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Inheritance, poverty, and disability

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Inheritance, poverty, and disability

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Inheritance is a significant means of transferring wealth from one generation to the next, and therefore increasingly attracts attention from researchers and policy-makers working on intergenerational and multidimensional poverty. However, until now disabled persons have been overlooked in these discussions. This oversight is particularly unfortunate because, as a group, the estimated one billion people with disabilities (some 15% of the world's population) are among the poorest and most marginalized of the global population. Over the past decade, a small but growing literature has examined the recursive connections between poverty and disability throughout the developing world. In this paper, we argue that disabled individuals are routinely denied inheritance rights in many low-income and middle-income countries, and that this is a significant and largely unrecognized contributor to their indigence. The denial of inheritance is both a social justice issue and a practice that can no longer be overlooked if disabled persons are to be brought into the development mainstream.

Keywords: inheritance; disability; poverty; international development; disabled women; dowry; bridewealth

Points of interest

- The link between disability, poverty, and inheritance is an area that has as yet been wholly unexplored.
- Inheritance rights have been given passing mention by a handful of disability and development studies and reports, but there has been little research that specifically focuses on inheritance practices and disability.
- Making the legal systems – traditional and formal – accessible to disabled persons is crucial to ensuring they can effectively assert their claims to inheritance.
- Disabled People's Organisations and mainstream development organisations must consider inheritance rights of disabled people if poverty among persons with disabilities is to be realistically addressed.
- Disabled women are at increased risk of being denied inheritance rights and this is a contributing factor to their increased risk of greater poverty.
- The most important finding from this research is the need to further explore the

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extent and patterns by which persons with disabilities are being denied their right to inherit through formal, customary, and informal practices.

Introduction

Persons with disabilities are among the world's poorest and most marginalized individuals. They face stigma, prejudice, and social isolation, and often lack the education, social support networks, and legal right to appeal injustices at the family, community, or national level (Department for International Development 2000; World Health Organization [WHO]/World Bank 2011). Over the past decade, a small but growing literature has begun to examine links between poverty and disability (Groce et al. 2011; Parnes et al. 2009; Yeo 2001). These links are of note not only because they are strong, but also because over one billion people worldwide (15% of the global population) live with disability and one in four households has a disabled member (WHO/World Bank 2011).

A major catalyst for increasing attention is the UN Convention on the Rights of Persons with Disabilities (CRPD), which in the Preamble, Article 28, and Article 38 specifically addresses poverty reduction and establishes the equal inclusion of disabled persons in all development and global health efforts as a right (United Nations 2006). Article 12 specifically cites the right to own and inherit property and ensures that disabled persons are not arbitrarily deprived of their property. The CRPD in turn has led to new initiatives to incorporate people with disabilities into current and future development efforts (United Nations 2011; also UN High Level Meetings in 2014). UN agencies, and bilateral and multilateral donor agencies increasingly recognize the necessity of including disability issues in mainstream poverty reduction efforts (International Development Committee 2014).

Issues such as social inclusion and equity, access to education, employment, microfinance, and social protection have been examined as important components in understanding cycles of poverty among disabled persons (Braithwaite and Mont 2010; Yeo 2001). This research increasingly shows that the issue of poverty among disabled persons is more complex and nuanced than originally thought (Barron and Ncube 2010; Groce et al. 2011; Sen 2009).

However, little attention has been directed to the structural nature of trans-generational poverty, nor the manner in which access to family and household assets affects individuals with disabilities over the course of their lifetimes. Strikingly little is known about inheritance rights for disabled persons in low-income and middle-income countries. Almost wholly unaddressed in the disability literatures, this is also overlooked in the development and social justice literatures. This lack of attention is perhaps understandable: only recently have inheritance practices, particularly as they relate to women, become part of the global discourse on poverty and development, and much remains poorly understood (Cooper 2010a, 2010b; Doss et al. 2011). Still largely unexplored and beyond the scope of this paper are yet broader questions about how inheritance drives issues related to continuing inequities in access to resources framed by gender, class and ethnicity, rural versus urban residence and high versus low-income and middle-income countries across the generations.

Researchers of disability and poverty in low-income and middle-income countries routinely hear anecdotes about how disabled persons are passed over when

land, property, or money is passed down within families. Take, for example, the 38 year-old Nigerian woman disabled by polio who had worked side by side with her non-disabled husband for 18 years establishing a small shop selling tobacco, bananas, and lottery tickets. Within a week of her husband's death, his brother, with the backing of her husband's own parents, had taken the shop and thrown her and her three children out on the streets, commenting that his brother should not have 'married a cripple' in the first place.¹ In Tanzania, a deaf son found that while he and each of his six siblings had been left one-sixteenth of an acre by his father, his siblings had decided that he 'did not need' land because he 'could beg to earn the same amount'. A lifelong farmer, he now lives on the streets of Dar es Salaam washing cars and asking for hand-outs.

This article reviews what is and is not known about inheritance and disability and discusses why this is an important – and currently missing component – in efforts to understand and sever the links between poverty and disability.

Methodology

We began with a comprehensive desk review identifying existing evidence on inheritance, disability, and poverty, searching the following social science, international development, and legal databases:

- Abstracts in Anthropology
- Google Scholar
- EconLit
- Family and Society Studies
- IBBS
- Index of Foreign Legal Periodicals
- JSTOR
- JSTOR Anthropology
- Legal Journals Index
- PubMed
- PsychInfo
- SSCI
- Web of Science
- Women's Studies International

Our searches included combinations of the terms 'disabled persons', 'disability', 'handicap', 'inheritance', 'comparative inheritance', 'succession', 'poverty', 'customary law', and 'discrimination'. As we were interested in multiple ways in which property and assets are transferred, our search also included 'dowry' and 'bride-wealth'. Because gender often compounds disability issues, the terms 'gender' and 'women' were also searched. We also conducted a general Google search of disability and inheritance, and searched Nexis UK for websites, newspapers, case law, and non-peer-reviewed journal articles and books. Finally, all major disability journals were searched for these terms.

Because we focused on disability and poverty in low-income and middle-income countries, results that focused on disability and inheritance in the developed world were excluded, although we hope to return to this in future.

Findings

Overview

Inheritance is a critical means of transferring wealth between generations. It includes the transfer of property and other assets from one's ancestors at various points in the lifecycle: birth, death, marriage (often involving dowry or bridewealth), and retirement from work (Cooper 2010a). Inheritance patterns are connected to a society's kinship organization, social structure, and ideas about freedom, wealth, and equality (Cooper 2010a; Doss et al. 2011; Hacker 2010; La Ferrara 2007; Sen 2009). Thus, inheritance is considered both an economic and a social justice issue. Inequity in the distribution of inheritance often reflects existing social inequities, leaving those denied equal inheritance not only poorer than other family members or destitute, but also with fewer rights to decision-making within the family and community (Cooper 2010a).

Inheritance can be either testate via a will or intestate when no will exists and property devolves according to a society's governing inheritance laws. Inheritance regimes vary widely, and in the developing world often involve interplay between national and customary law. A state can affect inheritance practices by limiting testamentary freedom (e.g. the amount of property an individual is allowed) and through intestate inheritance laws that establish who can inherit property in the absence of a will (Deere and Doss 2006). A state can also affect inheritance practices by determining whether or not to respect the customary laws of ethnic or minority communities living within its borders.

Inheritance regimes are either bilineal (property inherited through male and female lines) or unilineal (through only the male or female line) (Cooper 2010a; Hacker 2010; La Ferrara 2011; Nauck 2010). Much of the developed world has bilineal inheritance, while most of the developing world maintains unilineal inheritance systems. Two unilineal forms dominate. In matrilineal systems, property devolves along the mother's ancestral line so that a man's heirs are his sister's children. In patrilineal systems, property devolves along the father's ancestral line, usually to a man's siblings and/or children (Cooper 2010a; Hacker 2010; La Ferrara 2011; Nauck 2010).

Whether a community has a patrilineal or matrilineal inheritance system is generally linked to whether their wider kinship system is matrilineal or patrilineal. However, as Cooper (2010a) notes, inheritance practices do not always follow matrilineal or patrilineal patterns, since inheritance decisions are often made as a result of 'unique personal relationships' whereby individuals give land and other assets to someone close to them who is not within the society's traditional line of descent. This can be achieved through *inter vivos* transfers (where individuals transfer property to an heir during their lifetime) or through a will (although the will is not always followed by family and community members) (Cooper 2010a; Hacker 2010; La Ferrara 2011; Nauck 2010).

Religion plays a significant role. Under Islamic law, which governs practices in modern Muslim states, much of India, and many sub-Saharan African tribal groups, only one-third of an estate can be willed freely, with the remainder divided between the deceased's children and other heirs (Deere and Doss 2006). Daughters are entitled to one-half of the sons' share; widows are entitled to one-half of what widowers receive (Hacker 2010). In Hindu inheritance law, which governs most of India and is present in much of sub-Saharan Africa, two schools exist. Under the Dayabhaga

School, a man can will all of his property as he pleases. Under the Mitakshara School, a man's property is divided into personal property and joint ancestral property ('coparceny'). While a man may will his personal property as he sees fit, he is not allowed to will joint ancestral property, which belongs equally to himself and his sons at birth. Daughters do not inherit ancestral property (Sivaramayya 1997). While the Hindu Succession Act of 1956 gives Indian daughters and sons equal rights to personal property, it did not affect distribution of ancestral property. Consequently, there is still unequal inheritance between sons and daughters in Mitakshara Hindu Law (Carroll 1991).

There thus exists a wide variety of inheritance practices that affect what property can be distributed and to whom. As discussed below, these practices often involve the interplay of religious, state, community, and family laws and traditions, as well as personal decisions. Any study of inheritance among disabled persons must keep in mind the complexity of inheritance systems and the multitude of actors involved.

Inheritance and poverty

Linkages between inheritance and poverty have received increasing attention within development, particularly in relation to women's poverty and empowerment (Agarwal 1994; Bird 2007; Cooper 2010a, 2010b; Deere and Doss 2006; Doss et al. 2011). In her comprehensive review of inheritance and inter-generational poverty in sub-Saharan Africa, Cooper notes that:

inheritance is a major means for the transfer, or exclusion from the transfer, of adults' accumulated physical capital. As such, it can have positive or negative effects on poverty status over the life course. Inheritance events can either be boons of property accumulation or they can strip people of their previous security of access to assets. (Cooper 2010a)

Inheritance can provide younger generations with economic independence. Control over assets can also increase an individual's productive capacity and help movement out of poverty (Doss et al. 2011; Sen 2009). Conversely, recent African studies show that lack of inheritance 'exacerbates vulnerability' to chronic, inter-generational poverty (Cooper 2010a).

In the developing world, inheritance is among the rare means for obtaining property and other economic assets. Furthermore, the right to dispose of property gives individuals a continuing voice in family and community matters, even when ill or elderly. Those who are denied inheritance, even where only small amounts of property or cash exist, may face destitution. Such 'property' can be quite limited – a bicycle, sewing machine, or cook stove needed to continue self-employment.

Even if assets can be obtained through alternative means, inheritance is often the major method of obtaining rights to land (Cooper 2010a). This is important because land is an especially valuable form of property due to its 'economic, political and symbolic significance' (Agarwal 1994, 1456). Control over land allows one to be self-sustaining, to obtain further wealth through crops, and able to be sold or leased in times of need. Gender literature evidence indicates increased access to land improves women's welfare, productivity, equality, and empowerment (Agarwal 1994). Land also provides a sense of identity, belonging, status, and the right to a political voice within the community. Land is viewed by many in South Asia as having 'durability and permanence which no other asset possesses' (Agarwal 1994).

Land is equally important in sub-Saharan Africa, providing ‘food, shelter and economic activities’; a ‘primary source of wealth, social status, and power’ and facilitating access to other critical resources such as water, sanitation, and electricity (Cooper 2010a).

Inheritance and disability

Given the links between inheritance and poverty, it is important to understand the connection between disabled persons and inheritance, particularly the well-established links between disability and poverty (Department for International Development 2000; Groce et al. 2011; Mitra, Posarac, and Vick 2011; Parnes et al. 2009; Sen 2009).

Our desk study identified 90 publications in 61 journals, books, websites, and newspapers for review based on attention to some aspects of inheritance, poverty, and/or disability. Of these, 42 were selected for in-depth review based on abstracts and introductions. Notably, we were unable to identify a single study that focused specifically on inheritance rights and disabled persons in the developing world. However, enough material was located to conclude that, around the world, disabled persons are often denied the same inheritance rights enjoyed by others.

Evidence of exclusion of disabled persons from inheritance appears throughout history – from Roman law it was adopted throughout Europe in the Middle Ages (Metzler 2011). For example, in the *Sachsenspiegel* book, containing the legal code from Medieval Germany, ‘people born “dumb, blind, or lacking hand or foot” could not inherit under feudal law (Lehnsrecht) but could do so under territorial law (Landrecht)’ (Dobozy 1999). Buckingham, in her history of disability in India, notes that in pre-modern India, disabled persons were denied inheritance in the higher levels of Hindu caste society. A dharmasastric text from the fourth century AD ‘listed “a madman, an idiot, one born blind, and he who is afflicted by an incurable disease” as people who were rendered unable to inherit’ because they were thought incapable of performing required family rituals (Buckingham 2011). Groce (1985) cites additional examples of denial of inheritance or primogenitor for deaf persons in Medieval Europe.

Miles (2002) finds restrictions to inheritance of property in numerous historical Asian texts. For example, Al-Marghinani’s twelfth-century scholarly commentary on Islam, the *Hedaya*, still used among South Asian Muslims, notes that in the Qur’an (Surah 4, verses 5–6) intellectually disabled persons are prescribed guardianship and not allowed to control their own property because this would go against their best interests (Al-Marghinani 1975). Not all Islamic scholars agreed with these prohibitions, however. For example, the legal scholar Abu Hanifa advocated withholding property of the person with intellectual disabilities only until age 25, arguing that denying access after this would be inhumane (Al-Marghinani 1975).

Ancient Hindu Law also mentions property and inheritance rights of disabled persons. They were excluded from inheritance in the eleventh-century *Mitakshara* (Miles 1999), and Miles further lists Hindu law books where disability and inheritance were mentioned (Miles 2008). For example, the Minor Law Books *Narada* (fourth/fifth century CE) notes exclusion of disabled persons from inheritance but asserts that they must be maintained and their sons must be allowed to remain inheritors (Jolly 1889). Similar provisions excluding disabled persons from inheritance but requiring that they be maintained and/or that their sons be allowed to inherit are

found in other texts – for example, Institutes of Vishnu, XV (Jolly 1880, 38–34); MANU, IX (Hopkins 1995, 201–202); *Guatama*, XXVIII (Bühler 1897, 43–44); and *Baudhayana*, I.2.3 and I.2.4 (Bühler 1882). Interestingly, Miles (2008 citing Muller 1882) notes that Part II of the ancient Persian Pahlavi Texts asserts that a son or his wife ‘who is blind in both eyes, or crippled in both feet, or maimed in both his hands’ is entitled to twice the share of a non-disabled son.

In addition to historical references, a handful of recent articles in the disability and poverty literature mention inheritance. For example, Yeo asserts that disabled persons are low priority or excluded from family inheritances (Yeo 2001). Lwanga-Ntale (2003) and Bird et al. (2004) note that Ugandan customary law prohibits disabled persons from inheriting land. Lwanga-Ntale quotes a group of disabled women, stating ‘a disabled person cannot inherit land. A brother’s child may even be preferred in inheritance if he is not disabled’ (Lwanga-Ntale 2003, 7). Sultana (2010), studying disability and the Bangladesh legal system, notes that the Lunacy Act 1912, still enforced, allows persons with intellectual or mental disabilities to be declared incapable of managing their property; thus, Muslim families governed by this law often keep disabled individuals from claiming their share of family property. Furthermore, the Bangladeshi Hindu Inheritance (Removal of Disabilities) Act 1928, likewise still in force, states that no person governed by Hindu Law with any disease, deformity, or physical or mental defect may be excluded from their inheritance or share in joint family property, except a person *born* ‘a lunatic or idiot’ (Sultana 2010).

This last point shows that exclusion from inheritance may depend on the type of disability and the socio-cultural perceptions about that disability. Persons with intellectual or mental health disabilities, for example, may face greater exclusion because they are considered incapable of looking after property. This may be particularly relevant in the societies, which place significant importance on communal ancestral property. As Yeo notes, ‘where there are limited resources it may be seen as economically irresponsible to give an equal share of resources to a disabled child who is perceived as unlikely to be able to provide for the family in the future’ (2001, 9).

Nor are such disability-specific concerns confined to communal inheritance. For example, people who are deaf may have difficulty understanding and asserting their claims when those around them are unable to speak sign language. Because few courts in developing countries provide sign-language interpreters, poor deaf individuals are often unable to afford interpreters themselves.

Notably, while disabled men may have property rights, disabled women often do not. Furthermore, given that all women in Nepal (disabled or not) are denied the right to equal inheritance with men, the fact that many women with disabilities do not marry leaves them without any access to property rights even through husbands (Dhungana 2006).

Interestingly, evidence does not support the conclusion that all societies follow discriminatory inheritance practices. In her study on disability among the Kenyan Massai, for example, Talle (1995) notes that the Massai moral code requires disabled children to be treated equally, including in marriage and inheritance of their parents’ livestock. Given the lack of research into inheritance and disability among ethnic and minority communities, other groups may share similar ideas to the Massai, although no similar reports were found in existing literature.

Our review clearly demonstrates a dearth of research on this subject – aside from anecdotal references, no accounts were located on gender differences or how persons with different types of disabilities fare under inheritance practices. The few studies

where the links between disability and inheritance are mentioned note the association without providing in-depth discussion of why this occurs or what the lived experiences are for disabled people thus excluded.

Dowry, bridewealth, and disability

In addition to inheritance that may be received or denied upon a family member's death, another important form of 'inheritance' occurs during marriage.

The two major forms of wealth transfer during marriage are dowry and bridewealth. As Cooper (2010a) notes, dowry is prevalent across Asia, while bridewealth is common in sub-Saharan Africa. In the case of dowry, property, money, and/or other assets are given by the bride's family to the groom or his family. In the case of bridewealth, property, money, and/or other assets are given by the groom or his family to the bride's family (Cooper 2010a).

Some consider dowry a form of pre-mortem inheritance (Goody 1976; Nauck 2010). In many cases, dowry is the only inheritance a woman receives, as she is ineligible to inherit land and assets through customary or formal law (Carroll 1991; Schlegel and Eloul 1988). In other cases, dowry forms part of a woman's inheritance, with the balance transferred on the death of her father and/or mother (Schlegel and Eloul 1988).

Significantly, however, although many disabled men and women do have relationships, stigma, prejudice, and customary laws make it less likely they will formalize these relationships through marriage (WHO/UNFPA 2009). As Parnes et al. (2009, 175) note: 'unlike other women, [women with disabilities] have little chance to enter a marriage or inherit property that can offer a form of economic security'. In Nepal, for instance, a society where marriage is the norm for women, 80% of disabled women are unmarried (Dhungana 2006). This lack of formal marriage compounds links between poverty and disability through lack of dowry, bridewealth, or right to inherit property or resources generated jointly over the course of the relationship.

Even marriage does not ensure equitable treatment for disabled persons. Often families of disabled persons will be asked to pay a higher dowry or bridewealth for a marriage partner. Ghai explains that in India, because marriage involves the gifting of a woman by her father to the groom and his family, and because it is anticipated that that gift will be 'perfect', the family of a disabled girl must often pay a higher dowry to compensate for the daughter's so-called imperfections (Ghai 2002). Both Mehotra (2004) studying disabled women in India and Hosain et al. (2002) in their disability studies in Bangladesh report disabled girls' families paying heavy dowries to secure a marriage. A study of persons with physical disabilities in Dakar provided similar evidence for bridewealth – obtaining a wife for a disabled son required a higher than normal bridewealth (Whyte and Ingstad 1995).

Interestingly, although higher bridewealth or dowry can take years to accumulate there is little study of whether families were willing to pay such fees in order to marry off their disabled child. The inability to pay a higher dowry or bridewealth may mean an isolated and lonely adulthood for disabled individuals or permanent reliance on birth families.

Even if a higher dowry or bridewealth is possible, finding a spouse can be difficult. Disabled women have a more difficult time than disabled men in obtaining marriage partners (Habib 1995; Rahman and Ahmed 1993; WHO/UNFPA 2009). In

some societies, disabled women unable to obtain marriage partners may become ‘part’ of their female family member’s dowry. In the course of fieldwork, one co-author (N.E.G.) was told by a disabled informant that she herself had been ‘given’ as part of her non-disabled sister’s dowry to her sister’s husband’s family. This family in turn married her to an elderly uncle 50 years her senior to serve as his nurse. Where polygamous marriages exist it is also common for disabled women to become junior wives, brought into the household to do housework and childcare (Groce 1997).

Thus, for women with disabilities an inability to marry or to be the ‘first’ wife may keep them from obtaining any form of wealth. Furthermore, most or all of a dowry may not be given to the bride but instead to the groom and his family (Tambiah et al. 1989). It is thus debatable whether dowry should be considered a form of inheritance that could assist disabled women in obtaining economic autonomy.

Legal pluralism

Another significant issue is legal pluralism: ‘the coexistence and interaction between multiple legal orders such as state, customary, religion, project and local laws, all of which provide bases for claiming property rights’ (Meinzen-Dick and Pradhan 2002, i). Overlapping systems regarding inheritance often contradict and compete with one another at the individual and community levels. National laws may not reflect what occurs in practice. It is not unusual for different parties to appeal to different legal systems to assert their inheritance claim for the same property (Irianto 2004).

In many countries, statutory law recognizes the primacy of customary law in inheritance, an issue often considered a matter of family law. This can be disconcerting for minority groups whose statutory rights to equality before the law can be undermined by customary practices.

Unfortunately, there is little written on customary inheritance laws in relation to disabled persons. As with the inheritance and development literature in general, much current research on relationships between customary and statutory inheritance law relates to women. Cooper observes, for instance, that Botswana, Lesotho, Ghana, Kenya, Zambia, and Zimbabwe exempt inheritance matters from the gender-based non-discrimination provisions in national laws (Cooper 2010a).

Irianto (2004), studying interactions between state and customary law in Indonesian inheritance court cases, notes that formal Indonesian regulation makes no mention of women having any title to inheritance. This has a devastating impact on the inheritance rights of women. Customary law in both sub-Saharan Africa and South-east Asia often discriminates against women, including disabled women, by preventing them from inheriting – or inheriting equally with male family members – from parents or spouses. Further, much customary law is uncoded, flexible, and changing (Bushbeck 2006; Kameri-Mbote 1995). Formal wills are often unknown or ignored. For example, in African customary law, inheritance matters will almost always be intestate (Mwenda, Mumba, and Mvula-Mwenda 2005). These factors make it relatively easy for family members and chief elders to manipulate customary laws to keep or take property from women and other vulnerable individuals.

Although some countries now guarantee equal inheritance rights to all by statute, discriminatory customary law still dominates in practice (Cooper 2010a; Mbatiah 2010; Mwenda, Mumba, and Mvula-Mwenda 2005). Additionally, property-grabbing by family members, although outlawed by the State, is common among

widows and orphans; disabled persons are also routinely victims and likewise lack the ability to challenge these practices in courts. Individuals meant to enforce the law often fail to do so as they frequently benefit from the property-grabbing themselves (Mwenda Mumba, and Mvula-Mwenda 2005).

Vulnerable individuals may find it extremely difficult bypassing family and community leaders to assert their rights within national legal systems. Some are unaware of their rights. Others may fear retaliation or alienation from family and community if they resort to non-community-based legal systems. Many women who have questioned traditional inheritance systems or turned to state courts have been threatened, beaten and face alienation from family and community (Agarwal 1994; Mwenda, Mumba, and Mvula-Mwenda 2005). Similar alienation and violence might also be of concern for disabled persons who frequently depend on family for activities of daily living, and already are at increased risk of violence.

Even if individuals are aware of statutory laws, many prefer using customary systems because these are more familiar and less expensive (Cooper 2010b). Such local legal processes may be staffed by a justice who 'lack[s] strong legal training and who relies more on conventional wisdom than on rules of evidence and substantive law' (Mwenda, Mumba, and Mvula-Mwenda 2005).

Finally, even if individuals bring cases before state courts, these courts may still apply customary law and 'take personal relations, specific circumstances and backgrounds ... into account, not only strict legal rules' (Bushbeck 2006). An additional difficulty is that statutory law generally does not recognize polygamous marriages, leaving women who are second or third wives without any recourse to inheritance rights. This is particularly relevant to disabled women because, as noted above, they are more likely to be junior wives.

In communities where there is strong stigma against disability or where disabled persons are not considered responsible adults, decisions can be made by family, community leaders, or local justices who believe they are acting in these individuals' best interests. Also largely unexplored, but the subject of many anecdotes and worth investigation, are cases where issues of inheritance affect decisions to institutionalize disabled relatives or threat to do so are used as leverage to gain compliance.

Discussion

Although the literature linking inheritance, poverty, and disability is strikingly thin, the issues appear to be similar to those already identified between gender and inheritance and we can therefore extrapolate from this existing literature to anticipate difficulties disabled persons face.

On the individual level, many disabled persons are significantly less likely to obtain an education, and therefore not understand their inheritance rights or how to access the legal system to assert these rights. Thus, there is an unfortunate paradox in which they lack education, and resources to assert inheritance rights, while that very inheritance could enable them to access needed education and resources.

Even where the family and community have the disabled person's best interests in mind, they may believe them unable to adequately manage property. Much like the phenomenon of women relinquishing inheritance rights after being 'convinced' that it would be best for all parties (Hacker 2010), it seems likely that many disabled individuals are pressed to similarly relinquish inheritance rights.

Dependency on others for a place to live, care, and social inclusion may restrict an individual's options to object or to question inheritance practices. Disabled persons may also relinquish inheritance rights, believing they are a burden and this is a way to 'repay' others for their care and concern.

Customary and traditional legal systems and practices limit the right of disabled persons to inherit property and the right to appeal decisions made by other members of their families and communities regarding division of property. Legal pluralism means that it is often difficult for disabled persons to know which legal system governs their inheritance rights and makes it relatively easy for families and communities to 'forum shop' for a legal system to deny disabled persons their inheritance rights. In many states, statutory law excludes customary inheritance practices from non-discrimination clauses, legitimating discriminatory practices. Even in states that do not create exceptions in national laws for customary inheritance practices, lack of enforcement mechanisms means that communities and families often ignore national law.

An additional barrier at the structural level is that lawyers and judges often lack knowledge of the recent legal changes (such as the CRPD) or applicable laws that protect inheritance of disabled persons. Traditional stigma surrounding disability may make lawyers and judges unlikely to care about supporting inheritance rights for disabled people.

Furthermore, inaccessible court rooms and legal offices – lacking sign language interpreters or ramps, for example – provide additional structural barriers. Disabled persons from rural communities are at even greater disadvantage because of distances to lawyers, judges, and courts linked to national legal systems makes them even more reliant on the local, customary legal mechanisms.

While it can be argued that the CRPD overrides customary legal systems, this will not necessarily quickly extend to changes at local or individual levels. The Convention on Elimination of All Forms of Discrimination against Women, adopted by the United Nations in 1979, has been ratified by 187 countries, yet women still face discrimination worldwide.

An important consideration for inheritance and disability is the unique situation of families. While disabled persons must not be discriminated against, legitimate concerns of families must also be recognized. For instance, someone with an intellectual disability might require support to manage money and assets; similarly, someone with serious mental health problems might need facilitation to realistically decide how to spend their inheritance. If an individual needs inheritance for medical or psychological care or support over a lifetime and is unable to make appropriate decisions, allowing unregulated control over inheritance could have potentially devastating consequences. Ways in which disabled persons can maintain inheritance rights while taking into account that some might require help managing their inheritance will require careful consideration and discussion within and beyond the disability community.

Conclusions

Denial of the right to inherit can deprive disabled persons of existing or anticipated assets, driving them into poverty. For those already in poverty, inability to inherit is often a final blow, moving many from poverty to destitution. Nevertheless, this desk review finds the nature and extent to which inheritance is a contributor to poverty of

disabled persons is currently largely unrecognized, poorly understood, and largely conjectural.

This lacuna is not unique to disability. Cooper (2010a), in one of the few comprehensive studies of inheritance and poverty in sub-Saharan Africa, also notes lack of evidence-based research. Thus, perhaps our most important finding is the need to further explore – through field studies, case law examination, and discussions with disabled persons themselves – the extent to which disabled persons are being denied their inheritance rights through formal, customary, and informal practices, and the implications that this has for their continuing poverty. Study is needed not only on disability and inheritance in general, but also of barriers due to gender and issues faced by persons with different types of disabilities.

A solid evidence base would allow identification of where interventions would be most effective. There are, however, several that can be identified now.

First, countries that currently exempt inheritance from the non-discrimination clauses of their statutory laws need to reform these laws to conform with the CRPD. Because most people die intestate (Hacker 2010), reforming statutory law so that disabled persons are automatically included in distribution of inherited family wealth could have a profound effect. While reform of customary law is difficult given its localized and generally uncodified nature, engagement with local leaders may lead to improvement in customary inheritance practices.

Disabled persons themselves need education on their rights, as well as about accessing the legal system to effectively assert these rights. Lawyers and judges also need education about new laws so these can be effectively implemented. Education within local communities will also be crucial, as family and community members understand new laws and how these affect their testamentary freedom. Monitoring by human rights organizations and disabled persons' organizations is needed to ensure that rights are upheld.

Additionally, making courts more accessible is crucial to ensuring claims to inheritance. Providing sign-language interpreters, making courtrooms physically accessible and providing access to lawyers for disabled persons in rural communities are examples of how this can be achieved.

Finally, this paper presents a call to disability rights advocates to become involved in and develop an expertise on inheritance both at the policy and practice levels. Disabled people should be involved in discussions surrounding research into inheritance rights, as well as programmes advocating change of laws and practices. Most importantly, this should be at the forefront of the disability and development agenda. An exploration into inheritance practices and laws as they relate to disabled persons is crucial for reducing poverty, improving rights, and creating a more equal and just system for all.

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