

# Towards egalitarian inheritance rights in Botswana: the case of Tlokweng

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*This paper explores the extent to which recent social, economic, demographic and environmental changes in Botswana have enabled women to inherit land, housing and other household assets. Using qualitative data from a study undertaken in the peri-urban village of Tlokweng, the paper notes that, unlike in the past when women were largely excluded from property inheritance, the majority of parents who participated in the study on which this paper is based are now more inclined and willing to share their estate equally among all their children or to favour daughters over sons in deciding who should inherit residential properties. The changes, which are heavily contested by older women, young men and teenage boys, appear to have been due primarily to increased numbers of female heads of households and the role played by unmarried daughters in developing the family estate and caring for the aging parents.*

**Keywords:** *Property inheritance; customary laws; gender; generation; Botswana*

## 1. INTRODUCTION

A recent report by a women's movement in Botswana estimates that one out of every three cases reported to customary courts in Botswana is about property-grabbing following parents' deaths (Emang Basadi Women's Association, 2002). Otlhogile (1992) and Molokomme et al. (1998) attribute property-grabbing and other property inheritance conflicts to three factors: changes in the constitution of the family estate, variations in the interpretation of customary law, and legal pluralism. Customary law, according to Otlhogile (1992), tends to treat any property not traditionally known to it as a separate estate for the purpose of inheritance. Further complications arise from varying and contradictory interpretations of the meaning of customary law. Molokomme et al. (1998) contend that the term 'customary' is often used and interpreted variously to refer to either (i) 'rules' as defined and enforced by the chiefs during the pre-colonial and colonial eras, or (ii) 'unwritten laws' as recently interpreted by customary courts, or (iii) 'norms and practices' as currently accepted by people in their everyday lives. Worse still, Botswana (like most countries in Africa) is characterised by the co-existence and parallel application of customary law, common law and statute law, each of which provides variant procedures, rights and entitlements. However, it appears that although some of the conflicts end up in courts, a lot more are resolved amicably within the affected families, which suggests that customary laws may have been redefined to address the inheritance of kinds of properties not originally covered by these laws. Since they are in their formative stages, the redefined customary laws may be opposed and contested in some quarters – hence the grabbing of properties belonging to relatives who die intestate.

This paper argues that conflicts related to inheritance are partly due to new practices that allow daughters – and women in general – to inherit or claim shares in estates left

behind by their parents, which is contrary to traditional norms and practices,<sup>1</sup> rather than just to the emergence of new forms of properties. It further argues that parents are increasingly inclined to favour daughters over sons, partly as an appreciation of current financial and material investments made by daughters (notably unmarried ones) in the accumulation of family wealth and house construction.

The present paper has five parts: this introduction, the conceptual framework, women's exclusion from property inheritance, emerging egalitarian inheritance rights, and the conclusion.

## 2. CONCEPTUAL FRAMEWORK

This paper views customary inheritance norms and practices as dynamic social constructs embedded in gender and generational contracts, roles and expectations that are themselves subject to re-negotiation and re-definition over time and space. The multilayered gender and generational contracts are defined and negotiated on the basis of parents' and siblings' responsibilities and what is expected of them within spaces shaped by wider societal values, norms and legal frameworks. Of these, property ownership is the most critical, followed by post-nuptial residence, family welfare considerations, and state laws.

Writing about the general evolution of succession processes in Eastern Europe, Kaser (2002:386) argues that, in the past, inheritance laws in most parts of the world tended to favour men over women. He attributes this to the dominance of peasant agriculture, which involved readying land for housing and agriculture by slashing and burning forested areas – an arduous and dangerous activity tied to carrying weapons, hunting, and fighting off animal and human thieves. Thus peasant agriculture represented male labour and identity. Kaser further argues that men's ownership and control of land for housing and agriculture were outcomes of historical processes triggered by the need for organised actions and cooperation between men in a village, which finally resulted in the definition of village and tribal boundaries and, most importantly, land for housing, pastures and fields within these territories being viewed as communal property. A study commissioned by the Government of Tanzania concluded that customary laws seeking to protect clan land from alienation to outsiders formed the basis for discrimination against women as daughters, wives, divorcees and widows in inheritance matters (Tsikata, 2003:160). Land allocated to each household was also administered and controlled by men as heads of households. In this way, agnatic ties in the generational transfer of property, supported by tribal and patrilineal organisations, became prominent (Kaser, 2002:387).

In contrast to peasant agriculture, market economies enable women and men, regardless of their marital status, to acquire and own land, housing and other properties independently. As observed by Deere and Leon (2003) and Zhang (2003) – with regard to Latin America and China, respectively – urbanisation, multiple-income generating activities and declining dependence on land tend to enhance women's independent ownership and control of market resources and properties. Women's increased independent ownership of such assets challenges traditional gender and generational contracts that excluded women from property inheritance. Consequently, market economies tend to

<sup>1</sup>Throughout this paper, the terms 'tradition' and 'traditional' are used to refer to dynamic but common, indigenous, historical, culturally based and unregulated artefacts and ways of living that the present generation or immediate past generations inherited from previous generations.

create opportunities for parallel or bilateral inheritance practices. 'In parallel inheritance systems sons inherit through the male, and daughters through the female line [while] bilateral inheritance is characterised by children of both sexes inheriting from both parents' (Deere & Leon, 2003:930).

Whether inheritance is matrilineal or patrilineal depends largely on where a couple lives after getting married. In patrilineal societies, marriages are often virilocal: in other words, the wife 'goes to live in her husband's father's community' (Lastarria-Cornhiel, 1997:1322). In a virilocal marriage, a daughter is excluded from landed property inheritance in her natal home because she is expected to inherit the property of her parents-in-law through her husband (Zhang, 2003:270; see also Lastarria-Cornhiel, 1997; Deere & Leon, 2003). A son, on the other hand, stays with his parents, cares for them and develops a duty-beneficiary claim to his parents' estate.

In matrilineal societies, marriages and post-nuptial residences are uxorilocal: upon marriage, the husband goes to live in his wife's home and among her kin (Lastarria-Cornhiel, 1997:1323; Ngirwa, 2002; Zhang, 2003:260). Resources for the new couple are provided by the wife's family and community. Consequently, intergenerational wealth transfers are traced through the mother's line, from uncles to nephews. Upon the death of his wife, the widower returns to his natal home. In Malawi, uxorilocal residential requirements are waived in respect of chiefs. When a chief marries, the wife adopts his home so he can stay close to the clan, and when he dies his widow and children return to her village (Ngirwa, 2002:8).

Zhang (2003) observes that, because of urbanisation, many couples in China are opting for 'neo-locality' that is neither patrilocal nor matrilocal, and Deere and Leon (2003) note that in Latin America neo-locality practices tend to favour whichever child (son or daughter) remains at home and is willing to farm and take care of the parents.

Inheritance rules have also often been shaped by welfare considerations. In both patrilineal and matrilineal societies the devolution of wealth has traditionally tended to inhibit transfer of property to non-community members. To avoid fragmentation of the deceased person's estate, peasant communities preferred to leave the estate intact to one child (Kaser, 2002; Deere & Leon, 2003; Green & Owens, 2004; Mapetla & Sakoane-Songca, 2005). Both gender and generational contracts require the single heir to take care of aging parents, provide for the needs of the widow and young siblings, and properly maintain the estate in anticipation of the inheritance (Deere & Leon, 2003). However, urbanisation and the evolution of divisible properties have tended to promote egalitarian and inclusive practices.

In many countries, legal and land reforms have had profound effects on customary inheritance norms and practices. For example, land reforms introduced by the Chinese Government under its population-control programmes have reportedly led to a significant increase in uxorilocal marriages and gradual acceptance of property inheritance by daughters in families with no son (Zhang, 2003). Nationwide land laws passed in Tanzania under the villagisation programme have tended to exclude daughters from land inheritance even in tribes where customary laws included them (Tsikata, 2003). Griffiths (2002) and Rose (2003) note that legal pluralism and economic and administrative changes in Botswana, Malawi and Swaziland have created opportunities for women to manipulate or challenge customary laws and statutes to their advantage.

### 3. TRADITIONAL EXCLUSION OF WOMEN FROM PROPERTY INHERITANCE IN BOTSWANA

Customary laws in Botswana traditionally excluded women from property inheritance (Roberts et al., 1970; Otlhogile, 1992; Dow & Kidd, 1994; Schapera, 1994). When a man died, the eldest son, if mature, took over his father's position as head of the family and the management of the family cattle. When a man died before marriage or without male issue, his property was inherited by a male relative.

The type and amount of property each child was entitled to inherit from the parents' estate was dictated by the child's sex and position in the family. The largest share of a deceased man's estate went to the eldest son or principal heir. He inherited the land and most of the cattle and the family cattle-post. The youngest son inherited some cattle, the homestead and the family ploughing fields. The remainder of the estate (mainly cattle) was divided among other children (i.e. the daughters and middle sons). According to Schapera (1994), daughters and widows received no cattle at all. However, the principal heir was obliged to provide for unmarried sons and daughters and for separated or divorced daughters. The homestead could not be alienated without the consent of all family members.

A deceased person's possessions were divided appropriately between sons and daughters. For instance, kitchen utensils went to daughters while hunting and cattle management tools went to sons. It is worth noting that although wives erected and maintained houses (Schapera, 1943:86), daughters were not allowed to inherit either the houses or the homesteads, presumably because, as explained below, the land was said to belong to the father.

Western and colonial influences, and the introduction of waged employment and capitalist or market-oriented economies, caused the customary inheritance rules and practices to be challenged and modified during the colonial period. As early as the 1880s, some chiefs ruled in favour of unmarried daughters inheriting some cattle upon their fathers' death (Schapera, 1970), and some further ruled that 'cattle of a man without sons were to be inherited by his widow and daughters, and no longer by his nearest male agnate ... [and] a widow should receive (one or more) cattle even if her husband had surviving sons' (Schapera, 1970:145). However, since women were not trained to manage cattle, they were forced to entrust them to their husbands or other male relatives (Dow & Kidd, 1994).

By the 1930s, chiefs had started to allocate land to *de jure* female heads of households (Schapera, 1994), while traditionally women accessed land only through their husbands or male agnates. Until the 1930s, familial land was owned and controlled by husbands, fathers or sons at the family level, and by chiefs and headmen at the community level (Kalabamu, 2000:305–6). Women were not allowed to either acquire or inherit land. From the 1930s, daughters started to inherit their mothers' arable land and to receive land and cattle as gifts or donations from their male relatives, although married women could not readily inherit property from their natal homes.

Women's ability to acquire and inherit property during the early twentieth century has been attributed to, *inter alia*, the introduction of capitalist or market economy and men's migration from Botswana to South Africa's mines and towns in search of cash employment. The advent of market economies led to the commoditisation of labour, land and cattle, which enabled some women to work as teachers, nurses, secretaries, interpreters

and domestic workers and earn money to buy land and cattle and build modern houses. Furthermore, the men's prolonged absence made many women *de facto* or *de jure* heads of households, gave them economic power and enabled them to raise their children without the assistance of men (Schapera, 1994; Dow & Kidd, 1994; Datta, 1995) – a situation that continues to this day. However, despite the progressive rules and customs introduced during the colonial period, the exclusion of daughters from inheritance of houses and homesteads appears to have persisted (Kalabamu, 2006).

#### **4. EGALITARIAN CUSTOMARY INHERITANCE IN TLOKWENG**

In this paper the terms 'egalitarian' and 'equality' are used interchangeably to mean democratic, inclusive and free or unrestricted practices, rather than 'equity', which is reserved for fairness, impartiality and justice. The paper does not explore the extent to which gender equality has been translated into gender equity. Further research is therefore required to unravel issues of gender equity, ethnicity and differences in personal endowments.

##### **4.1 Tlokweng 'village'**

Tlokweng, a peri-urban settlement abutting Gaborone, has experienced far-reaching demographic, socio-economic and environmental transformations during the past four decades. First, its population increased by 540 per cent from 3906 in 1971 to 21 133 in 2001. This rapid growth is attributable to its close proximity to the city – which it serves as a 'dormitory town'. Second, it has a serious land and housing shortage because of this growth. The land shortage is aggravated by its location – hemmed in by city of Gaborone to the west, South Africa to the east and freehold farms to the north and south. Third, it was one of the first two villages to be declared an urban area. In Botswana a village attains 'urban' status when 75 per cent of its population is engaged in non-agricultural activities. In 1981 Tlokweng (together with Palapye) was declared an urban area, and by 1991 only 2 per cent of its economically active population was engaged in agriculture.<sup>2</sup> Finally, as elsewhere in Botswana, many of Tlokweng's households are headed by women. In 1991, women headed 43 per cent of the 2647 households in the village and constituted 44 per cent of the economically active population.

In brief, Tlokweng is a village that has been transformed into an urban settlement – a context that provides a platform for contesting and re-defining customary norms and practices.

##### **4.2 Research methodology**

The primary objective of the study on which this paper is based was to explore the impact of recent social, economic, political and demographic transformations on customary inheritance rules and practices. The study was carried out through in-depth interviews based on a schedule of questions, and through focus group discussions. However, only data from the in-depth interviews have been used in this paper. A total of 26 in-depth interviews were held with 12 teenagers (six girls and six boys) and 14 adults (eight men and six women). The teenagers were selected from Tlokweng Community Junior Secondary School. No systematic approach was used to select the students.

<sup>2</sup>Although many people are employed as teachers, civil servants, and so forth, they may still be engaged in arable and/or pastoral farming.

The 14 adults were selected through purposeful sampling based on house ownership and residence in Tlokweng – regardless of whether they were migrants or not. The interviewees were male and female homestead owners interviewed at their homes, in alternating order (a man at one homestead, a woman at the next). In-depth interviews were also held with the Deputy Chief and one headman – both male. The Deputy Chief is also the Tlokweng Customary Court president. These two informants answered the questions in their official capacities. The ‘constant comparative analysis’ technique was used to analyse the data in order to identify emerging issues and similarities and differences between cases.

### 4.3 Redefined inheritable properties

Unlike in the past, when siblings were anxious to inherit cattle and arable land, respondents in Tlokweng all agreed that homesteads are currently the most preferred assets. One female respondent, a 64-year-old retired teacher, said:

The most important thing that people fight about is the *lehwapa* [homestead or residential plot] . . . because nowadays most of the people are looking for rental accommodation. Whenever somebody dies, children think of building rooms for rent so that they can get money.

Besides homesteads, other assets often mentioned were, in a loose descending rank order, arable land, money, businesses, cars, and cattle. The new order of preferences for inheritable assets reflects changed socio-economic environments – notably the commoditisation of land and the preference for money as a medium for the exchange of goods and services. Arable land and homesteads are preferred not because of their utilitarian uses and values but as capital resources in economic opportunities provided by peri-urban environments. Homesteads are preferred for the production of rentable rooms, and arable land for horticultural farming, and poultry and small stock farming. As argued by Mbiba and Huchzermeyer (2002), peri-urban settlements such as Tlokweng are viewed as areas of economic opportunity because they are close to lucrative markets and well-developed infrastructure facilities provided by urban centres such as Gaborone. The preference for arable land and homesteads in Tlokweng is also a reflection of Gaborone’s inability to accommodate its workers and residents, especially the poor (Kalabamu & Morolong, 2004). While people are erecting structures for renting within their existing homesteads, owners of arable land in Tlokweng and other peri-urban settlements are converting their land to residential, commercial, industrial, poultry-keeping and horticultural uses.

Although cattle have been commoditised, some respondents consider animal husbandry risky and demanding, as one male respondent (a 67-year-old retired civil servant) explained:

Cattle are important but too demanding because of frequent drought. When it rains, grass grows, then cattle can feed and drink water on their own, but not when there is drought. Sometimes it only rains once a year, which makes it difficult to feed cattle. Building rooms for letting is less tedious because your duty is to collect rent at the end of each month. You only have to pay water and electricity bills, which is less tedious than feeding cattle.

The above comment and the preferred inheritable assets mentioned by interviewees underscore the transformation in the Tlokweng economy from peasant agriculture to a market economy that has placed homesteads at the top of the list of most valuable

properties. Cattle are now seen as less important than new forms of divisible and privately owned assets such as homesteads, money, cars and businesses.

#### 4.4 Emerging gender equality

The experience of a female respondent (a 44-year-old secondary school head teacher) shows that married daughters may now claim a share of their deceased parents' estate:

I inherited a *tshimo* [field] that my mother used to plough because I am the last-born daughter. At first I feared that my brothers and sisters were not going to let me inherit the *tshimo* because I am married but they did and I am very happy with that ... My brother – the last-born son – inherited the residential plot. He did not inherit the field because my aunt told us that in our culture the last-born girl is the one who has to inherit the mother's field. Whoever is last in the family has to get the *lelwapa*, so in our case it happened to be a boy.

My eldest brother got the second *tshimo*, which he shared with the other children. All the children had a share in the cattle. The cattle were divided equally among all the children ... My elder brother did not get more cattle than any other child. We shared equally ... Every one of us was happy except my sister who claims to have been given a piece of land by my father but others don't agree. We have planned for the family meeting to which we have invited elders. If this fails, the chief will have to intervene. His word will be final ...

The above experience highlights how gender equality is achieved. First, it underscores the emerging right of the last-born daughter, whether married or not, to inherit the mother's field – which is consistent with the old tradition whereby daughters inherited their mothers' utensils. Mothers' fields, the response suggests, are perceived as parts of reproductive assets or domestic utensils that women need to bring up their children. Second, the right of the last-born son to inherit the homestead is being contested: the last-born child regardless of sex should inherit the homestead.

It seems that equal sharing of property (such as cattle) between siblings of both sexes is a recent phenomenon in Tlokweg. Older women – those whose parents died more than 30 years ago – have different experiences, as explained by an 83-year-old retired female teacher:

My father died in 1972 and my mother in 1985. I inherited my mother's *tshimo* and the *lelwapa* but nothing from my father. My brothers inherited our father's cattle ... all his cattle were divided among boys only, not girls. The girls got nothing even after our mother passed away. I inherited my mother's yard because I was looking after her ... Our last-born brother inherited our mother's [second] residential plot, which our mother had inherited from our grandmother. He is not staying on the plot. It is our last-born sister who is residing on the plot. She was once married, now she is divorced.

The old woman's narrative shows that during the 1970s and 1980s – when Tlokweg was less urbanised than today – unmarried women could inherit land from their mothers but not their fathers' cattle, probably because, at that time, cattle were still identified with men and were more socially and economically valued than land. She inherited the homestead in recognition of her duty of taking care of the aging parents. The second homestead was inherited by the last-born son as per the custom but is used by a divorced

daughter – which is consistent with the traditional welfare considerations (as detailed in the conceptual framework above) that guaranteed unmarried daughters access to natal resources through the male heir. The narrative also confirms the old tradition of the rights of daughters to return to their natal home when their marriages broke down.

The secondary school head teacher spoke of her sister who was unhappy with the equal sharing out of assets that took place after their father's death because, the sister argued, the sharing did not take cognisance of her role in caring for their ageing parents. She explains:

My sister [who is not married] claims one of our parents' fields because she took care of them while they were still alive. However, other members of the family do not see it that way because our parents did not inform us when they gave her that piece of land. We think that our parents . . . just allowed her to use it when she wanted to go and settle elsewhere. Since our parents had enough land to give her a portion, they did so.

Unmarried daughters who take care of parents during their parents' old age and those who actively contribute to the development and growth of their parents' estate expect to inherit larger shares than the rest. They want the duty-beneficiary principle that traditionally favoured sons over married daughters to be applied. 'Elders say that the last-born son is the one that has to inherit the land, which is wrong . . . I think a girl who is not married should get the land', said the 83-year-old retired teacher.

Some male and female respondents want sons to be excluded from inheritance benefits. A 64-year-old retired carpenter wished he had an unmarried daughter to inherit his two plots. He said:

If I had a daughter I would make her get the bigger portion of share. I was going to give her all the plots. I would expect the boys to work hard to get their own plots. Or if the daughter gets married that's when I can ask her to give the plots to her brothers because she will have to use her husband's property.

His older son had just sold a residential plot allocated to him by the land board. His wishes probably reflect his disapproval of his son's sale of land.

A 58-year-old bricklayer employed by a private company wanted his parents' property to be inherited by his sister and his own property by his daughters:

I think our sister will inherit everything from our mother. I think all my brothers will agree to the idea because they also have their own plots already . . . Our sister is not married but has four children: three sons and one daughter. She is living with them in our mother's house. She is the one who is taking care of our mother. She is not working. If she was married she was not going to inherit the plot – it was going to her last-born child [a daughter]. According to our local culture, if our sister is not married she has to remain in our parents' plot. Even if we were not having plots we were still going to allow her to inherit our mother's plot . . .

I intend to give my house to my last-born daughter and the field to the other young daughter. The older ones will have to go and find their own plots . . . I have decided to give everything to the young ones because the older children have enough chance to go and look for their own plots since they are older than the young ones.



The bricklayer's preference for privileging women goes beyond duty-beneficiary rights to include issues of family welfare and girls' vulnerability in urban environments. The latter reason seems to be equally important to a 51-year-old woman (self-employed as a traditional beer brewer) who expects her last-born daughter to inherit her whole estate:

My late husband was born here in Tlokweng. I have nine children – six boys and three girls. I do not own any residential nor arable land. This plot belonged to my late mother-in-law. Both my father and mother-in-law have passed away. I have two houses in the plot ... My children helped me to build the big house. They contributed money for buying roofing materials and I contributed money for the foundation up to the roof. I used the profit money from my brewing business.

When I die my last-born daughter is the one who is going to inherit the *lelwapa*. The other children will not complain ... because they know it is the culture. I know that normally the last-born son is the one that has to inherit the *lelwapa*, but if the last-born daughter is not married, I think she should inherit it, not the last-born son, because for a boy it is easy for him to make a living even if he is not married, unlike a girl, which is difficult even to get a job, but for a boy it is easy to find a job. I will call all my children and discuss the issue of giving the last-born daughter the *lelwapa*, but if they refuse I will involve elders, such as the uncles.

At the time of the interview, the last-born daughter was about 19 years old, single but had a 3-month-old baby. Having lost education opportunities and being a mother at such a tender age makes the young girl and the baby vulnerable. The informant is probably sympathetic to her daughter's position. However, not all women inherit on compassionate grounds. For example, a 64-year-old female primary school teacher used her duty-beneficiary status to stake her claim for the family homestead:

I am staying in my parents' plot. I inherited the plot because I was taking care of my parents and I am not married. All my brothers and sisters are married and have their own *lelwapa*. In Setswana culture the last-born son is the one who has to inherit the *lelwapa*, but in our case my brother who was supposed to inherit it agreed to give it to me since he is married and has his own *lelwapa*. We, my brothers and I, discussed the issue and agreed that I should be the one who should inherit the *lelwapa*. The agreement was done in writing. This was done recently, while my parents passed away a long time ago. My mother's *tshimo* was divided among my four brothers and me. My sisters who are married did not get anything. At the time of their death, our parents did not own any cattle.

The respondent 'inherited' the homestead many years after her parents' death. To achieve this, she used several negotiation strategies and family networks. In the first instance, she was single. Secondly, she took care of the parents. Thirdly, she opted to forego her sole right to inherit her mother's ploughing field. Formalisation of her inheritance was concluded and reduced to a written agreement recently, most certainly to forestall future claims on the patrilineal lineage.

Married daughters who adopt post-nuptial matrilocal residence may also inherit their parents' estate, as the following narrative by the 67-year-old retired civil servant reveals:

I was born in Molepolole ... I am married to a woman from Tlokweng. My wife inherited this plot from her parents. We had two children but one passed

away. At present I am not working. I worked for the wildlife department. I invested all my pension money in building houses in the plot. I now have five units, which I am renting out. I get money every month. It is like I am still working. Our surviving son will inherit everything – houses on this plot and my money. He is a businessman and has a car. I have two grandchildren – they are not going to inherit anything from me.

The narrative shows not only that married women too can inherit their parents' estate as long as they remain within their natal community, but also that the husband feels disenfranchised in his patrilineal home. Despite claiming that he was not interested in his parents' land and cattle in Molepolole because he is educated, he was enthusiastic about his 'wife's land' in Tlokweg. He further refers to the property as his – probably because he has invested in the houses. Under traditional uxori-local marriages, he would be expected to return to Molepolole if his wife predeceased him.

In brief, inheritance practices in Tlokweg appear to have changed from privileging sons to being gender inclusive. Some parents appear to favour daughters, especially unmarried daughters or daughters who adopt their natal home for residence after marriage. Daughters who invest money, labour and other resources in their natal homesteads and fields and those who take care of aging parents feel entitled to a larger share of the deceased parents' estate. The privileging of daughters over sons is partly based on the assumption that, in the urban environments, girls are more vulnerable in terms of job findings and coping strategies than boys. This concern is valid if we take into account that more females than males are poor in Botswana. Welfare and duty-beneficiary considerations have thus contributed to gender equality in customary property inheritance.

The Tlokweg Deputy Chief (who is also the village's Customary Court President) supports the emerging inheritance practices. He says:

According to our customs here in Tlokweg, sons are the only ones who have the right to inherit cattle. I don't like this rule. All children (whether boys or girls) should share the cattle. In the past, older sons got bigger shares of the cattle. These days, cattle are shared equally between all children. However, if an older son demands a larger share and the matter is presented before the customary court, the chief will say 'yes, it is okay because he is the eldest in the family'.

... Batlokwa [the indigenous tribe in the Tlokweg area] culture for inheriting land does not differ much from other Tswana tribes – the difference is that Batlokwa do not have as much land. In the past, people could erect their cattle-posts anywhere because there was enough land ... Other tribes, such as Bangwato, still have enough land.

According to the Deputy Chief, contemporary gender equality practices are acceptable as long as they remain uncontested by family members. In case of disagreements, his court is obliged to rule as per the customary laws. He also acknowledges differences in inheritance practices between Tlokweg and other communities in Botswana and attributes the differences to land shortages in Tlokweg.

#### **4.5 Drivers for gender equality**

Kalabamu (2006:241–3) attributes progressive land reforms and inheritance rights in Botswana to several factors, such as the upholding of democratic governance and

human rights principles by the post-colonial Botswana Government, the effects of globalisation and feminist campaigns, women's empowerment through economic prosperity and transformations, and shifts in men's interest in land, cattle and other forms of property. He argues that socio-economic transformations have not only enhanced women's self-esteem and independence but also given them equal status with men, while democratic institutions, globalisation and feminist campaigns have given them a platform and the energy to challenge gender inequalities and exclusions.

The responses obtained in Tlokweng suggest that the new gender equality in property inheritance has come about because of several interrelated and interdependent factors. First, as noted earlier, are the changes in inheritable assets brought about by urbanisation, the use of cash, new sources of livelihood, and land shortages. Land and housing have overtaken cattle as the major source of wealth, power and social status. Second is women's ability to earn independent incomes, which has empowered them and enabled them to help generate and accumulate family assets. Third is the tendency of unmarried daughters living with their parents to invest in their parents' land and housing estate and take care of them in their old age – which gives them a platform for duty-beneficiary claims that were in the past the prerogative of sons. Fourth is the growing phenomenon of women household heads who have no moral obligation to uphold patriarchal practices. Last are the welfare considerations under which daughters are considered more vulnerable than boys in urban Tlokweng today.

#### 4.6 Contesting gender equality

Although most adult men interviewed in Tlokweng prefer sharing their estate equally among their children or favouring their daughters, older women, young men and teenage boys are strongly opposed to this development. The 64-year-old retired but unmarried teacher who inherited her parents' homestead wants her estate to be inherited only by her sons because she is afraid that the daughters may get married:

... I intend to give my last-born son the *lelwapa* because maybe the last-born daughter will get married. Even if the last-born son is married I will still give him the *lelwapa*. I am not too sure as to whom I will give the *masimo* [arable fields or land]. Probably to whoever is interested in ploughing, because I have realised that nowadays children are not interested in ploughing. Otherwise I will give it to my eldest son.

Young adult men think they are entitled to inherit from their parents to the exclusion of their sisters, as this young man says:

I am 25 years old and an employee of [...] as a security officer. I am not married. I do not own a car or a house ... When my parents pass away I intend to inherit the fields and the residential plot from them. I expect my sister to get married and move from my parents' plot and go and settle with her husband. If she does not get married she has to go and find her own plot. I cannot share the plot with her because it is small (40 metres by 40 metres). We may share the fields – if I can plough this year then she can plough the following year. If she is married I will not allow her to plough the fields, she has to use her husband's property ...

Suppose my sister does not get married and wants to share my parents' property with me, I will not allow her because I am older than her. I have to take care of her. I will ask her to go and look for a house to rent. If she is not

working, we can build more houses in the plot and then share rooms. If she does not agree with me, I will ask the elders to resolve the matter. If it fails, I will take it to the *kgotla* [village court or assembly], if it fails again I will take the matter to the high court.

The views of the above respondent reflect traditional perceptions that the first-born male is the principal heir who assumes the role of 'father' upon the death of a male parent. He expects his sister to marry, go away and become 'someone else's problem'. His views contradict the wishes and expectations of mature adult and elderly men.

Some teenage male respondents also want their sisters excluded from inheritance benefits. For example, a 15-year-old boy with two brothers and two sisters expects to inherit the lion's share and his sisters to be excluded. At the same time, he indicates a preference for parallel inheritance if his sisters do not marry and go away:

When my father dies, I expect to inherit a construction company which he owns, since I am the eldest son. I also expect to inherit my parents' land because I am old and able to put it to good use ... I expect my younger brother to inherit a house while my sister will get married and move away to start her own life. If she doesn't get married, since my mother is a hairdresser she will inherit money from my mother's business.

The boys' and young men's expectation that their sisters will get married and move from their parents' households contradicts prevailing realities in Botswana, where almost one-half of the households are headed by women (Mookodi, 2003). Furthermore, about one-third of female heads of households have either never been married or are cohabiting – which means they can neither go away nor be excluded from sharing or using their late parents' properties since they have never been married under either customary or statute law.

Another 14-year-old boy also prefers parallel inheritance – for sons to inherit his father's business and sisters to inherit his mother's business. However, he does not mind equal sharing of non-market resources such as arable fields:

My father owns a motor vehicle garage, a car, house, arable fields and a cattle-post. I expect to inherit from my father ... my sister will inherit from my mother because she is a woman, while I am a man. I will inherit from my father, me and my elder brother. My sisters will inherit money from my mother and my mother's furniture. All of us (boys and girls) will share the arable fields.

In short, older women, young men and some teenage boys would like the old tradition whereby first-born and last-born sons inherited the lion's share to be retained and observed. Some boys want their sisters excluded from their parents' estate in anticipation of their marrying and going away, while others prefer parallel inheritance: sons inheriting their fathers' estates and daughters their mothers' estates. These diverging preferences reflect the prevailing gender asset gap. Under parallel inheritance, boys expect to benefit more than their sisters.

In contrast to teenage boys, teenage girls sounded ambivalent, indifferent or fearful of inheritance issues. One teenage girl said:

I am not interested in inheriting anything because I know that in most cases when parents die children start fighting over the inheritance. So I don't want to get involved in fighting. I prefer getting things for myself.

And a 13-year-old girl said:

When my parents die, I do not think that everything will go well since my twin sister and I do not get along well. I think there will be some conflicts . . . I expect to inherit our [mother's] cattle, *masimo*, and land and my twin sister to inherit from my father.

One of the teenage female respondents supported egalitarian inheritance spiced with elements of traditional practices whereby the sons are slightly more privileged than daughters. This could be because she thinks tradition places more caring responsibility on her elder brother than on her younger one, and least on herself. She said:

I expect to inherit from my parents – at least one house and some cattle. My elder brother can inherit another house and a car because he has a valid drivers' licence. My younger brother can also inherit the other car and the other house and some goats and some cattle. I think the last-born [brother] has to get a bigger share because traditionally the last-born is the one who is supposed to inherit a bigger share than others . . . our elder brother should inherit the cattle-post because maybe he will be more responsible than us, the young ones. I think I should inherit the *tshimo*.

In brief, while middle-aged men and women, and older men, are more supportive of gender equality in the distribution of deceased persons' estates, older women, young men and teenage boys are contesting these arrangements. Girls are less worried about what is going on.

## 5. CONCLUSION

In contrast to the traditional norms and practices that prevailed in Botswana four to five decades ago, the interviewees' experiences and perceptions presented in this paper suggest that inheritance norms and practices in Tlokweng are now largely egalitarian and inclined to privilege daughters over sons. Contrary to the views of previous scholars (Otlhogile, 1992; Molokomme et al., 1998), customary norms and practices have been redefined to accommodate the new forms of assets (such as rentable rooms, money, businesses and cars), which are now more valuable and preferred over traditional ones such as cattle and agricultural land. The village's proximity to Gaborone and the high demand for rental rooms have made residential properties the most preferred inheritable asset. As theorised in the conceptual framework, the emerging practices are outcomes of multilayered and interrelated social, economic, environmental, political and historical processes that have transformed sources of livelihoods, and gender and power relationships, to provide a platform for challenging women's exclusion from property inheritance and other forms of gender inequality.

In the context of Tlokweng, women's rights to inherit or share in the estate of their deceased parents have been driven by the demise of peasant agriculture, the weakened role of communal resources in everyday life, and the growth of the market economy. Women are now able to earn independent incomes and make substantial investments in family houses and homesteads. Unmarried daughters and daughters who choose matrilocal post-nuptial residence have attained the status traditionally accorded only to sons. Furthermore, since unmarried daughters are better placed than sons to care for aging parents, this entitles them to a larger share of their parents' estate under duty-beneficiary rules. In addition, some parents prefer to privilege daughters over sons because they consider girls to be more vulnerable than boys in today's urban environments. More

importantly, the redefined inheritance rules have enabled women to access land and housing more readily than in the past. The paper has also shown that property-grabbing and inheritance-related conflicts are not necessarily due to the supposedly outdated customary rules, but reflect the mind-sets of conservative individuals and groups with vested interests who are reluctant to accept gender equality and positive changes.

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