary, religious and statutory legal systems affecting inheritance

The next series of entries reflect that analyses of the organisation and provisions of countries' legal systems' inheritance have taken a rights-based approach, and most often have specifically interrogated evidence of gender discrimination and inequality. While these have certainly enhanced understandings of some of the obstacles that exist to women's equal economic roles and security, they have not explicitly addressed the poverty effects of instances of legal discrimination. Nevertheless, the complexities of many African societies' legally pluralistic systems, including the ways in which laws of property ownership, marriage, divorce and inheritance inter-relate, are necessary bodies of knowledge for considerations of the challenges and opportunities for addressing the economic consequences of various inheritance rules and practices. Included in this section are papers that take up the question of how customary legal systems function in present-day societies and whether these systems constitute viable opportunities for realising equity in assets access as well as resolution of disputes over property and inheritance rights.

**Armstrong, A., Beyani, C., and Himonga, C. (1993). 'Uncovering Reality: Excavating Women's Rights in African Family Law'. *International Journal of Law and the Family*, 7, 314-369.**

Available at: <http://lawfam.oxfordjournals.org/cgi/content/abstract/7/3/314>

This article identifies the specific issues which affect African women in the sphere of marriage and the family relations within the framework of Articles 15 and 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The article first elaborates and puts in context concepts such as family, marriage, rights, equality and justice and then provides an overview of the plurality of laws which have emanated mainly from colonialism. The authors then highlight issues specifically relevant to women in the context of customary law and analyze them in terms of CEDAW and the more general standard of women's interests and justice. (Bora Laskin Law Library, University of Toronto: [www.law-lib.utoronto.ca](http://www.law-lib.utoronto.ca)).



*Keywords:* CEDAW, customary law, gender equality, legal pluralism, legal reform, marriage, women

**Cavin, A-C. (1998). *Droit de la famille burkinabé: le code et ses pratiques à Ouagadougou*. Paris: L'Harmattan.**

In French-speaking West Africa, the coexistence of two sources of family law – state norms stemming from colonialism alongside ancestral tradition – has long been problematic. It has often been considered that these two types of law existed side by side without being influenced by each other. On examination, however, it appears that multiple responses have been found within the unitary organizational model envisioned by the state. This work aims to examine actual practice in the town of Ouagadougou in Burkina Faso. It draws on three typical conflicts in family law – inheritance problems; paternity disputes; and divorce – focusing on the fate of women in these conflicts and demonstrating the actual methods used to resolve conflict, as well as the development of new procedures that combine tradition and modern ideas. These new procedures may one day lead to the establishment of new laws capable of meeting the needs of the majority of Burkinabé citizens. (Cummings *et al.* 2001: 87-88).

*Keywords:* customary law, divorce, family law, law (inheritance), paternity, women`s rights, Burkino Faso

**Davies, P. (2005). 'Marriage, Divorce, and Inheritance Laws in Sierra Leone and their Discriminatory Effects on Women'. *Human Rights Brief*, 12 (3), 17-20.**

This article examines the violations of the human rights of women in Sierra Leone under the General Laws, Customary Laws, and Islamic Laws that pertain to marriage, divorce, and inheritance. Using the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Universal Declaration of Human Rights (UDHR), the author explains how the laws and customs pertaining to marriage in Sierra Leone violate the commitments Sierra Leone has made to these international instruments. The author concludes with recommendations for urgent reform and domestic codification of the provisions contained in the international agreements to which Sierra Leone is signed. (Bora Laskin Law Library, University of Toronto: [www.law-lib.utoronto.ca](http://www.law-lib.utoronto.ca)).

*Keywords:* CEDAW, customary law, divorce, gender discrimination, human rights, international law, law (inheritance), legal reform, marriage, women, Sierra Leone



**Emery, V. (2005). *Women's Inheritance Rights in Nigeria: Transformative Practices*. Toronto: University of Toronto Faculty of Law. (Unpublished student research paper).**  
Available at: [http://www.law.utoronto.ca/documents/ihrp/HIV\\_emery.doc](http://www.law.utoronto.ca/documents/ihrp/HIV_emery.doc)

This research paper provides a comprehensive summary of the current status of widows' inheritance rights in Nigeria through explication of the facets of property rights, marriage rights, and succession rights, in the three systems of law, common, customary, and sharia, that are active in Nigeria. Additionally, the author's exploration of possible options for ensuring that widows receive adequate property rights incorporates useful documentation of influential rules and practices (for example, the rule of primogeniture and the pragmatism of local customary dispute resolution systems) from research and case law in other Sub-Saharan African countries. Although deliberately focused on the situation of widows in Nigeria, much of this analysis is applicable to women in general in Nigeria.

There are many useful insights regarding Nigerian inheritance rights to be gleaned from this review and Emery uses details as they are available to illustrate particular issues concerning gender and inheritance. For instance, drawing from case law that has interpreted customary inheritance rights, Emery provides an outline of distributive principles among the Yoruba and the Ibo who are the two dominant ethnic groups in Southern Nigeria. In this she describes that the Yoruba peoples divide property equally among all children, regardless of age or gender, while the eldest male typically is made the *dawodu*, or family head, with responsibilities as trustee of the family property. In the absence of a male child, however, the eldest daughter can also become the *dawodu*. A widow has no right either to inherit or administer the property because as a wife under customary law she is considered as part of the chattel of the estate. A woman can, however, sue on behalf of her minor children to protect their property rights. For the Ibo, succession is on the principle of primogeniture and primarily patrilineal, with both the rights of control and property inherited by the eldest son or, if there is none, the brother. The eldest son holds land on trust for himself and his brothers. Even if there are female children, property will pass to the brother of the deceased. The widow lacks any rights to the property and her access to land is then assured only by her son. Emery provides similarly detailed information concerning the rules and practices of common and sharia laws (as practiced as the dominant form of customary law by the Hausa in Northern Nigeria) relating to property, marriage and inheritance, as well as some discussion of how these different legal systems have been related to one another in inheritance disputes.

Many pertinent issues and experiences relating to widows' inheritance of property in Nigeria are examined in this paper. Ideas specific to inheritance reforms in the context of HIV/AIDS are also included, such as, for example, a discussion of the notion that the major role of widows and other elderly women in caring for AIDS orphans and other family members may serve as a justification for a new system of inheritance based upon compensation for women's care work.





Reflecting a concern with not over-simplifying her brief, Emery acknowledges that widows are not always in a worse economic position than their married counterparts. Nigerian women who practice purdah, for example, may, in fact, have greater economic independence because as widows they are able to work outside of the home. In sum, this is a very valuable contribution to considerations of how widows' inheritance rights interact with different systems and types of law in Nigeria and in similar legal contexts.

*Keywords:* customary law, common law, Islam, marriage, patrilineal inheritance, sharia law, widows, women's property, Nigeria

**Hilmy, N. (1998). 'The Rights of Women in Muslim Societies'. *AFLA Quarterly*, 1, 6-25.**

An account is provided of women's rights in the Arab region in terms of their social roles, employment and education within the traditional Arab family. Much of the modern Muslim world has experienced significant changes with respect to the lives of women. These changes are discussed with particular reference to women's political and legal rights, participation in national development, and property and inheritance rights. The role of the state and the social construction of gender identity are also considered. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations general assembly in 1979, but was not accepted by all the Islamic countries unconditionally. The reservations made by Egypt, Tunisia, Iraq, Democratic Yemen, Bangladesh and Jordan are outlined. The author concludes that major advances in women's rights in Islam have been achieved in recent years. These advances represent a radical departure from traditional Islamic doctrine. However, while reforms reflect the ideals and aspirations of the educated, West-oriented urban elite, they may be met with hostility and suspicion in the more conservative rural areas. Moreover, the vast majority of the Muslim judiciary remains loyal to the traditional doctrines and values that formed the basis of their education in the law. Thus, the legislation does not always reflect social reality and although the legal machinery for women's advancement exists, it does not function effectively everywhere. (Cummings *et al.*, 2001, 101).

*Keywords:* Islamic law, women's property rights

**Kameri-Mbote, P. (2002). *Gender Dimensions of Law, Colonialism and Inheritance in East Africa*. International Environmental Law Research Centre.**

Available at: [www.ielrc.org/content/a0205.pdf](http://www.ielrc.org/content/a0205.pdf)

This paper gives an account of the status and application of inheritance laws in Kenya from colonialism to date highlighting the conflict between introduced English norms with customary norms as well as provisions in Islamic and Hindu laws, with a central focus of the effects on the rights of women to inherit property. The review reflects how laws of succession



and marriage for different groups in Kenya, often in accordance with religion, have developed along different lines to produce a system of legal pluralism today. Using Kenyan legal cases as evidence and findings from qualitative research among five different populations in Kenya, Kameri-Mbote reviews the links between marriage and inheritance practices and legal statuses to discuss the implications of conflicts between customary and Christian or civil systems for different women.

The paper provides a good basic introduction to legal terms and concepts including the differences between heirs and successors, legal centralism and legal pluralism, as well as a description of the women's law approach research methodology, and draws some comparisons of legal situations for women and inheritance among other eastern and southern African states.

*Keywords:* customary law, Hindu law, Islamic law, law (inheritance), legal history, marriage, women, Kenya

**Lastarria-Cornhiel, S. (1997). 'Impact of Privatization on Gender and Property Rights in Africa', *World Development*, 25 (8), 1317-1333.**

This document explores the transformation of customary tenure systems and their impact on women's rights to land in Africa. The focus is on the diversity of land rights within customary tenure systems, the different institutions and structures (for example, inheritance and marriage) that influence rights to land, and the trend towards uniformity and increasing patrilineal control. With privatization, rights to land have become concentrated in the hands of those people (for example, community leaders, male household heads) who are able to successfully claim their ownership rights to land, while others, such as poor rural women, ethnic minorities lose the few rights they had and generally are not able to participate fully in the land market. (Cummings *et al.*, 2001: 107).

*Keywords:* customary law, land rights, marriage, rural poverty, women's property rights

**Moore, S.F. (1986). *Social Facts and Fabrications: 'Customary' Law on Kilimanjaro, 1880-1980*. New York: Cambridge University Press.**

This self-described hybrid historical/ethnographic study of the legal and political ideas and practices of the Chagga of Kilimanjaro, Tanzania over a period of one hundred years contributes important theoretical and methodological insights for considerations of the development and manipulation of laws and customs that govern peoples' claims and rights to land. Moore conceptualises law as 'a categorical slice of life that includes local practices and national policy, activities both in and out of the courts, and touches everything from politics to



property, from incest to inheritance' (p. xiii). Customary law is described as an artificial construct with changing political implications. Drawing from archival records, including court transcripts, other researchers' accounts, and her own long-term fieldwork among the Chagga, Moore describes and analyses changes among relationships, access to resources, and ideas during precolonial, colonial and postcolonial periods. A case study of a localised patrilineage is used as a means of reflecting how supra-structural changes were experienced by individuals. Documentation of legal disputes further illustrates Chagga peoples' experiences of tensions within structural limitations, and Moore identifies the changing incidence of types of dispute over the years.

This study provides insightful historical analysis of how rules, including those of inheritance and property ownership and access, have been continually adjusted by negotiation.

*Keywords:* customary law, legal history, patrilineage, property rights, Tanzania

**Mtengeti-Migiro, R. (1991). 'Legal Developments on Women's Rights to Inherit Land under Customary Law in Tanzania'. *Verfassung und Recht in Übersee*, 24 (4), 362-371.**

This paper examines the question of land inheritance rights in Tanzania. Before the advent of colonial domination, social organization was based on clans comprising single families headed by a man. In this context, women were excluded from inheriting family or clan land. With the coming of colonialism, the socioeconomic set-up in the traditional society started to crumble, and after independence, new policies further affected both traditional land tenure and social organization. These changes, however, did not completely erode the customs and practices that regulated property relations, and the coexistence of the two has had a significant impact on women's rights. Rules on inheritance are now to be found in the Local Customary Law Order (Declaration No. 4) 1963. The specific rules for daughters and widows for the inheritance of family and clan land are outlined. The rules discriminate against women and afford them only limited rights to inheritance. The first attempts to upset the Rules on the basis of equality began in 1968, and in 1984 the Bill of Rights was enacted, which precluded discrimination of any kind. The enactment of the Bill of Rights is an important step towards realizing equal rights for women, especially in matters of inheritance. Although legal reform has to go hand in hand with social and economic changes in other spheres of private and public life to ensure real equal opportunity for all citizens, the authors conclude that the elimination of discriminatory laws and the introduction of affirmative laws are nevertheless essential first steps. (Cummings *et al.*, 2001: 113).

*Keywords:* customary law, legal reform, women, women's property rights, Tanzania



**Mutangadura, G. (2004). 'Women and Land Tenure Rights in Southern Africa: A Human Rights-based Approach'. Presentation at Land in Africa: Market Asset or Secure Livelihood Conference, London, November 8-9, 2004.**

Available at: [www.iied.org/docs/events/Key\\_Notes\\_Ben\\_Cousins\\_SouthAfrica.pdf](http://www.iied.org/docs/events/Key_Notes_Ben_Cousins_SouthAfrica.pdf)

This written presentation synthesises findings from a review of country level literature on land policies and land laws as well as key informant interviews with government officials and representatives of civil society regarding the status of women's land rights in Zambia, Lesotho, Mozambique, Botswana, South Africa and Malawi. A specific focus is given to identifying barriers to women's acquisition of land rights under customary and statutory land tenure systems and assessing government and civil society efforts to improve the land rights of women in the customary and statutory land tenure systems. Discussion of obstacles specific to the practice of customary law, legal clauses that do not allow joint ownership of land by married couples under statutory tenure, the non-synchronisation of the inheritance and marriage laws with land laws, and the challenges presented by the HIV/AIDS pandemic provide good contextualisation of current women's land right questions.

*Keywords:* customary law, legal reform, marriage, women, women's land rights, Botswana, Lesotho, Malawi, Mozambique, South Africa, Zambia

**Odgaard, R. (1999). *The Scramble for Women's Land Rights in Tanzania*. Copenhagen: Centre for Development Research.**

Available at: [www.cdr.dk/newsletter/nw299-4.htm](http://www.cdr.dk/newsletter/nw299-4.htm)

It is often assumed that women in patrilineal communities have no access to land in their own right. Research from Iringa and Mbarali Districts, Tanzania, shows that such rights for women were provided for in the customary rules. According to the customary rules of the Hehe and the Sangu peoples, both males and females were entitled to a share of their father's property. The rights to inherit were tied to the responsibility for children, old and sick people. Sons and brothers of deceased persons were expected to carry the bulk of responsibility for children, the old and the sick, and were therefore entitled to larger shares of the deceased person's estate than daughters and sisters. (Cummings *et al.*, 2001: 116).

*Keywords:* customary law, patrilineal society, women, Tanzania

**Takane, T. (2007). 'Customary Land Tenure, Inheritance Rules, and Smallholder Farmers in Malawi'. Chiba, Japan: Institute of Developing Economies.**

Available at: [www.ide.go.jp/English/Publish/Dp/pdf/104\\_takane.pdf](http://www.ide.go.jp/English/Publish/Dp/pdf/104_takane.pdf)



Based on information derived from six villages in various parts of rural Malawi, this paper examines the interrelationship between smallholder strategies to obtain land on the one hand, and customary land tenure and inheritance rules on the other. The paper revealed that although the majority of land transactions followed customary land tenure systems and inheritance rules, in a good number of cases land transactions deviated from the basic rules. One factor behind such deviation was the unique personal relationships that were developed between original landholders and heirs. Another factor was the seemingly increasing cases of returning wives in patrilineal villages. Still another factor was the intensifying land scarcity that encouraged villagers to adopt strategies to obtain land from any source by any means. On the other hand, there were also some cases in which the same land-scarcity problem induced villagers to countercheck the practice of flexible land transfer to prevent their lineage land from being alienated to non-kin members. These facts suggest that, in a land scarce situation, an individual strategy to obtain land rights from any possible sources by deviating from customary rules may occasionally be in conflict with a lineage strategy to countercheck such tendency (Author's own).

This paper provides a summary of the customary land tenure and inheritance rules of both patrilineal and matrilineal societies in Malawi as well as a report of the findings of a questionnaire about actual experiences of land transfers and inheritances among 186 randomly sampled households in six different villages (matrilineal, patrilineal and mixed). It includes both descriptive case studies of these villages and quantified data regarding different kinds of practices, as well as ten case studies of individuals' experiences of inheritance and other forms of land transfers. This effectively illustrates the author's conclusion that a variety of land transfer and inheritance practices occur and these do not always adhere to the 'ideal constructs' of matrilineal or patrilineal societies' customary laws. For instance, the researchers note that several widowed or divorced women who were household heads in patrilineal societies had gained access to land through transfers from a women's father, mother, maternal uncle, paternal uncle or brother. The individual case studies describe different strategies pursued by people under particular political, economic, social and cultural conditions.

*Keywords:* customary law, land, matrilineal inheritance, patrilineal inheritance, Malawi

**Whitehead, A., and Tsikata, D. (2003). 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary'. In Razavi, S. (Ed). *Agrarian Change, Gender and Land Rights*. Oxford: Blackwell Publishing.**

This article examines some contemporary policy discourses on land tenure reform in Sub-Saharan Africa and their implications for women's interests in land. It demonstrates an emerging consensus among a range of influential policy institutions, lawyers and academics about the potential of so-called customary systems of land tenure to meet the needs of all



land users and claimants. This consensus, which has arisen out of critiques of past attempts at land titling and registration, particularly in Kenya, is rooted in modernizing discourses and/or evolutionary theories of land tenure and embraces particular and contested understandings of customary law and legal pluralism. It has also fed into a wide-ranging critique of the failures of the post-colonial state in Africa, which has been important in the current retreat of the state under structural adjustment programmes. African women lawyers, a minority dissenting voice, are much more equivocal about trusting the customary, preferring instead to look to the State for laws to protect women's interests. We agree that there are considerable problems with so-called customary systems of land tenure and administration for achieving gender justice with respect to women's land claims. Insufficient attention is being paid to power relations in the countryside and their implications for social groups, such as women, who are not well positioned and represented in local level power structures. But considerable changes to political and legal practices and cultures will be needed before African states can begin to deliver gender justice with respect to land (Author's own).

*Keywords:* customary law, gender justice, land, legal reform, policy, politics, women

**Women and Law in Southern Africa Research and Educational Trust. (1994).**

***Inheritance in Swaziland: Law and Practice. Swaziland: WLSA.***

Available at: [www.wlsa.org.zm/index.html](http://www.wlsa.org.zm/index.html)

This paper reviews inheritance law and practices in Swaziland, including procedures and processes for devolution of estates and appointment of heirs and beneficiaries under custom as well as through the country's statutory legal system. It describes the evolution of customary law in Swaziland and its suitability for modern conditions and with considerations of women's multiple roles. The paper highlights discrimination against women in inheritance law as well as in the practices of property-grabbing from women by in-laws. Recommendations are presented regarding law reform and raising awareness on inheritance laws.

*Keywords:* customary law, gender discrimination, law (inheritance), legal reform, property-grabbing, women, Swaziland



#### 2.4.2 *Changes to inheritance practices as responses to societal transformations*

The following studies analyse up from empirical data of changing or changed inheritance practices to theorise reasons for such changes. In this, inheritance systems have been conceptualised as embedded in societal-wide transformations, and they are noted to adapt in response to such trends as the individualisation of land ownership, increased interest in non-agricultural economic opportunities and consequent investments in education, the rise of nuclear family, urbanisation, rising costs of agricultural inputs, Islamic revival, and population pressure. The majority of these studies focus on changes noted in land inheritance (one focuses on livestock inheritance), although their theoretical analyses are pertinent to considerations of changes to the inheritance of various assets.

**La Ferrara, E. (2007). 'Descent Rules and Strategic Transfers. Evidence from Matrilineal Groups in Ghana'. *Journal of Development Economics*, 83, 280–301.**

This paper reports on a recent economic analysis of the effects of descent rules that are meant to govern the way in which kin membership is established and property is inherited. It focuses on the traditionally matrilineal ethnic group of the Akans in Ghana and on one specific economic decision: the *inter-vivos* transfers (transfer of property among living people) to different members of the family. The data is derived from Ghana Living Standard Surveys for the years 1987 to 1989.

In matrilineal descent systems a man's heir is not his own child but rather his sister's son. As such, among the Akans it is expected that land remain in the matrikin as a result of men bequeathing to their sisters' sons. However, while the default allocation is for the entire land endowment to be bequeathed to a man's nephew at the time of the man's death, a father can make donations to his own children during his lifetime and can also establish with a written will that part of his property should be inherited by his own children (both provisions are subject to approval on behalf of the matrikin). La Ferrara posits that the right to transfer land to own's own children may be an adaptation to encourage the investment of the labour of a man's wife and children in his land holdings.

La Ferrara's model predicts that children will send transfers to their parents to induce the latter to donate the maximum socially acceptable amount of land to them. Her analysis of household data of transfers (which is limited by the kinds of data available, e.g. only cash transfers that originate from, or extend to, outside the household) does show that Akans are significantly more likely to receive transfers from their children compared to patrilineal ethnic groups in Ghana and that this effect is reinforced by the extent to which customary matrilineal norms are observed (i.e. a nephew resides in the man's household). As such, La Ferrara finds indications that Akan children take strategic action in making monetary transfers to their parents in response to the threat of disinheritance as governed by rules governing a kinship system of matrilineal descent.



In this analysis, the matrilineal form of social organisation is held to have important consequences for the claims that family members can make on each other's time and property, and hence affects individual choices regarding who to send transfers to in an altruistic as well as in a strategic setting.

*Keywords:* bequests, children, *inter-vivos* transfers, land, matrilineal inheritance, parents, Ghana

**Moritz, M. (n.d). 'Individualization of Livestock Ownership in FulBe Family Herds: The Effects of Pastoral Intensification and Islamic Renewal'.**

Available at: <http://people.ucsc.edu/~mmoritz/individualization.pdf>.

This paper describes traditional and current practices in livestock ownership and transfer within and between households of the FulBe pastoralists in the far north of Cameroon. Based on a year of ethnographic fieldwork among three FulBe villages, which included recording households' and individuals' livestock ownership and rights, Moritz notes changes from the traditional norms of households' livestock rights and transfers among FulBe living in a peri-urban setting, but continuance of traditional practices in a rural pastoral setting. He judges that while in the past family herds of the FulBe reflected social relationships between family members and could hence be 'read as social biographies of the people who keep them', today, among the peri-urban FulBe there is increasing individualisation of livestock ownership and fewer transfers of property rights, resulting in the concentration of livestock ownership and control with the household head. Moritz attributes this concentration of livestock property ownership with the household head to two main causes: the rising costs in the peri-urban area of livestock production costs which can be directly traced to individual animals (e.g. supplementary feed and veterinary bills) and therefore assigned to individual owners of animals, and the effects of the Islamic renewal.

The Islamic renewal is theorised by Moritz as playing a critical role in the individualisation of livestock ownership, with implications for inheritance and other transfers of property (e.g. dowry), because Islamic legal traditions, including inheritance laws, more clearly define individual rights than FulBe traditions which prioritised the continuity and integrity of the family herds. For instance, Islamic inheritance codes prescribe that property must be directly divided among the direct survivors, children, spouse(s), and parents, and that sons inherit twice as much as daughters, while spouses inherit one fourth or one eighth (depending on the number and type of heirs). Moritz documents that peri-urban FulBe pastoralists in his study followed Islamic codes strictly, even when this meant breaking up the family herd into non-viable parts. Additionally, Moritz notes the increase in polygynous households and how this results in strict separations of livestock by polygynous household rather than the pooling of assets in a common household herd.





The paper includes a summary of traditional livestock transfers within pastoral FulBe households in the Far North Province, which include: the gift of heifer to children (*sukkilaaye*), indirect dowry (*sadaaki* – the gift of a cow by the groom’s family to the bride) and inheritance of cattle (*donaaye*). Analysis of how these *inter vivos* transfers occur or don’t occur today provides insights into the status of individuals’ property rights and wealth. For example, Moritz describes that in the past, the household head retained the right of disposal over all the animals in the family herd, including the *sukkilaaji* of his children. Now, however, he finds that children protest the sale of their *sukkilaaye* and its offspring. In response, many peri-urban household heads no longer give their children *sukkilaaye*. Similarly, *sadaaki*, the indirect dowry from the groom’s family to the bride, which was traditionally given in the form of granting ownership of cattle from the family herd to the bride (which a woman could take with her when her husband died) is also less practiced among peri-urban FulBe. Today, Moritz observes, fathers-in-law prefer to give cash instead of cattle to the bride which means that the household head remains in full control over all the animals in the family herd. He further notes that women complain that the monetarisation of the *sadaaki* means that they have less (re-)productive capital and are thus more dependent on their husbands. Moreover, women find this cash disappears more readily than cattle.

The data and analysis in this paper appropriately reflect the many different social, cultural, religious and economic factors that contribute to changes in livestock ownership and transfers among this population of pastoralists in West Africa.

*Keywords:* individualisation of property, Islamic law, livestock, pastoralists, Cameroon

**Platteau, J-P., J-M. Baland. (2000). ‘Impartible Inheritance Versus Equal Division: A Comparative Perspective Centered on Europe and SubSaharan Africa’. Namur, Belgium: Centre de Recherche en Economie du Développement (CRED), Faculty of Economics, University of Namur.**

Available at: [www.fundp.ac.be/eco/cahiers/filepdf/c209.PDF](http://www.fundp.ac.be/eco/cahiers/filepdf/c209.PDF)

This paper provides a very thorough review of changes in inheritance systems over time as well as actual and hypothesised implications of these changes in Europe and Sub-Saharan Africa. Platteau and Baland judge that for the most part economists have neglected non-market mechanisms of land allocation and they reason that since the major mode of land acquisition in most African countries is inheritance, this neglect is a major challenge to understandings of distributions of wealth and poverty. In response to this perceived lacuna the authors focus on inheritance rules and practices in various African societies, particularly in the context of land pressure increases resulting from population growth and/or agricultural commercialisation. How the evolution of land tenure systems towards increasing individualisation affects equity is a primary level of analysis. This study, however, is limited to the situation of male children only, and most of the study’s empirical data is drawn from



contemporary situations in the more densely populated countries of Sub-Saharan Africa (particularly, Rwanda, Kenya, Uganda and Botswana).

The authors find that while present-day Sub-Saharan African countries have recently experienced trends of individualisation of land tenure, multiplication of non-agricultural activities, and increasing land scarcity, which are similar to processes experienced by preindustrial and protoindustrial western European countries, there are 'striking differences between the patterns of evolution in these two regions, because Africans seem to have a more systematic and deeper attachment to the equal sharing rule and because strong intra-family solidarity ties continue to prevail in the lineage-based societies of Africa' (p. 3).

The first half of the paper provides a review of the political and military history that led to changes in western European land allocation practices among the noble classes from partible to single-heir devolution, as well as systems of single-heir inheritance and succession in Japan and India, and contrasts these systems with the Russian experience of the equal division of land among sons. The authors also make special note of the variation in inheritance practices among western European regions and discuss how single-heir land devolution among noble classes was in many cases accompanied by compensation in terms of the distribution of other assets among other children as well as the various inheritance systems and their implications among Europe's lower economic classes. The links that Platteau and Baland draw between inheritance systems and economic returns and resultant migratory and employment patterns in pre-industrial and industrialising Europe provides useful background knowledge to any contemplation of inheritance systems. Moreover, the authors attempt to use European historical data to develop tentative theories concerning effects of different inheritance systems on population growth, technical change and economic entrepreneurship.

The second half of the paper reviews the literature concerning inheritance practices and implications in Sub-Saharan African countries. The authors review how the land tenure system in Sub-Saharan Africa has undergone profound transformations during the last century and particularly during the last decades. Due to the combined pressures of population growth and increased market integration, landholders have increasingly asserted individualised use rights to given plots including: the right to resume cultivation of a specific plot after a period of fallow; the right to assign the plot to an heir or to a tenant; the right to prevent holders of group or secondary claims (e.g. the right of pastoral herders to graze their animals on crop stubble) from exercising their traditional prerogatives; and the right to dispose more freely of the land. The simultaneous processes of increasing land pressure and more intensive agricultural practices have reduced community controls over land use and allocation and corporate ownership of the lineage land has gradually given way to more individualised forms of land tenure.



Nevertheless, the authors conclude from their review that the fundamental principle guiding the distribution of family land in Africa is that all male children are entitled to receive more or less equal shares when the property is definitely partitioned (daughters are expected to obtain use rights over their husbands' lands). While in many countries the eldest son is customarily entitled to an additional share on account of his special duties, and in the past youngest son may have also been granted additional shares due to customs that require his caretaking of elderly parents, the authors note how equality among brothers' shares is on the rise. Indeed, the significance of the principle of equal shares is observed in popular non-compliance with legal reforms in Kenya and Rwanda which sought to reduce divisions in land holdings. The authors conclude that 'Equality in inheritance seems to be maintained at the price of reducing landholdings to minuscule sizes that cannot ensure decent livelihood for the rightsholders (p. 32). Moreover, even when there is access to non-agricultural income opportunities the practice of more or less egalitarian distribution of family property persists.

The authors find that in Sub-Saharan Africa recent rapid population growth under a system of partible inheritance, to the extent that it activates the land market, may not only make for a more unequal land distribution and for the emergence of a landless class in the countryside but may also lead to an erosion of the inheritable base of land assets and give rise to serious intra-family conflicts. This applies not only to land but also to other productive assets (e.g., cattle). Specific groups are increasingly vulnerable under such conditions, including women, and most notably widows, separated or divorced women, and wives in polygamous marriages, as well as return migrants, handicapped children, orphaned children, illegitimate children, children of broken marriages and children whose fathers remarry. On the matter of the rise in non-customary marriage unions due to challenges in transferring the requisite brideprice and land rights insecurity, the authors state that 'A genuine vicious circle of poverty is therefore at work: children of poor parents cannot get married according to the custom, which makes them more liable to lose security of access to land and to become landless, thereby perpetuating or accentuating the poverty of the last generation of the family' (p. 35).

In conclusion, Platteau and Baland attempt to make the European experience speak to the current situation in many Sub-Saharan African countries. They state that the European experience suggests that exclusive patterns of devolution may become unavoidable if such pressure reaches critical thresholds beyond which subsistence from very small, subdivided holdings becomes impossible. They also characterise the expansion of industrial and commercial opportunities across Europe in the eighteenth and nineteenth centuries as a much-needed safety valve to farming households. By contrast, they note that despite acute population pressure and in the absence of a strong non-agricultural economic sector, in Sub-Saharan Africa partible inheritance continues as a 'sacro-sanct social norm' (p. 42). According to the authors' analysis, this is resulting in the prevalence of discriminatory practices, often practiced in more concealed or indirect forms than is the case under impartible inheritance, which put specific social categories at particular risks of poverty.



*Keywords:* impartible inheritance, land rights, legal history partible inheritance, primogeniture

**Quisumbing, A., Payongayong, E., and Otsuka, K. (2004). 'Are Wealth Transfers Biased Against Girls? Gender Differences in Land Inheritance and Schooling Investment in Ghana's Western Region'. Washington, DC: International Food Policy Research Institute.**

Available at: [www.ifpri.org/divs/fcnd/dp/papers/fcndp186.pdf](http://www.ifpri.org/divs/fcnd/dp/papers/fcndp186.pdf)

This study attempts to analyze changing patterns of land transfers and schooling investments by gender over three generations in customary land areas of Ghana's Western Region. Although traditional matrilineal inheritance rules deny landownership rights to women, women have increasingly acquired land through gifts and other means, thereby reducing the gender gap in landownership. The gender gap in schooling has also declined significantly, though it persists. We attribute such changes to the increase in women's bargaining power due to an agricultural technology that increased the demand for women's labor, contributing to the reduction of social discrimination as well as weak parental discrimination (Author's own).

This analysis recognises four categories of land transfers: 'permanent' transfers (the sum of inherited and gift land); inherited land; gift land, and 'temporary' transfers or allocated land (use of land allowances). The analysis of these different types of transfers throws up many interesting considerations and pieces of information for further investigation. For instance, the authors deliberately pay special attention to gift transfers, as they conceptualise these as possible institutional innovations to make it possible to transfer land to desired heirs. In this analysis, they find that father's land is positively associated with gift transfers, whereas mother's land has a negative effect, and the researchers hypothesise that this could be because the matriclan still has claims on her land. They also find an absence of parental discrimination against daughters with respect to gift transfers. Many findings in this study will be interesting to other researchers contemplating changing inheritance and property transfer practices.

*Keywords:* gender, land, uterine inheritance, wealth transfer, Ghana



### 2.4.3 *Marriage and inheritance*

Marriage has been shown to be an important determinant in inheritance expectations and outcomes. As the following studies demonstrate, women and children in marriage often have different claims on inheritance than non-married women, including 'advanced inheritance' which may be transferred at the time of marriage. The detailed analysis provided in the following three studies points to the potential for new insights concerning the consequences of marriage for inheritance and economic livelihoods by disaggregating among household members as well as among women who are married with bridewealth transfers and without, women who are unmarried with children as well as divorced, separated, and widowed women.

**Fafchamps, M., and Quisumbing, A. (2002). 'Control and Ownership of Assets Within Rural Ethiopian Households'. *The Journal of Development Studies*, 38 (6), 47–82.**

Available at: <http://www.informaworld.com/smpp/content~content=a713601238~db=all>

This article investigates how the control and devolution of productive assets are allocated between husband and wife. Theory predicts that bargaining power within marriage depends on the division of assets upon divorce and on control over assets during marriage. Using detailed household data from rural Ethiopia, we show that assets brought to marriage, ownership of assets, control within marriage, and disposition upon death or divorce are only partly related. Productive resources are controlled by the household head. Disposition upon death or divorce only loosely depends on individual ownership during marriage but control is associated with larger claims upon divorce. Assets brought into marriage have little impact on disposition upon death, but matter in case of divorce (Author's own).

In addition to examining the distribution of control and ownership of productive assets among husbands and wives in rural Ethiopia settings, this study asked men and women how they expect various assets to be allocated in case of divorce or death of spouse. The researchers note that rules regarding divorce and inheritance vary dramatically between different locations in the same country. In the majority of cases, however, respondents advised that upon the death of the household head assets are most likely to be left to the surviving spouse, together with child custody. Children inherit in less than half the cases, and when they do, it is usually together with their mother. Moreover, the study data reflects that the presence of children from previous marriages has a strong effect on inheritance expectations: women with children of their own are more likely to inherit all land and livestock while those women with husbands who have children by other unions are less likely to inherit. The researchers express surprise at the finding that most marriage contracts are correlated with weaker inheritance rights for women, although this effect is not found to generally be significant. They offer as a possible interpretation that the presence of a marriage contract signals an intention to create a stable marriage and to have children, and is thus related with the expectation that a surviving wife will share household assets with



children upon the death of her husband. Finally, the study also demonstrates that personal characteristics affect inheritance. It was found that women married to older men expect to get more land, possibly because they are able to take over the farm work. Older wives anticipate inheriting fewer assets, perhaps because it is expected that their adult children will take care of them. Educated women also expect to receive fewer assets, but the researchers are not satisfied that they understand why and express an interest in further researcher into such questions.

*Keywords:* assets, children, divorce, household, marriage, productive assets, women, Ethiopia

**Fafchamps, M., and Quisumbing, A. (2005). 'Assets at Marriage in Rural Ethiopia', *Journal of Development Economics*, 77, 1– 25.**

This research is based on the recognition of marriage as an occasion for a substantial transfer of assets from the parent to the child generation which in many agrarian societies typically marks the establishment of a new production unit, e.g. a family farm. The assets brought to marriage are conceptualised as 'the start-up capital of this new enterprise'. The authors note that particularly in environments where asset accumulation takes time and is particularly difficult for the poor, assets brought to marriage are crucial to the lifetime prosperity of newly formed households. Additionally, there are indications from other research that the distribution of assets between spouses at the time of marriage acts as possible determinant of bargaining power within marriage. With these points in mind, the authors investigate the different factors that may influence the level of assets transferred at the time of marriage.

What parents give to their children at the time of marriage is understood by the authors as 'advanced inheritance'. Previous analysis of the researchers' data from Ethiopia (Fafchamps and Quisumbing 2003) shows that assets brought to marriage are positively associated with parents' wealth, indicating that a bequest motive affects assets at marriage. In this paper, the authors note that in determining what inheritance to advance, parents must balance the interest of the marrying child against their old age needs and the inheritance of unmarried siblings. To test various processes that may influence parents' asset transfers at marriage, including assortive matching, compensating transfers and strategic behaviour, the researchers develop mathematical models and simulations. They also report from survey data that collected information in different Ethiopian sites pertaining to parental background and marriage histories of each spouse, the circumstances surrounding the marriage, and the premarital human and physical capital of each spouse.

Survey results show that grooms in Ethiopia bring nearly ten times more assets than brides to the newly formed family unit, and that land is their asset with the highest average value.



Brides are found to bring very little land to marriages, and rather bring some livestock, although less than grooms. Two-thirds of brides report bringing no assets to marriage. Brides with more brothers are recorded to receive more from their parents upon marriage and the researchers hypothesise that they may be because brothers may indirectly contribute to the availability of assets for the marriage. The authors note more even distribution among groom and bride of gifts at the time of marriage, but note that these are of relatively little value compared to overall assets brought to marriage.

Results suggest that assets brought to marriage by brides follow a strategic motive. The researchers report that their evidence suggests that parents give more if doing so improves the marriage prospect of their daughter. They also find some evidence that parents reduce transfers to daughters at marriage if the groom brings more and increase what they give to their daughter if the groom brings less. Such processes of strategic behaviour and compensating transfers do not hold for grooms. The authors judge that parents appear to determine sons' marriage assets based purely on their own preferences and endowments, rather than in response to brides' circumstances. In conclusion, the authors reflect that these results make sense in the context of rural Ethiopia where grooms bring the bulk of the new household's assets: 'Grooms do not act strategically because the outcome of the marriage market is not an important determinant of their future welfare. For brides, however, much of their future welfare hinges on how they fare in the marriage market' (p. 22-23).

*Keywords:* assets, bridewealth, endowments, intergenerational transfers, intrahousehold allocation, marriage, parents, Ethiopia

**Hakansson, N. (1994). 'The Detachability of Women: Gender and Kinship in Processes of Socioeconomic Change among the Gusii of Kenya'. *American Ethnologist*, 21 (3), 516-538.**

This article examines the role of gender and kinship identities in shaping women's access to social and economic resources. Hakansson argues that changes in women's access to resources vary and are not attributable to political-economic factors alone, but that these changes also depend on the content of women's relationships with their natal kin, and on the role of marriage in defining the character of women's social identities. He opens the paper with a review of the literature concerning links between women's social and economic statuses and their societies' kinship systems in African countries, drawing primarily from anthropological literature, to position a model that distinguishes between women's roles in different systems.

Hakansson proposes that among East African societies two different patrilineal gender and kinship systems may be distinguished:



- Systems where women, irrespective of marital status, maintain socially sanctioned identities and jural, ritual, and economic rights and obligations in their natal family and lineage throughout life. The statuses of sister and daughter in this system are immanent features of a woman's existential identity, and these statuses, in turn, entail certain constitutive rights. Although the status of wife entails rights and obligations vis-a-vis the husband and his family, the latter status is a negotiable feature of a woman's identity.
- Systems where females from the time of birth hold an ambiguous position in their natal family and lineage, and where they attain ritual, economic, and jural rights and obligations predominantly through the statuses of wife and mother. Thus, the status of wife in this system is an immanent feature of a woman's existential identity, entailing stronger constitutive rights than either of the two statuses of sister or daughter. Rather, in these systems, the latter are deemphasized and contingent, and do not in and of themselves entail rights as strong as those entailed by marriage.

Hakansson uses a comparison of the Gusii and Luyia of western Kenya to elaborate on both types of the gender and kinship systems identified above. The Gusii are described as an example of a system in which a woman's role is identified with her husband's family whereas among the Luyia a woman retains social identification with her father's family even after her marriage. This discussion explores in detail the practices and results of bridewealth payments and marriage between women and their roles and relationships with their husband's family as well as women's roles with her natal kin, and particularly her brothers. For example, among the Gusii it is observed that the bridewealth payment for a sister pays for a brother's bridewealth payment and thereby establishes an important bond between the sister and brother, which includes future contributions of assets or provision of security in times of economic crisis by the brother for the sister. Hence, Hakansson states, 'It is the payment of bridewealth that provides a woman with a social network for managing family crises and economic problems.' It is observed that in such a system women who separate from their husbands and children are allowed to stay with their natal kin for years.

The article's second half discusses the increasing numbers of single mothers and eloped women among the Gusii which has formed a new population of landless women. Hakansson observes that these Gusii women are not only barred from socially sanctioned access to their husbands' farms but are also estranged from their natal kin. Unmarried Gusii women (for whom bridewealth has not been paid) hold very ambiguous social positions which translate into vulnerable economic positions since they are not recognised as properly belonging with any kin group. This is different from the Luyia. Because Luyia women retain membership in their natal clans and families throughout life, unwed mothers can utilise such ties for child care, economic support, and access to land. In conclusion, Hakansson writes that culturally specific rights and obligations adhering to kinship and marriage relationships affect the degree and character of women's social and economic marginalisation in East African





patrilineal societies. He encourages research that not only recognises that social systems provide pre-existing norms and moral values for social practices, but also focuses on how the content of relationships are changing over time.

*Keywords:* bridewealth, family, kinship, land, marriage, patrilineal society, social change, women, Kenya

## 2.5 Gender inequality and inheritance systems

Correlations between landlessness and poverty in Africa have been established. Land poverty affects the lives of millions of rural people in Africa. Moreover, land is not only important to people because it produces the material conditions for survival and economically productive livelihoods, but land can also be used to influence political and social status. For instance, a landowner may gain power over others by employing them as land labourers and in so doing influence his or her own personal and social identities. Moreover, land can be an important asset base for economic livelihood diversification (on and off-farm enterprises), including the possibility of putting land up as collateral for credit. Land is also an asset that is mortgagable or saleable during a crisis. As such, land is often conceptualised as an important contributing factor in people's avoidance of chronic and IGT poverty in African contexts.

Estimates by various international research bodies indicate that women may own less than 10 percent of all titled land worldwide and many researchers note that gender-based inequities extend to the ownership of 'movable' property as well (e.g. equipment, household goods) with significant implications for the security of women's livelihoods (Steinzor, 2003). This chapter presents the growing body of research that documents women's unequal access to land in many African countries, as well as the policy analysis that has been developed concerning the obstacles and opportunities for realising women's equal property rights. It has been surmised that the major mode of land acquisition in most African countries is inheritance (Platteau and Baland 2000). Land and property ownership contexts are obviously integral to the rules and practices of inheritance: if women are barred from ownership rights, they will continue to be excluded from inheriting land, and hence excluded from this important mode of acquiring the means to avoid poverty.

The exclusion of women from property and inheritance rights has been linked to chronic and IGT poverty. For instance, there is evidence that women spend more of their earnings on basic household needs whereas men tend to spend their earnings on personal goods, such as alcohol and tobacco. Moreover, some analysis indicates that children in female-headed households with lower incomes than male-headed households are less likely to be



malnourished in some African countries.<sup>11</sup> As such, studies, such as those summarised below, that focus on women's access to assets are particularly meaningful to the study of IGT poverty.

### 2.5.1 *Women's lack of land rights and women's poverty*

**Agarwal, B. (2001). 'Land Rights and Gender'. *International Encyclopedia of the Social & Behavioral Sciences*, 8251-8256.**

This five page entry provides a concise overview of some of the major arguments and supporting evidence in favour of ensuring women's land rights. After noting key factors that distinguish various meanings of land rights, Agarwal condenses findings from very different contexts across the world that support different theories for why it is important for women to have effective and independent land rights. The key arguments in favour of women's land rights pertain to welfare, productive efficiency, equality and empowerment. For instance, concerning welfare, Agarwal presents data from different studies that indicate women's control over land is more likely than men's control to ensure women's and children's wellbeing. There is a brief summary of inheritance as an opportunity for women gaining land rights, but Agarwal notes barriers including customary marriage and inheritance practices which exclude women from land transfers. Agarwal also reviews practices of government land transfers, focusing on cases from Central and South America.

*Keywords:* gender discrimination, land rights, women

**Annan-Yao, E. (Ed.) (2004). *Gender, Economies and Entitlements in Africa*. Dakar: CODESRIA.**

Available at: [www.codesria.org/Links/Publications/new\\_publ/gender\\_economies.htm](http://www.codesria.org/Links/Publications/new_publ/gender_economies.htm)

This theoretically sophisticated and empirically grounded book draws extensively on feminist methodologies to discuss gender, economies and entitlements in Africa. It deals critically with a broad range of themes that highlight the structural insensitivities, stereotypes, injustices and inequalities that women are often victims of, despite their significant contributions to household and national economies throughout Africa. Among the issues covered are: gender relations in the family, formal education and health; gender and accessibility to resources; women's experiences of citizenship; sex identities and sex work; and globalisation, trade and gender. The book captures how, despite phenomenal structural constraints, women as economic agents have refused to celebrate victimhood. (Author's own).

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<sup>11</sup> For summaries and references for this body of research, see Agarwal (2001).



Some chapters focus specifically on gender differences in resource access, such as Mookodi's 'Gender and Resources: Some Macro and Micro Level Considerations' and Ishengoma's 'Accessibility of Resources by Gender: The Case of Morogoro Region in Tanzania'.

*Keywords:* assets, feminisation of poverty, globalisation, household, women, Ethiopia, Nigeria, South Africa, Tanzania

**Cross, C. (1999). 'Women and Land in the Rural Crisis'. *Agenda*, 42, 12-27.**

In this article, the author argues that institutional barriers to women's positive use of land and deepening rural poverty in South Africa are leading to increasing migration. Although women are still attributed the role of farmers, their actual foothold on land is very slight. Their right to make agreements for access to land, to transfer or dispose of land, and to use land for entrepreneurial purposes is marginal and exists mainly in the narrowest local context of family relations. The article questions whether rural policy that promotes women's independence under the present conditions would alleviate poverty or contribute to the deterioration of family units. It considers land issues for women migrating from one place to another; women's farming activity in relation to their control of land; women's household roles and power; and their institutional access to land. Some possible interventions are offered in the light of the analysis. The author concludes that dealing with women's institutional risks will not by itself provide more land to families now trying desperately to live on too little; gender-effective land reform on a mass scale will also be needed. Interventions should ideally be those that help both men and women, rather than those that target women alone. Overall tenure security, greater security around economic land use, incentives for entrepreneurial activity, and general access to markets would be possible examples of objectives that could help women. Any set of options for promoting rural women's land utilization will also need to be tested against women's own perceptions, evaluated for possible effects on the wider institutional setting, and improved with women's views and ideas. (Cummings *et al.*, 2001: 91-92).

*Keywords:* land, land reform, migration, rural poverty, women's rights, South Africa

**Cross, C., and Friedman, M. (1997). 'Women and Tenure: Marginality and the Left-Hand Power'. In Meer, S. (Eds.) *Women, Land and Authority: Perspectives from South Africa*. Oxford: Oxfam.**

Sociocultural issues related to women and the prevailing forms of rural land tenure in South Africa are considered. The various forms of existing tenure are outlined (state land systems, communal or tribal tenure, freehold communities, informal land systems, and white farms)



and the plight of women and families of women evicted from farms is described. The next section considers men's and women's concepts of land rights, discusses how various households may gain tenure, and explores gender priorities and male fears about giving land tenure to women. The chapter highlights how various households run by women experience a disadvantage that differs by degree for households composed of widows with grown children, younger widows with young children, single mothers with children, and married women with absent husbands. The chapter suggests that research is needed to determine 1) the assumptions about land tenure systems and various kinds of rights; 2) the range of variation in women's perceived land rights; 3) how class factors influence women's control of land; 4) how land is actually held and transferred; 5) how successfully women can defend their rights to land from challenges; 6) women's access to power structures and influence on power brokers; 7) the specific points of male/female conflict over land; 8) the extent to which violence impedes women's access to land; 9) the impact of women's increasing access to land rights; 10) the involvement of women in production; 11) how inheritance systems will affect legal changes; and 12) how to support women in the effective use of land. (Cummings *et al.*, 2001: 91).

*Keywords:* households, land, women's rights, South Africa

**Deere, C., and Doss, C. (2006). 'Gender and the Distribution of Wealth in Developing Countries'. Research Paper No. 2006/115. Helsinki: United Nations University World Institute for Development Economics Research.**

Available at: <http://www.wider.unu.edu/publications/rps/rps2006/rp2006-115.pdf>

This paper's purpose is to review what is known about the distribution of assets among men and women, possible implications for this distribution, as well as some of the reasons for differences between the assets of men and women. The first section outlines the authors' arguments for the significance of studying the gendered distribution of assets. The second section reviews the available evidence on the gender asset gap in developing countries, noting that not much is known about this topic. The following section identifies different constraints on women's asset ownership with particular attention to the role of legal marital and inheritance regimes. This section summarises histories of Roman, Islamic and common law to explain precedents in contemporary laws. The last sections of this paper provide brief reviews of research findings regarding women's land ownership in Latin American and African countries and the impact of women's land ownership on household income and welfare (although only one study about the impact of women's land ownership on household income and welfare in an African country, Ghana, is included).

This review paper manages to answer more 'what' questions about the gender distribution of assets and links to marriage and inheritance practices, than 'why'. While providing some insights into general norms or practices and identifying what knowledge exists or doesn't



about particular relevant topics, this review does not provide the socio-historical, economic, political and cultural contextualisation which is helpful to understanding many of the complex issues that affect women's inheritance and access to assets in the present day.

*Keywords:* assets, gender inequality, land, legal history legal systems, marriage, women

**Food and Agriculture Organization and Oxfam. (2003). 'Report of the FAO/Oxfam GB Workshop on Women's Land Rights in Southern and Eastern Africa'. Pretoria: FAO and Oxfam.**

This official report summarises the papers, presentations and discussions of a workshop on Women's land rights in Southern and Eastern Africa which was held in South Africa in 2003 and attended by 75 participants from international and African country governmental and non-governmental agencies as well as various research institutions. The conference presentations and discussions summarised in the report address: conceptual frameworks for women's land and property rights; legal issues of land, property and (co-) ownership; women's inheritance rights in Zimbabwe, Malawi and among pastoralist communities in Ethiopia; women's land rights in post-conflict countries; HIV/AIDS and women's land rights; land administration and women's land rights; legal aid and women's land rights; women's rights to housing, land and property; and recommended priority areas for action. The format of the report reflects a process of knowledge exchange by researchers, legal experts, and policymakers and as such provides several different perspectives regarding particular issues. Points of debate and consensus, as well as issues insufficiently researched or understood, are noted through these discussion reports. Indications of sources such as research papers and intervention projects that would be useful for further information are provided in the text. Additionally, the appendices provide an overview of activities by different organisations addressing women's land and property rights in Southern and Eastern Africa as well as short biographies and contact information for the conference participants.

*Keywords:* AIDS, land, land tenure, legal reform, women's property rights

**Farha, L. (2000). *Women and Housing Rights, Source Series No. 5. Centre on Housing Rights and Evictions.***

This manual details some of the most pressing housing rights issues faced by women worldwide and provides advocates with resources and information on international housing rights law. The manual begins with the premise that women experience violations of the right to housing differently than men; therefore, gender-neutral approaches to housing rights frequently overlook the particular needs and concerns of women. The manual is divided into 7 sections. The first sections include an introduction, information on using the manual, a



focus on women and security of tenure (including threats to security of tenure from gender-biased laws; customary law, tradition and dominant social attitudes; domestic violence; and financial barriers). The latter sections consist of international legal resources, a guide to using international legal resources, information on how advocates can use the United Nations system, and further Internet resources, texts and contact information. (Bora Laskin Law Library, University of Toronto: [www.law-lib.utoronto.ca](http://www.law-lib.utoronto.ca)).

*Keywords:* customary law, gender equality, housing rights, international law, property law, women, United Nations

**Gray, L. and Kevane, K. (1999). 'Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa', *African Studies Review*, 42 (2), 15-39.**

Increasing commercialization, population growth, and concurrent increases in land value have affected women's land rights in Africa. Most of the literature concentrates on how these changes have led to an erosion of women's rights. This paper examines some of the processes by which women's rights to land are diminishing. First, we examine cases in which rights previously utilized have become less important; that is, the incidence of exercising rights has decreased. Second, we investigate how women's rights to land decrease as the public meanings underlying the social interpretation and enforcement of rights are manipulated. Third, we examine women's diminishing access to land when the actual rules of access change. While this situation may sound grim, the paper also explores how women have responded to reductions in access to land. They have mounted both legal and customary challenges to inheritance laws, made use of anonymous land markets, organized formal cooperative groups to gain tenure rights, and manipulated customary rules using woman-to-woman marriages and mother-son partnerships. These actions have caused women to create new routes of access to land and in some cases new rights (Author's own).

*Keywords:* customary law, land rights, law (inheritance), women

**UN Habitat. (1999). *Women's Rights to Land, Housing and Property in Postconflict Situations and During Reconstruction: A Global Overview*. Nairobi: United Nations Centre for Human Settlements.**

Available at: [www.unhabitat.org/pmss/getElectronicVersion.asp?nr=1926&alt=1](http://www.unhabitat.org/pmss/getElectronicVersion.asp?nr=1926&alt=1)

Drawing on reports, news and journal articles and personal accounts, by women who have lived under conflict, activists, academics and other professionals in every region of the world, this report aims to synthesize and analyze women's experiences across regions in accessing and controlling land, housing and property in the context of post-conflict situations or reconstruction, with a view to providing a summary of the central barriers women face in



claiming and enforcing their rights to land, housing and property, the foundation which must be laid to render these rights enforceable, and activities which are required to continue the struggle for women's rights to land, housing and property.

After exposing the meaning of some of the key terms used in any discussion of women's rights to land, housing and property, the paper opens with some preliminary and general comments on women's rights to land, housing and property *outside* of the context of war or reconstruction. This section highlights the fundamental role that rights to land, housing and property play during times of peace in ensuring the livelihood of women, their families and often their communities. It sets out the existing international legal framework which creates and supports these rights and follows with an overview of the ways in which law, custom and tradition interact with and impede the realization of women's rights to land, housing and property. Part three focuses specifically on these rights in the context of conflict and reconstruction, highlighting the additional barriers to these rights imposed on women during conflict and reconstruction. Part four then details the conditions that are required for women to claim and enforce their rights to land, housing and property focusing on education, the role of women's organizations, community action, legal reform, and international campaigns. In conclusion, Part five assesses the current status of women's rights to land, housing and property in the context of conflict and reconstruction and provides modest suggestions to sustain the momentum of work on this issue and to move it forward. (Author's own, p. 9).

The authors of this report note that there is little information and research on the application or meaning of women's property rights in the context of armed conflict and reconstruction. These contexts are, however, obviously significant to women's property rights as they result in violations on a mass scale, displacement of women from their property, and increases in women-headed households. Women who return to their homes and lands post conflict are reported to either face the same lack of access as they did pre-conflict or, if widowed or if their spouses are missing, women may be refused their claims to property by male relatives who use physical abuse or customary law. While detailing such negative repercussions, this report also discusses how situations of conflict may provide women with opportunities unavailable during times of peace, such as the taking on of decision making roles and the formation of women's groups to address their interests. The post-conflict reconstruction phase is identified as an opportunity to redress women's lack of rights in, access to, and control over land, housing and property. The authors document that this seldom happens, in part, because women are excluded from decision making processes relevant to reconstruction (e.g. peace agreements).

*Keywords:* conflict, post-conflict, UN Habitat, women's property rights



2.5.2 *Analysis of gender equity in inheritance and property rights and opportunities for legal reform*

**Benschop, M. (2002). *Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?*. Nairobi: UN Habitat.**

Available at: <http://ww2.unhabitat.org/publication/hs66702e/default.asp>

Women's equal rights to land, housing and property are recognised in international law and are translated into national legislation by an increasing number of states. This book provides an overview of international human rights instruments relating to women's land, housing and property rights. It then examines whether Kenya, Tanzania and Uganda have translated their international treaty obligations into national legislation and provides a detailed analysis of the national laws and policies on land, housing, inheritance and marriage in these three countries. The role that women's organisations and alliances have played in recent law reform in this region is described in detail.

Even if national laws and policies related to women's equal rights to land, housing and property are in place, the implementation of these laws and policies into the reality on the ground remains an enormous challenge, and requires a joint effort by national and local governments, in close collaboration with civil society organisations and paralegal networks. This book therefore also looks into the mechanisms used by governments, NGOs and paralegal networks in implementing women's rights at community level.

The study concludes with a set of specific recommendations per country, which seek to help translate women's equal rights into national and local laws and to bridge the gap between rights and reality (Author's own).

*Keywords:* customary law, divorce, housing, land rights, legal systems, legal reform, marriage, policy, UN Habitat, women, Kenya, Tanzania, Uganda





**Benschop, M., and Siraj Sait, M. (2006). *Progress Report on Removing Discrimination Against Women in Respect of Property and Inheritance Rights*. Nairobi: United Nations Human Settlements Programme.**

Available at: [www.unhabitat.org/downloads/docs/3983\\_71713\\_Inheritance\\_percent20Final\\_percent20071006.pdf](http://www.unhabitat.org/downloads/docs/3983_71713_Inheritance_percent20Final_percent20071006.pdf)

This report is based on global overview of women's land and property rights carried out by the Land and Tenure Section of the Shelter Branch, UN-HABITAT incorporating recent research by other stakeholders. The objective of this report is to provide an easy comparative record of the progress of selected countries in achieving gender equality with regard to inheritance rights. This is offered through a review of relevant domestic legislation in (the) form of a table. While the context of implementation of inheritance is dealt (with) elsewhere and is briefly noted in the following section, this report is primarily concerned with the legal status of inheritance rights in national legislations. The gaps between legislation and practice too are beyond the scope of this report.

The first part of this progress report briefly introduces the human rights and gender equality framework for inheritance rights and offers the rationale for monitoring inheritance rights. The second part provides an overview at country level of factors, which still stand in the way of women's enjoyment of their human rights. In the third part, Constitutions of a cross section of countries are tabulated and analysed. While the final part offers reflections on the progress report (Authors' own content: 5-6).

The main contribution of this report is the tabulated overview of constitutional provisions concerning prohibition of discrimination on basis of sex, explicit recognition of women's equal rights, and recognition of right to land, housing and/or property for the following African countries: Botswana, Egypt, Eritrea, Ethiopia, Ghana, Kenya, Lesotho, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, South Africa, Swaziland, Tanzania, Tunisia, Uganda, Zambia and Zimbabwe.

*Keywords:* gender discrimination, gender equality, housing, law (inheritance), legal systems, property law, UN Habitat, women's land and property rights, Botswana, Egypt, Eritrea, Ethiopia, Ghana, Kenya, Lesotho, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, South Africa, Swaziland, Tanzania, Tunisia, Uganda, Zambia, Zimbabwe

**Cummings, S., H. van Dam, A. Khadar and ValkGender, M. (Eds). (2001). *Perspectives on Property and Inheritance: A Global Source Book*. Oxford: Oxfam.**

Available at: [http://www.kit.nl/net/KIT\\_Publicaties\\_output/ShowFile2.aspx?e=529](http://www.kit.nl/net/KIT_Publicaties_output/ShowFile2.aspx?e=529)

This book combines an edited collection of papers concerning women's property and land rights with an annotated bibliography of research and policy papers that focus on related



topics. The five papers, individually authored, focus on women's property rights in Latin America, Côte d'Ivoire, South Africa, the Middle East and India and address issues including gender inequality in legal systems, discrimination in practice, inheritance, access to resources, marriage and employment. The annotated bibliography provides entries with abstracts for 163 sources which address both international and country-specific issues pertaining to women's property rights. The index to these sources is organised according to author, subject and region. Also included is a list with access information for relevant web-based resources and a collection of media stories about women's property rights issues published by various sources between 1996 and 2001.

The entries in Oxfam's Global Source Book's annotated bibliography that are pertinent to the current collection of sources about inheritance practices in African countries and links to IGT poverty have been incorporated into this annotated bibliography.

*Keywords:* annotated bibliography, land, law (inheritance), legal systems, marriage, women's property rights

**Human Rights Watch (2003). *Double Standards: Women's Property Rights Violations in Kenya*. New York: Human Rights Watch.**

Available at: <http://www.hrw.org>

This is a thorough report on several different and related factors contributing to, and resulting from, women's lack and violation of property rights in Kenya. It is based on analysis of existing laws and practices in Kenya, and the findings of 130 interviews conducted in Kenya in 2002 with individual women and men from a variety of locations, ethnic groups and socio-economic statuses, as well as Kenyan government officials, United Nations representatives, nongovernmental organisations (NGOs), lawyers, paralegals, academics, judges, members of law review commissions, religious officials, local traditional leaders, and donor government officials.

While the report includes a historical review of women's property rights from precolonial customary practices to the British colonial administration's implementation of laws concerning land titling and marriage, as well as analysis of present-day state laws and customary practices, the most valuable and unique contribution of this report is its documentation of the ways in which individual women have experienced loss of property. The research reflects that women's property rights abuses are not exclusive to one social class, ethnic group, religion, or region. Rich and poor, educated and illiterate, in monogamous and polygamous marriages, women across Kenya reported having the property (land, livestock, productive assets and household items) that they used with their husbands taken by other men when their husbands died or losing claims to property upon separation or divorce from their husbands. Many women's accounts reported property loss



as a result of threats of physical abuse as well as the significant consideration of cultural censure. Particular vulnerabilities, such as a woman not having children or only having daughters and women married according to customary practices, are also revealed through documentation of individual women's experiences.

The report chiefly focuses on women's 'disinheritance' or the loss of property that had been occupied by a woman and her husband at the time of the husband's death or marital separation or divorce, but also addresses daughters' (especially married daughters') lack of inheriting from parents, and women's lack of control over the use of property that they bring to a marriage, help to purchase, or contribute to in making productive for the household. Using individual women's accounts of their own experiences, the report traces the consequences of women's lack of property rights, which reflects the common incidence of property grabbing by husbands' families, eviction from home and land that women once occupied jointly with their husbands, and economic destitution resulting in women and their children living in poor shelter (often in Nairobi's informal settlements) and children being withdrawn from school due to lack of school fees. Practices of widow (and child) inheritance and cleansing are also given careful consideration and women's testimonies of their experiences following a husband's death reflect the physical risks women face in terms of physical violence and widow 'cleansing' through sex, as well as the risks to their future economic security.

The report identifies and discusses that the chief causes of women's insecurity of property ownership or access are discriminatory laws, attitudes and unresponsiveness among government and traditional leaders, and an ineffective judicial system. It also addresses the many obstacles to women asserting their property rights in Kenya, including women's lack of awareness about their legal rights, the time and expense of pursuing property claims, violence, social stigma, poverty, and harassment of NGOs working on women's property rights. As such, specific recommendations are made for legal reform, public awareness and sensitisation, legal aid programming for women, and establishing transparency and accountability in property ownership and inheritance in Kenya. This report closes by setting the findings from this research in Kenya against relevant international legal standards.

*Keywords:* customary law, disinheritance, gender discrimination, human rights, legal reform, property grabbing, widows, women, women's property rights, Kenya

**Jütting, J., and Morrisson, C. (2005). 'Changing Social Institutions to Improve the Status of Women in Developing Countries'. OECD Policy Brief 27. Paris: OECD.**

Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=871445](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=871445)

This policy brief addresses the role of social institutions in developing countries as major obstacles to gender equality. The focus on reform of social institutions to achieve gender equality is premised on findings from Morrisson and Jutting's research that these are critical



to economic and non-economic practices that correlate with women's roles in economies. The researchers measured the depth of discrimination caused by social institutions with economic (ECO) and non-economic (NON-ECO) indicators. The ECO indicators include: right to inherit, freedom of movement and dressing, right to ownership, and access to property. The NON-ECO indicators include: gender mutilation, marriage before the age of 20, polygamy, and authority over children. This analysis demonstrates that the higher the value for ECO and NON-ECO variables the lower the probability that women will play an active role in the economy. It also showed a distinct gap in the condition of women in Southeast Asian, Latin American, European and North American countries relative to women in Sub-Saharan Africa, the Indian subcontinent and countries of the Middle East and North Africa region: ECO and NON-ECO values are consistently very low in the first group and comparable to those of OECD countries, and significantly higher in the latter regions.

The bulk of this policy brief advocates various methods for influencing change to social institutions, such as those of the ECO and NON-ECO variables, which perpetuate women's social and economic inequality. The complexity of changing social institutions is acknowledged and particular considerations and strategies are discussed. A basic point made is that interventions should take into account religion, culture and history and ensure male support so as to implement reforms successfully. Moreover, the analysts recommend that outsiders to the society, i.e. foreign donors, not lead interventions as such action could be perceived and resisted as cultural imperialism.

Specific actions recommended for influencing social reform include:

- empower women through improved access to education, health services and family planning and factors of production (land, credit, technology and information);
- guarantee women more participation in decision making from the community to the national level;
- give men incentives to accept rather than oppose or boycott changes, including emphasizing the public benefits of women's economic empowerment and possibly also provide direct financial compensation to men;
- engage people at the household and community level through the media, local chiefs and religious authorities;
- implement public awareness campaigns;
- promote targeted investment in infrastructure, time-saving and labour-saving technologies and innovations, and information and communication technologies, to support women's work;



- implement specific projects that challenge traditional institutions with project staff who are particularly knowledgeable and trained on these highly sensitive issues and who are ideally from a cultural background similar to their clients;
- reform legal institutions that discriminate against women, e.g. property rights, inheritance laws, divorce laws and family codes and establish monitoring systems to help ensure that such changes are enforced;
- promote investments in manufacturing and open markets particularly for products with important female labour content to boost both export revenues and the demand for female employment in developing countries.

*Keywords:* developing countries, gender discrimination, legal reform, policy, social institutions, social reform, women's rights

**Naggita, E. (2000). 'Why Men Come Out Ahead: The Legal Regime and the Protection and Realization of Women's Rights in Uganda', *East African Journal of Peace and Human Rights*, 6 (1), 34-61.**

A brief review is provided of the international legal regime for the protection of women's rights and legal provisions in Uganda relating to marriage and divorce, succession, and inheritance of property. At present, Uganda's domestic law and women's rights, particularly those relating to family and property, either directly or indirectly, discriminate against women. An assessment of the limitations of the law and the legal regime in the protection of women's rights shows the many factors that work together to entrench and strengthen women's subordination and enhance existing inequalities against them. The need to reformulate the Ugandan legal regime is stressed and suggestions towards this end are made. (Cummings *et al.*, 2001: 115).

*Keywords:* divorce, law (inheritance), legal reform, marriage, succession, women's rights, Uganda

**Steinzor, N. (2003). 'Women's Property and Inheritance Rights: Improving Lives in a Changing Time'. Washington, DC: USAID.**

Available at: [http://pdf.dec.org/pdf\\_docs/PNADA958.pdf](http://pdf.dec.org/pdf_docs/PNADA958.pdf)

This conference report summarises the discussions held in 2002 concerning women's property and inheritance rights among participants of USAID's NGO Small Grants Program which supports 21 organisations in Africa and Asia with projects focusing on these issues. NGO representatives from Kenya, Malawi, Namibia, Tanzania, Bangladesh, Cambodia, Nepal and Sri Lanka participated in these discussions. The main discussion topics and issues for which action plans were developed include: customary practices and statutory law;



developing a supportive policy environment; options for mediation and enforcement; changing attitudes and practices; and the impact of the HIV/AIDS epidemic. In addition to summarising findings related to common issues, the report contains the 'next steps' that conference participants identified as priorities for research, education and awareness-building, legal aid services and support, advocacy and lobbying, networking, legal and institutional reform, poverty alleviation and economic reform, and funding constraints.

*Keywords:* AIDS, customary law, legal reform, NGOs, policy, USAID, women, women's property rights, Kenya, Malawi, Namibia, Tanzania

**Tsikata, D. (2004). 'Securing Women's Land Rights: Approaches, Prospects and Challenges'. Presentation at Land in Africa: Market Asset or Secure Livelihood Conference, London, November 8-9, 2004.**

Available at: [www.iied.org/docs/events/Key\\_Notes\\_Ben\\_Cousins\\_SouthAfrica.pdf](http://www.iied.org/docs/events/Key_Notes_Ben_Cousins_SouthAfrica.pdf)

This written presentation reviews the main developments and debates concerning the legal status of women's land rights in Africa, with specific case study material from Tanzania, Uganda and Ghana. The paper addresses the question 'What exactly is the problem regarding women's land interests and inheritance rights?' by quickly summarising colonial and postcolonial developments that contributed to the growing differentiation in land control and questions of access and equity. It then discusses recent land tenure reform efforts and the positions taken by governments, international and domestic non-governmental organisations, civil society and feminist legal scholars. The presentation closes with a short list of the remaining questions regarding the diagnoses of problems and solutions for securing women's land rights in African countries.

*Keywords:* law (inheritance), legal reform, women's property rights, Ghana, Tanzania, Uganda

**Varley, A. (2007). 'Gender and Property Formalization: Conventional and Alternative Approaches', *World Development*, 35 (10), 1739-1753.**

Securing property rights in both rural landholdings and urban housing is a much-debated feature of current development policy. Providing title for the household does not guarantee security for women, and legal equality may fail to prevent gender differences in property ownership. A pro-active approach to women's property rights is needed. Disenchantment with state programs delivering individual titles has led to calls for alternative strategies emphasizing local or customary authorities and procedures. This paper questions the ability of either approach to address gender inequalities effectively without affirmative action but suggests that informal responses within state institutions can help (Author's own).



*Keywords:* customary law, gender discrimination, land, land administration, urban property, women

**Women and Law in Southern Africa Research and Educational Trust (2000). *Charting the Maze: Women in Pursuit of Justice in Swaziland*. Swaziland: WLSA.**

Available at: [www.wlsa.org.zm/index.html](http://www.wlsa.org.zm/index.html)

This paper analyses the multiple concepts of justice in Swaziland and how they differ between women and men in the context of other variables such as class, ethnicity, and age. A focus is property-grabbing and disinheritance as experienced by women in Swaziland, and the paper investigates these phenomena as conflicts catalyzing women's search for justice. The legal analysis considers the implications of factors such as the duality of inheritance law, family location, internal family dynamics, and types of marriage on the distribution of a deceased individual's estate property. The paper also includes recommendations to improve women's access to justice and the justice delivery system.

*Keywords:* customary law, conflict resolution, justice system, legal analysis, legal pluralism, marriage, women, Swaziland

## 2.6 Vulnerable groups and inheritance

This final chapter reflects the focus of recent poverty studies on identifying categories of people who are particularly vulnerable to chronic poverty, and specifically groups whose vulnerability is exacerbated by their exclusion or inequality in inheritance systems. Three categories of people emerge from the literature as conspicuously marginalised or excluded by inheritance practices in African societies: widows, orphaned children, and households affected by HIV/AIDS. Although there is considerable convergence among the experiences and challenges of widows, orphaned children and households affected by HIV/AIDS, the content of this chapter is divided to more clearly elaborate the distinctive factors of each group that affects their inheritance claims. Yet, as these summaries reflect, even within these disaggregated social groups, there are significant differences in their degrees of socio-economic vulnerability. As such, it remains crucial to retain the lesson learned from earlier studies that much of inheritance systems' outcomes are determined by the particular political, economic and cultural context within which these systems of rights and social relationships are embedded.



### 2.6.1 *Widows and inheritance*

Further reflecting the significance of marital status for women's access to property, including homes and productive assets, many scholars have focused on the consequences of widowhood for women's livelihoods. Studies discuss traditional norms or customary practices that were often understood to ensure the economic security of widows within the extended family as well as changes to these practices in recent times as a result of widespread poverty and HIV/AIDS.

The following entries regarding widows include those that probe the particular characteristics and experiences of this social category in different African contexts, as well as those that identify poverty risks as a result of current inheritance rules and practices

**Ewelukwa, U. (2002). 'Post-Colonialism, Gender, Customary Injustice: Widows in African Societies'. *Human Rights Quarterly*, 24, 424-486.**

Available at: [https://muse.jhu.edu/login?uri=/journals/human\\_rights\\_quarterly/v024/24.2ewelukwa.html](https://muse.jhu.edu/login?uri=/journals/human_rights_quarterly/v024/24.2ewelukwa.html)

Discrimination against widows on the basis of sex is argued to be prevalent in Sub-Saharan African countries, particularly in terms of their inheritance rights and the degrading burial rituals they are subjected to, in violation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Focusing on the treatment of Nigerian widows, the author examines the roots of the problem: inequitable property regime, polygamy, loopholes in estate law administration, insensitivity/hostility of police, administration, and the judiciary, absence of laws addressing the problems of widows, and the unpopularity of wills. The author provides recommendations for law reform as well as spurring cultural change through the actions of women of the culture. (Bora Laskin Law Library, University of Toronto: [www.law-lib.utoronto.ca](http://www.law-lib.utoronto.ca)).

*Keywords:* CEDAW, gender inequality, legal systems, legal reform, marriage, polygamy, widows, women, Nigeria

**Gwako, E. and Moogi, L. (1998). 'Widow Inheritance among the Maragoli of Western Kenya', *Journal of Anthropological Research*, 54 (2), 173-198.**

Continuity and change in the practice of widow inheritance or levirate marriage among the Maragoli of western Kenya are discussed. The perspectives of widows are examined to illustrate how levirate marriage affects them. It is argued that the practice benefits and serves different and sometimes conflicting interests for various groups of men and women, and the experiences and perspectives of Maragoli widows with regard to this practice are not homogenous. Some existing incentives favour the continuation of levirate marriage. For example, financial constraints and other continued strains on their households' limited





resources may influence some widows' stand vis-à-vis this practice. The results of this study show that although levirate marriage still obtains among the Maragoli, signs of an impending change are appearing as more economically secure and resource-owning widows become increasingly assertive of their right to make independent decisions about what to do with their lives. (Cummings *et al.*, 2001: 100).

*Keywords:* widow inheritance, Kenya

**Luginaah, I. *et al.* (2005). 'Challenges of a Pandemic: HIV/AIDS-related Problems affecting Kenyan Widows', *Social Science and Medicine*, 61 (11), 2468.**

The paper reports the findings of a qualitative study using focus group discussions and in-depth interviews about the challenges faced by widows as they confront the direct and indirect impacts of HIV/AIDS in Nyanza, Kenya. Two focus groups were conducted with widows from two community-based organizations. This was followed by in-depth interviews with four members and two leaders from each of the community-based organizations. The contents were analysed using grounded theory. The findings reveal several challenges encountered by widows in their struggles with the direct and indirect impacts of HIV/AIDS. Widows who know or do not know their HIV status are conscious about the possibility of contracting or transmitting the virus. Wife inheritance (a Luo custom) emerged as an outstanding issue for the widows in the context of HIV/AIDS transmission. The widows employ various strategies to resist being inherited. Widows in the current epidemic navigate issues of sexuality in various ways, such as insisting their partners use condoms or permanently abstaining from sexual intercourse (Author's own).

*Keywords:* AIDS, Luo, widows, widow inheritance, Kenya

**Oleke, C., Blystad, A., and Rekdal, O. (2005). 'When the Obvious Brother is Not There': Political and Cultural Contexts of the Orphan Challenge in Northern Uganda', *Social Science & Medicine*, 61, 2628–2638.**

This study presents data and analysis regarding the 'sudden discontinuance' of the practice of widow inheritance among the Langi of northern Uganda based on ethnographic fieldwork, interviews with community leaders, household heads and orphans, as well as a survey of 402 households. Traditionally among the Langi, it was expected that a woman's natal kin would discontinue their role as providers to her at the time of her marriage. The transfer of bridewealth would mean the transfer of responsibility for the woman and her future children to her husband's kin. Patrilocal marriage also physically removed the woman and her children from the woman's natal family, making the continuance of claims upon a woman's natal kin more difficult. Investigating the cases of widowed women and orphaned children



among the Langi in recent years, this study finds that sixty-three percent of the households caring for orphans in the study area were no longer headed by paternal kin in a manner deemed culturally appropriate by the patrilineal Langi society, but rather were headed by marginalised widows, grandmothers or other single women receiving little support from the paternal clan. The authors reflect that the rapid discontinuation of practices of widow inheritance (and care for the widow's children) is a consequence of local impoverishment and deaths of adults as a result of political violence or HIV/AIDS, which has drastically limited the availability of any potential inheritors (e.g. husband's brothers) to support widowed women and their children. The authors also note that the large majority of this study's informants were 'highly ambivalent' about the cessation of widow inheritance as these individuals recognised the benefits for widows and children of this social practice as well as the current extreme social and economic vulnerability of households headed by single mothers without support from husbands' clans. The researchers conclude with the recommendation that researchers avoid broad generalising descriptions of challenges faced by widowed women and orphaned children and instead aim to address the particularities of local historical-political-cultural contexts that can result in significantly different outcomes for women and children.

*Keywords:* AIDS, kinship, orphans, widows, widow inheritance, Uganda

**Potash, B. (Ed.). (1986). *Widows in African Societies: Choices and Constraints*. Stanford, CA: Stanford University Press.**

This edited volume of accounts of widowhood in different societies of East and West Africa combines detailed ethnographic case studies of widows and their communities as well as useful discussion of the theoretical implications of these studies' findings for understandings of the roles of widows in their societies. It challenges the stereotypical view of widows as an abnormal and marginal social category with descriptions of how diverse the experiences of widows are. For instance, there is discussion of how widowhood at different phases in the lifecycle affects women differently, and there is an emphasis on individual widowed women's agency and actions. Schildkrout's study of the Hausa notes that widows have more options than any other category of women and Muller's study of the Rukuba reflects that widows have relatively significant control over their own lives although with concomitant work loads which often makes re-marriage an attractive option. The collection also demonstrates the fallibility of overly normative and group-oriented approaches to the contemplation of widows in societies as the case studies show that the fates of widows are not always determined according to the norms of widows as a collective social responsibility. Rather, in many cases, individual widowed women act to realise their own security. Indeed, even in societies where the levirate (widow inheritance) is the jural norm, several case studies demonstrate that its actual practice is often determined by women's choices and its translation in practice may often be only nominal. Among the Nandi, for example, Oboler notes that while levirate is the



ideal, it is rarely actually practiced, and Potash describes how among the Luo there is often little content in the levirate relationship when it is practiced. Another important contribution is Guyer's chapter regarding the changing roles of Geti widows which relates these to the political and economic changes in Cameroon from the nineteenth century to the late twentieth century thereby demonstrating the links between women's, and by implication widows', statuses and security to the political economy.

One of the critiques that this volume makes of previous approaches to the study of widows in Africa is Western scholars' conceptualisation of marriage as a permanent status, rather than a more ephemeral institution, which necessarily implies that widows can only hold marginal social status. Such challenges as this book presents are useful to anyone interested in thorough investigations and careful analysis of the historical and changing roles of widows in different African societies.

*Keywords:* widows, widow inheritance, women

**Rehmtulla, S. (1999). 'Initiatives to Help Widows in the Struggle for Property and Inheritance Rights in Tanzania'. The Hague: Wageningen.**

Most African states have a dual legal system consisting of the western-based statutory law and customary laws. In many of the African customary laws, the right to own or inherit land and immovable property is denied to women. AIDS has reinforced the problems that women face with regard to property and inheritance rights and is also responsible for the increase in young widows. This paper examines the problems that women face with regard to their property and inheritance rights and discusses the initiatives being taken to help them. Tanzania is used as a case study, as the position of women there may be comparable to that of women in other African countries, particularly the neighbouring states of Kenya, Uganda, Zambia and Zimbabwe. The socioeconomic situation of women in Tanzania is briefly discussed and the relevant laws applicable to land tenure and inheritance are reviewed. Initiatives undertaken by NGOs, the government and the donor community to fight for women's rights are outlined, and the constraints they face in achieving their goals are addressed. The Kilimanjaro Women Information Exchange and Consultancy Organization (KWIECO) runs a programme that aims to educate women and disseminate information on women and development issues. A detailed discussion of this programme is provided as an example of the initiatives being undertaken in Tanzania. Finally, actions that could be taken by civil society, the government and the donor community are proposed, and research needs are outlined. (Cummings *et al.*, 2001: 120).

*Keywords:* advocacy, AIDS, customary law, law (inheritance), NGOs, widows, women's rights, Tanzania



### 2.6.2 *Children and inheritance*

Recent poverty research has emphasised the significance of poverty in childhood for vulnerabilities to chronic poverty. However, studies of children's property and inheritance rights and violations of these rights as well as the consequences for childhood and IGT poverty remain limited. Changing conditions in many African contexts as a result of parents' and other adult guardians' deaths due to HIV/AIDS or conflict, divorce among parents and childbirth out of wedlock have indicated the importance of focusing on children's economic livelihoods and rights. This concern includes the need to re-examine inheritance rules and practices with a deliberate focus on what and how assets pass or not to children.

**Horizons and Makerere University Department of Sociology, Plan/Uganda. (2004). 'Succession Planning in Uganda: Early Outreach for AIDS-affected Children and their Families'. Washington, DC: Population Council.**

Available at: [www.popcouncil.org/pdfs/horizons/orphnsfnl.pdf](http://www.popcouncil.org/pdfs/horizons/orphnsfnl.pdf)

This publication reports on an intervention study that evaluated the effectiveness of a succession planning programme in Uganda. The succession planning project involved encouraging HIV-positive parents through discussions and support activities to appoint guardians for their children, to write wills for their property inheritance, and to disclose their positive serostatus to children. The researchers evaluate the effectiveness of the programme based on tabulations of how many parents in the programme-enrolled group and a control group (not enrolled in the programme) had appointed guardians, written wills and disclosed their status to their children in 1999 (pre-programme) and in 2001 (post-programme) as well as by analysing the content of qualitative interview responses by parents and children. The evaluation is therefore restricted to realising these three activities and not in the eventual impact of these three activities on succession from parent to child.

Nevertheless, the report provides some interesting data concerning property inheritance planning. For instance, the results of the survey done at the baseline stage of this study (1999) show that almost one-third (n=147) of widowed females in the study groups had already personally experienced property grabbing (inherited property taken from the surviving family member and heirs). At the same time only 24 percent had many any arrangements for their property (i.e. through a will or other verbal means), and less than 1 in 10 had a written will. Interestingly, the succession planning programme did not increase the numbers of people who produced written wills: in 2001 only 20 percent of parents in both the groups (enrolled and not enrolled in the programme) had written wills.

Qualitative interview data indicates that significant cultural obstacles to writing wills exist. Regarded as a step in preparing for death, the preparation of a will is believed to hasten death and thus some people fear to do this. There is also a tradition of extreme secrecy about one's property. Programme implementers found that people were very reluctant to



record in writing or to reveal to a counselling aide the details of the property they owned. Traditionally, male heads of household would tell a clan elder of their properties who would then be solely responsible for distributing this property when the man died. Other challenges to will-writing include illiteracy, fears that wills could be plagiarised and falsified, identification of wills with European colonialists (and hence cultural resistance), and lack of appropriate, secure places to store wills. Furthermore, some people explained that revealing one's property before death may lead to property grabbing and conflict.

The analysts note that when the results are disaggregated by sex, it appears that the programme may have been making a greater difference with enrolled males: there were significant pre- vs. post-intervention increases in the proportion that had written wills (from 16 percent in 1999 to 37 percent in 2001) and in the proportion of men who had appointed an executor (from 57 percent in 1999 to 83 percent in 2001). There were no significant changes in these outcomes among men in the comparison group. Nevertheless, focus group discussions indicated that women have the greatest interest in will writing.

This analysis does not thoroughly address the eventual impact of written wills on property inheritance. However, some programme participants were able to report on personal experiences. The paper states that some women reported that they used a spouse's will to maintain control of their property, while others had wills but found them ineffective. In addition, wills seem to be more effective when the survivors are adults or older children, and far less effective when the survivors are young children.

*Keywords:* children, succession planning, widows, wills, Uganda

**Maundeni, T. (2000). 'The Consequences of Parental Separation and Divorce for the Economic, Social and Emotional Circumstances of Children in Botswana', *Childhood*, 7, 213-223.**

This brief research paper reports the findings of qualitative interviews with twenty-five mothers, twenty-five of these mothers' children, and ten additional children of these mothers in Botswana regarding their experiences and perspectives of the economic, social and emotional impacts of a father's absence due to separation or divorce. Most children and mothers reported that divorce resulted in a decline in standard of living while some reported no change or even improved standard of living (the latter in cases where the husband had not contributed to the household's economy prior to separation or divorce). While Botswana family law entitles both husband and wife to an equal share of property upon divorce this research finds that children and women perceive that this does not occur and that they suspect that men also circumvent equal division by first disposing of joint property without their wives' consent. The research also documents the lack of regular and sufficient child support payments by fathers following a divorce. Anticipated inheritance rights also seem to



be implicated as male children report fathers not following through on previous promises to bequeath cattle to them. This analysis also addresses the link between a child's material deprivation and psycho-social development drawing from theories that economic hardships make some children feel unequal from others which can affect their self-esteem. How this might correlate with future economic hardships is not addressed in this paper.

*Keywords:* assets, children, divorce, Botswana

**Rose, L. (2006). 'Children's Property and Inheritance Rights and their Livelihoods: The Context of HIV and AIDS in Southern and East Africa'. Food and Agricultural Organization of the United Nations.**

Available at: [www.oxfam.org.uk/resources/learning/landrights/downloads/childrens\\_property\\_and\\_inheritance\\_rights\\_and\\_livelihoods.pdf](http://www.oxfam.org.uk/resources/learning/landrights/downloads/childrens_property_and_inheritance_rights_and_livelihoods.pdf)

This paper focuses on legal and institutional aspects of children's property and inheritance rights in Southern and East Africa. Chapter 2 discusses violations of children's property and inheritance rights and discusses how the spread of HIV/AIDS has contributed to the violations. Chapter 3 assesses several norms of customary law that aim to protect children's property and inheritance rights as well as the current practices of customary law that—in the context of the HIV/AIDS pandemic—serve to complicate and limit children's ability to maintain their rights. Chapter 4 reviews and assesses a selection of international laws and national laws from the countries in the region that influence children's property and inheritance rights, emphasizing succession and land laws. Several gaps in national legislation and policy that need to be addressed are identified. The fifth chapter reviews several National Plans of Action (NPAs) for orphans and vulnerable children<sup>1</sup>, identifying a number of topics which should be addressed in all NPAs in order that they are more comprehensive in their coverage of children's property and inheritance rights. Chapter 6 discusses the effectiveness of government structures in addressing children's property and inheritance rights, emphasizing the institution of the public trustee. Chapter 7 outlines and evaluates a number of stakeholder initiatives that address children's property and inheritance rights. Chapter 8 presents eight case studies of children whose property and inheritance rights were violated. Each case study includes a summary and an accompanying analysis of legal and policy issues. Chapter 9 presents recommendations regarding both preventive and corrective methods to protect children's property and inheritance rights as well as recommendations regarding future research and development priorities. Chapter 10 offers a few concluding remarks. (Author's own).

The author introduces this report with the observation that little data and analysis exists concerning children's property and inheritance rights and violations of these rights, and this is mirrored by a similar lack of focused attention among national legislators. Rose defines her use of the term 'violations of children's property and inheritance rights' as situations in which



people deny children ‘the possibility to benefit - either in the present or in the future - from the property of their parents or from the property that they have acquired through their own labors’. Reports from case studies indicates that members of extended families cite customary law when they take control of the property of deceased relatives, even though they are often not entitled to this property by either customary or statutory law, and that many guardians/estate executors use property of the deceased for their own benefit rather than for the benefit of the orphaned children of the deceased. This constitutes ‘property grabbing’. This desk study gives detailed analysis of several African countries’ various laws and case studies to discern what provisions exist to safeguard children’s property and inheritance rights. Such analysis is very useful in understanding opportunities for legislative and policy reform to address children’s rights.

Rose notes that even when states have laws in place that recognise children’s property and inheritance rights, many children are unable to ensure enforcement of these laws. Drawing from case studies from other research and advocacy efforts, Rose identifies the following barriers for children in ensuring their rights are upheld: information (children are not fully aware of their rights); time (they are unable to pursue their property claims before their deceased parents’ property is permanently alienated); status (children are of lower status and power than their competitors—often their own guardians); youth (they are not permitted by law to pursue their property claims on their own); and cost (they are unable to meet the logistical and legal costs of pursuing their property claims). To prevent the negative effects of property grabbing from children, including children’s current and possibly future poverty, the author argues that countries should guarantee by legislation and policy that orphaned children, who have lost one or both parents and who are under the age of majority as determined by the laws of their country, have the right to own, acquire (through purchase, gift, or inheritance), and dispose of property, including land, housing, money, livestock, and crops.

*Keywords:* AIDS, children, children’s rights, law (inheritance), legislative reform, Kenya, Lesotho, Malawi, Namibia, Rwanda, Swaziland Uganda, Zambia, Zimbabwe

**Rose, L. (2005). ‘Orphans’ Land Rights in Post-War Rwanda: The Problem of Guardianship’, *Development and Change*, 36 (5), 911-936.**

In 1994, the Rwandan civil war and genocide produced thousands of orphans. Alongside the war, the growing HIV/AIDS crisis in Rwanda has produced a current population of about 300,000 orphans — many of whom are compelled to head households. These orphans urgently require land use rights, but many find that their rights to their deceased parents’ customary land holdings are denied or restricted by their guardians and others. Despite the legal protections for children that are guaranteed within Rwanda’s laws, the reality is that many guardians do not respect orphans’ land rights and few orphans have sufficient access to administrative and legal forums to assert and defend these rights. In contrast to most



accounts in the literature that discuss more generally the issue of African orphans' land rights in the context of adults' land rights, this article focuses on specific cases in which Rwandan orphans independently pursued their land rights. Ultimately, the article concludes that in Rwanda — and elsewhere in Africa — government officials should re-examine their ideas about guardianship and grant orphans urgent attention as individuals and as a special interest group (Author's own).

*Keywords:* AIDS, children, guardianship, land rights, orphans, property law, Rwanda

**Sloth-Nielsen, J. (2004). 'Realising the Rights of Children Growing up in Child-headed Households: A Guide to Laws, Policies and Social Advocacy'. Belleville, South Africa: Community Law Centre, University of the Western Cape.**

Available at: [www.communitylawcentre.org.za](http://www.communitylawcentre.org.za)

This report presents the main legal and policy issues that concern child-headed households in South Africa. Child-headed households are defined as those households in which the main caregiver is younger than 18 years however, the author notes the importance of also recognising in this category those children whose care-giver is terminally ill with HIV/AIDS because children often become de facto heads of households in such cases. The paper's primary contribution is a review of the current state of the challenges faced by children in child-headed households (e.g. children's lack of access to food) and relevant implemented or proposed laws, policies and programmes.

The paper also includes some discussion of the chronic poverty implications for children in child-headed households. For instance, the paper highlights the specific vulnerabilities of children in child-headed households being dispossessed of their property due to customary laws' rules of inheritance or property grabbing by families and communities. Significant issues discussed are the importance of children acquiring proof of identity to secure his or her recognition as a person before the law, which may help to protect inheritance rights, the role of appointed guardians for child care or trusteeship of property, and current review of customary laws' privileging of primogeniture inheritance to establish gender equality in inheritance rights. The paper closes with a list of recommendations for strategic advocacy to influence the rights of children in child-headed households in South Africa.

*Keywords:* advocacy, AIDS, child-headed households, children's rights, law (inheritance), property law, South Africa





### 2.6.3 *AIDS-affected households and inheritance*

The HIV/AIDS pandemic in Sub-Saharan Africa has been shown to significantly contribute to the poverty of households and communities. Illness and death among adults during their childbearing and most productive working years is linked to the diminishment of households' economic statuses and livelihoods as the results of the loss of adults' labour and the sale of households' productive assets to pay for treatment and burial costs. Households with people affected by HIV/AIDS have further been linked to the intergenerational transmission of poverty as children in these households are often found to be disadvantaged in terms of investments in their health (including nutrition) and education.

The diminishment of households' asset bases as a result of AIDS-related illnesses and deaths has clear consequences for future generations' inheritance. Moreover, deaths as a result of AIDS have also been associated with stigma and the social exclusion of surviving relatives in many African societies, particularly in the cases of widows and children. The combination of economic and social vulnerabilities among surviving relatives has been theorised as further weakening their inheritance claims. Even when inheritance claims may be deemed legitimate, property grabbing from widows and children has been widely reported. The following entries provide specific data regarding the poverty consequences of HIV/AIDS in African societies and specifically the ramifications of HIV/AIDS on inheritance practices.

**Aliber, M., et al. (2004). *The Impact of HIV/Aids on Land Rights: Case Studies from Kenya*. Cape Town: Human Sciences Research Council.**

Available at: [www.hsrcpublishers.ac.za](http://www.hsrcpublishers.ac.za)

This 224-page publication reports findings from case studies of three villages in different regions of Kenya regarding the relationship between HIV/AIDS and land tenure security, with a particular focus on women as a socially vulnerable group. The three different sites were chosen to represent different qualities associated with the nature of the HIV/AIDS epidemic, local land tenure systems, demographic factors and social factors relating to gender relations and the status of women. Data was collected through participatory field methods, a household survey and individual interviews.

The study does reflect that HIV/AIDS can undermine people's security of land tenure but it also indicates that in most cases threats to tenure security do not result in actual or sustained loss of land rights. Widows and their children, and to a lesser extent full orphans, are the groups of people shown to be most vulnerable to tenure insecurity resulting from HIV/AIDS, however this is not universal. This study turned up little to no evidence of land grabbing from orphaned children. Young widows are shown to be more vulnerable in terms of land tenure



security than older widows which the authors theorise is likely because they have had less time to secure their relationships among their husband's family.

The report contains interesting empirical findings which provoke new research questions and analytical considerations, some very relevant to inheritance. For instance, the case study of Bondo in western Kenya found that functionally landless households survive mainly by sharecropping and therefore the lack of land is sometimes much less a constraint on livelihoods than lack of draught animals. The implication for inheritance considerations is that livestock inheritance in such cases may be more significant than land inheritance, and therefore should certainly not be overlooked. Similarly, the research notes that in all cases the agency of influential individuals who intervene to mediate local-level disputes (e.g. sub-chiefs) plays a critical role in protecting, or not, vulnerable people's property rights. While the study shows that Kenya's statutory tenure system does offer protection to women and orphans, it also shows that this protection is not consistently nor automatically applied, and often requires the person who believes her/his rights have been violated to initiate engagement with local officials.

The authors conclude that there is not a straightforward correlation between the intensity of the epidemic and the negative impact on land rights. Rather, there are various factors at play, including the degree of local AIDS-related stigma, and local leaders' attitudes towards enforcing the statutory tenure rights of women and children. As such, the authors argue that it is conceivable that government interventions directed at either combating HIV/AIDS-related stigma or strengthening the system of land administration could attenuate the relationship between tenure insecurity and AIDS.

*Keywords:* AIDS, children, land rights, orphans, widows, women, Kenya

**Cohen, D. (1998). 'Poverty and HIV/AIDS in Sub-Saharan Africa'. SEPED Conference Paper Series No 2. City: UNDP.**

Available at: [www.undp.org/seped/publications/poverty\\_HIV\\_SSA.pdf](http://www.undp.org/seped/publications/poverty_HIV_SSA.pdf)

This paper discusses two key relationships - the relationship between poverty and HIV/AIDS, and the relationship between HIV/AIDS and poverty - in terms of the gender dimensions of poverty, the intergenerational aspects of poverty, the qualitative and quantitative measures of poverty, and the ways in which the HIV epidemic alters the relationships between the poor and the wealthy. An intergenerational approach to poverty is defined as seeing poverty as part of dynamic social, economic and political processes. The focus for these questions is sub-Saharan Africa due to the staggering rates of HIV infection in this region and the AIDS epidemic which directly affects more than one quarter of Africans (pp.1-2).



The trends of mother to child transmission and HIV orphans are identified as directly affecting intergenerational poverty, and thus presenting a particular challenge to policy makers. The HIV/AIDS epidemic intensifies poverty and leads to its persistence over time and across generations. This happens due to the risky behaviours adopted by the poor, a more limited capacity to deal with morbidity and mortality, the erosion of human resources, social exclusion and the damaging effect on childhood development. The authors warn that large numbers of children growing up in poverty will adopt those behaviours which lead to HIV infection, and become the next generation of those infected with HIV.

They conclude that: '[t]he next step has to be the development of policies and programmes that address the inter-relationships between poverty and development and to actually put in place those activities that can make a difference for development outcomes. Central to these activities are programmes that address poverty today so as to facilitate future socioeconomic development tomorrow. For unless the intergenerational effects of HIV are addressed now then it is optimistic in the extreme to assume that Africa will become a pole of development in succeeding decades' (p.11) (Smith and Moore, 2006: 34).

*Keywords:* AIDS, intergenerational poverty

**Drimie, S. (2003). 'HIV/Aids and Land: Case Studies from Kenya, Lesotho and South Africa', *Development Southern Africa*, 20 (5), 647-658.**

Available at: <http://www.informaworld.com/smpp/content~content=a713618534~db=all>

Recent research conducted in Lesotho, Kenya and South Africa has revealed that HIV/Aids will seriously impact on a range of land issues as a direct result of very high infection rates in these countries. HIV/Aids will affect different forms of land use, the functioning of land administration systems, land rights of women and orphans as well as the poor generally, and inheritance practices and norms. The epidemic not only affects the productivity of the infected, but also diverts the labour of the household and extended family away from other productive and reproductive activities as they take care of the sick. Affected households fall below the social and economic threshold of vulnerability and 'survivability', leaving the survivors – mainly the young and elderly – with limited resources to quickly regain a sustainable livelihood. This indicates the importance of effective land administration systems and of land rights as HIV/Aids impacts on the terms and conditions on which households and individuals hold, use and transact land. This has a particular resonance for women and children's rights, which, in the context of rural power relations that are themselves coming under increasing pressure from the epidemic, are especially vulnerable to being usurped. Thus, the impact of HIV/Aids on land raises complex and sensitive issues for land policies and programmes, particularly if they are intended to underpin rural development and sustainable livelihoods (Author's own).



Dimrie introduces this research article by noting that a lack of empirical data concerning the impacts of HIV/AIDS on land issues has meant that these impacts have generally not been factored into land policies across Africa. This three-country study identifies trends or issues for further investigation and policy attention based on literature reviews, interviews with government representatives and local institutions working with HIV/AIDS, and participatory research methods in various affected communities with traditional authorities, local government officials, community groups and affected households. Based on this research Dimrie states that HIV/AIDS will impact on every aspect of management, planning and implementation of land policy for decades, as well as the social environment in which this occurs. As such, it is argued that researchers and policymakers recognise that each phase of HIV/AIDS – asymptomatic; early illness; chronic illness; critical illness; death and survivors – is associated with a different impact, which has different implications for land use, land rights and land administration. In addition, he points to the significance of focusing on the categories of survivors, most notably, widows, orphans and youth-headed households, and different implications for land issues.

*Keywords:* AIDS, child-headed households, land administration, land rights, orphans, widows

**Dimrie, S. (2002). 'The Impact of HIV/AIDS on Rural Households and Land Issues in Southern and Eastern Africa'. Food and Agriculture Organisation of the United Nations.**

Available at: [www.fao.org/wairdocs/ad696e/ad696e00.htm](http://www.fao.org/wairdocs/ad696e/ad696e00.htm)

This background paper to individual case study reports (Kenya, Lesotho and South Africa (see Dimrie, 2003) first discusses the links between HIV/AIDS and poverty in Sub-Saharan Africa, with particular attention to the epidemic's impacts on household livelihood strategies, before presenting a conceptual framework for the impacts of the epidemic on land issues. The conceptual framework focuses on households and the issues of land use, land rights, and land administration. Dimrie regards analysis of the impact of HIV/AIDS on land as essentially an analysis of changes in social institutions in which rights to land are anchored. As such, he points to a number of social attributes that analysis must take into account, including: cultural, legal, political and other social dimensions affecting entitlement; how HIV/AIDS affects land entitlements and how land entitlement affects HIV/AIDS; whether lack of entitlement to land increases vulnerability to HIV/AIDS; how HIV/AIDS impacts on institutions involved in land administration; the inputs needed to secure effective use of land by HIV/AIDS affected households; the fact that entitlement is not static and changes across gender and age; the complex continuum from landed to landless; and the fact that although access to land may not be the most effective strategy for HIV/AIDS affected households, in rural areas it is likely to remain central to their survival.



*Keywords:* AIDS, land, land administration, land rights, livelihood strategies, Kenya, Lesotho, South Africa

**HelpAge International. (2003). 'HIV/AIDS and Ageing: A Briefing Paper'. London, UK: HelpAge International.**

Available at <http://www.eldis.org/cf/search/disp/docdisplay.cfm?doc=DOC12567&resource=f1>

With a focus on Africa and Asia, this paper outlines the specific effects of HIV/AIDS on older men and women, both as carers and as carriers. It looks at their role as primary care givers to orphans of HIV/AIDS, their own risks of infection, stigma and exclusion based on age, and thus the persistence of HIV/AIDS related poverty through time and across generations. The authors suggest that collaborative action is needed to ensure that the intergenerational nature and widespread socio-economic impacts of HIV/AIDS are recognised, addressed and prevented. (Smith and Moore, 2006: 40).

*Keywords:* AIDS, elderly

**John-Smith, M. (2002). 'The Struggle for Women's Inheritance Rights in Africa: A Critical Component in an Expanded Response to the HIV/AIDS Epidemic'. Presentation at the International Conference on AIDS, Toronto, July 7-12, 2002. Washington, DC: International Human Rights Law Group.**

Available at: <http://gateway.nlm.nih.gov/MeetingAbstracts/102252778.html>

*Issues:* Women's rights NGOs in Africa have identified the HIV/AIDS epidemic as a critical factor in the exponential growth and devastating effects of the denial of women's inheritance rights. The number of young widows has increased drastically, staggering numbers of girl orphans are now household heads, and older women must raise orphaned grandchildren. They are thus dispossessed of land, home, and property at the point which they are most in need of their means of production. *Description:* With partner NGOs, the International Human Rights Law Group has undertaken international awareness-raising campaigns through the UN Commission on Human Rights and global e-mail letter-writing campaigns, along with research, local advocacy and support for inheritance rights activities (outreach, legislative advocacy, legal services). A major goal is to support local NGO efforts and to bring global attention to women's inheritance rights as an issue in need of specific interventions in an expanded response to the AIDS crisis. *Lessons learned:* Fuelled by the AIDS epidemic, the denial of inheritance rights to women and girls has an acute negative impact on household poverty, violence against women, and the general socio-economic status of widows, daughters and their households. Without detracting from the importance of an interrelated approach to responding to the AIDS crisis, targeted attention to women's inheritance rights is critical. *Recommendations:* The work of African NGOs struggling for women's right to inherit



should be specifically supported in an expanded response to HIV/AIDS. This will alleviate the impact of the epidemic on the most vulnerable (widows, orphans). It will further lower their risk of contracting HIV/AIDS due to increased economic security: economically secure women are less likely to remain in situations of violence, to enter the sex industry, and to be trafficked, all of which increase their chances of contracting HIV/AIDS (Author's own).

*Keywords:* AIDS, households, human rights, NGOs, orphans, property grabbing, vulnerability, widows, women, women's property rights

**Strickland, R. (2004). 'To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa'. Washington, DC: International Center for Research on Women.**

Available at: [www.icrw.org/docs/2004\\_paper\\_haveandhold.pdf](http://www.icrw.org/docs/2004_paper_haveandhold.pdf)

This report presents a thorough overview of existing knowledge and action as well as gaps in knowledge and action regarding the links between women's property and inheritance rights in the context of HIV/AIDS in Sub-Saharan Africa. At the outset a theory of these links is outlined. First, Strickland conceptualises guarantees of property for women in the form of a secure home in which to live, a reliable site for economic activity (on the land or in the home), and collateral for gaining access to credit as conditions that promote women's self-reliance, economic independence, and empowerment, which are in turn identified as factors that contribute to women's secure livelihoods and the reduction of risk factors commonly associated with HIV/AIDS. In this sense, Strickland hypothesises that securing women's property and inheritance rights may potentially contribute to the *prevention* of HIV infection. Second, Strickland contends that land, housing, and other property constitute a resource base from which the household can draw to cover HIV/AIDS-related costs, including the cost of medical treatment, provision of care, and services related to deaths and funerals. Hence, property and inheritance rights are positioned as enabling effective coping mechanisms for households affected by HIV/AIDS, thereby mitigating the personal and financial impacts of the virus.

Strickland states that the relationship between property ownership and inheritance, and HIV prevention and mitigation of the impact of AIDS is just beginning to be researched. He notes that comprehensive data regarding women's property rights in Sub-Saharan Africa are sorely lacking and that 'There is a real risk of overgeneralizing until there is a larger, more robust database about women's ownership, access to, and control of land, housing, and other property.' (p.9) Moreover, direct impacts of HIV are often difficult to identify, and are often under-reported, so conclusions about relationships between the disease and women's property and inheritance rights must remain somewhat speculative and rely upon a range of quantitative, qualitative, and anecdotal materials available from case studies and regional analyses.



The bulk of the paper's content traces the anecdotal and hypothesised connections between women's economic vulnerability and impoverishment, particularly in the context of HIV/AIDS, and their access to land tenure. Explanations of land tenure systems demonstrate their determination by a range of legal, institutional, and socio-economic factors, the nature of which will vary from setting to setting. Referencing case study data, Strickland elaborates on how even in situations where women's property and inheritance rights are established by statutory law, they can be at risk due to multiple factors, including social norms, local customs, and institutionalised practices, which can influence decisions concerning property transfers. Information from country-specific studies is reviewed (Kenya, Lesotho, Malawi, Namibia and Zambia). A discussion of the complexities of customary law in various contexts is included as are summaries and 'lessons learned' from activities of organisations that are addressing issues of women's property and inheritance rights in East and Southern Africa in the context of the HIV/AIDS epidemic. The major limitation of this paper is that it addresses the more immediate situations and implications of women's property and inheritance rights, rather than the longer-term and broader anticipated effects. As the author notes, 'like the tip of an iceberg, disturbingly little is known about the negative intergenerational economic consequences for orphans stripped of their rightful inheritance through such practices.' (p. 17)

The paper closes with identification of research and action priorities. The appendices provide further support for such future work, including a list of suggested indicators for collecting gender disaggregated information to measure quality and quantity of rights concerning gender-related access to land, as well as useful baseline information, including a summary of key human rights instruments containing provisions relevant to women's property and inheritance rights, a table that presents percentages of different types of land ownership in Southern and Eastern Africa, and contact information and summaries of activities of 70 organisations already working on these topics in the region.

*Keywords:* AIDS, customary law, gender, law (inheritance), NGOs, property law, women's property rights, Kenya, Lesotho, Malawi, Namibia, Zambia

**United Nations (2004). 'Property and Inheritance Rights and HIV/AIDS: Women and Girls in Southern Africa'. New York: United Nations Secretary General's Task Force on Women, Girls and HIV/AIDS in Southern Africa.**

Available at: [http://womenandaids.unaids.org/documents/factsheet\\_general.pdf](http://womenandaids.unaids.org/documents/factsheet_general.pdf)

The fact sheet summarizes the gendered aspects of property and inheritance rights and HIV/AIDS in Southern Africa. This includes key facts from the region and a definition of women's property and inheritance rights. Key issues include multiple legal systems that often fail to recognize or uphold women's property rights as well as socio-economic barriers to



applying women's land and property rights. The fact sheet concludes with 4 key actions: 1) review and reform customary law and practice; 2) increase legal literacy; 3) identify strategic litigation opportunities; 4) simplify land administration procedures; 5) train police and judicial officials. (Gacoin, A. 2007, AIDS Portal:

[http://www.aidsportal.org/Article\\_Details.aspx?id=5848&nex=33](http://www.aidsportal.org/Article_Details.aspx?id=5848&nex=33)).

*Keywords:* AIDS, customary law, law (inheritance), land rights, legal system, legal reform, policy reform, women, women's property rights, Southern Africa

**Wiegers, E., Curry, J., Garbero, A. and Hourihan, J. (2006). 'Patterns of Vulnerability to AIDS Impacts in Zambian Households', *Development and Change*, 37(5), 1073–1092.**

Using household data from Northern Zambia, this article looks at HIV/AIDS impacts on different aspects of people's access to food. The findings draw particular attention to the variances in vulnerability among households burdened by illness and orphans that are headed by men, women and the elderly. It is argued that vulnerability levels to HIV/AIDS impact differ substantially among households and implicitly expose the underlying causal conditions that enable or disable people in their responsiveness. Households affected by HIV/AIDS cannot be treated as a homogeneous group and understanding the differences in vulnerability can play an important policy role in designing targeted support. (Author's own).

This analysis focuses on households' assets ownership and use as critical factors in determining vulnerability in the context of HIV/AIDS-related deaths. The researchers state that the vulnerability of a household can be observed indirectly by its ability to adapt to a shock, such as a death of a family member. They elaborate that a household's responsiveness is shaped by the extent of its assets and entitlements, as well as by its capacity to transform these into income and food, meaning that poor households are more vulnerable because of their limited access to assets. The study's findings show a significant gender discrepancy in asset ownership, with households headed by women owning substantially fewer items such as small livestock, bicycles, radios and productive assets like axes, compared to male heads of households. Female-headed households with people living with HIV/AIDS represent the most asset-poor category identified in this study and are found to be least able to respond to the hardships caused by AIDS. Study findings demonstrate that these households have reduced crop production, decreased investment in farm inputs, disposed of many of their liquid and productive assets, and increasingly resorted to low-profit activities such as food for work and beer brewing. Moreover, 35 per cent of female-headed households with people living with HIV/AIDS surveyed in this research reported that property (including household items, small livestock, farm implements, bicycles) was taken by in-laws after the death of the husband. Elderly-headed households with people living with HIV/AIDS and orphans were also identified in this study as highly vulnerable groups with specific constraints and experiences in dealing with the epidemic. The authors describe that age and





frailty make it difficult for the elderly to produce food and to use assets productively, and that grandchildren in these households make significant contributions to the household's labour force, thereby minimising their access to education.

*Keywords:* AIDS, elderly-headed households, female-headed households, livestock, orphans, productive assets, property grabbing, Zambia



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## **Chronic Poverty Research Centre**

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