

**IN THE SECOND MEETING OF THE THIRD SESSION OF THE FIFTH PARLIAMENT  
OF THE FOURTH REPUBLIC**

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND  
PARLIAMENTARY AFFAIRS ON THE INTESTATE SUCCESSION BILL**

**1.0 INTRODUCTION**

1.1 Parliament was seized with the Intestate Succession Bill on November 3, 2009 when it was presented and read the first time in the House. The Rt. Hon. Speaker pursuant to Article 106 (4) and (5) of the Constitution and Standing Order 179 of the House referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report.

**2.0 DELIBERATION**

2.1 The Committee held preliminary consultative sessions and meetings with relevant stakeholders and also conducted public hearings in five regional capitals, namely – Tamale, Kumasi, Cape Coast, Ho and Accra to solicit public input on the referral. Ms. Edna Kuma of the African Women Lawyer’s Association (AWLA) and Mrs. Barbara Ayensu of LAWA Ghana Alumni Incorporated (Leadership and Advocacy for Women in Africa), both participated in the regional public hearings conducted by the Committee. The then Hon. Attorney-General and Minister for Justice Mrs. Betty Mould Iddrisu, Director, Legislative Drafting of the Attorney-General’s Office, Mrs. Estelle Appiah, were also amongst others in attendance at the deliberations of the Committee on the Bill.

### 3.0 **ACKNOWLEDGEMENT**

- 3.1 The Committee is grateful to the above mentioned persons for their participation in the deliberations and GTZ-Ghana in particular for co-funding the public hearings on the Bill.

### 3.0 **REFERENCE DOCUMENTS**

- 3.1 The Committee had recourse to the under-listed documents during deliberations:
- a. The 1992 Constitution,
  - b. The Standing Orders of Parliament,
  - c. Intestate Succession Bill,
  - d. Intestate Succession Act, 1985 (PNDC Law 111)

### 4.0 **BACKGROUND**

- 4.1 The application of the present law on intestate succession continues to pose challenges emerging mainly from the changes in the nature of the system of inheritance and the family law system. The focus of the family law system and inheritance generally now seem to be shifting from the extended to the nuclear family as obtains in other parts of the world. This development continues to gain important recognition which needs to be adequately reflected in the law on intestate succession.

Meanwhile, the well-entrenched customary law system has provided very little protection for surviving spouses and children. Indeed such class of persons particularly within the matrilineal system of inheritance have no more than a right to maintenance by their father's customary successor and a right to reside in their father's house subject to good behaviour. There is also very little provision for

additional spouses in polygamous marriages where the deceased is survived by more than one spouse.

The need to remove the anomalies in the present law relating to intestate succession and to provide a uniform intestate succession law applicable across various customary jurisdictions irrespective of the inheritance system of the intestate and the type of marriage contracted necessitated the introduction of this Bill.

## **5.0 OBJECT OF THE BILL**

5.1 The Bill seeks to provide for intestate succession and to particularly make the law in this regard, more responsive to the needs of the nuclear family of a person who dies intestate.

## **6.0 PROVISIONS OF THE BILL**

6.1 This Bill provides for 29 clauses:

### **6.1.1 Clauses 1 & 2**

Clause 1 provides for the devolution of the estate of a person who dies without making a will and the provisions of clause 2 relates to cases of intestacy and partial intestacy.

### **Clause 3**

This clause confers on a surviving spouse or child or both as the cases may be absolute right to the household property of the intestate.

#### **Clauses 4**

This clause indicates that where there is one house and the surviving spouse made contributions toward the acquisition of the only house of the marriage, he/she is entitled to more than 50% of the estate.

#### **Clauses 5 & 6**

Under these clauses, provisions are made for the apportionment of the estate of an intestate who is survived by a spouse and a child and for the devolution of the estate of an intestate who is survived by more than one spouse.

#### **Clause 7**

This clause deals with a surviving spouse who is estranged from the deceased and has been living separately for three years or more.

#### **Clause 8**

Clause 8 spells out the interest of a surviving spouse in the matrimonial home.

#### **Clause 9**

This Clause gives the surviving spouse the option to buy out the share of other beneficiaries where the estate consist of only one house and the surviving spouse contributed to the acquisition of the house.

#### **Clauses 10 & 11**

These Clauses make provision for joint ownership of property other than the matrimonial home and for the sale or redemption of a mortgaged estate.

### **Clause 12**

Clause 12 stipulates that before the estate of the deceased is distributed, adequate provision should be made for dependent and incapacitated children first.

### **Clauses 13, 14, 15 & 16**

Under these Clauses, provisions are made for the distribution of the deceased's estate depending on who survives the deceased.

### **Clauses 17**

Clause 17 addresses the situation where a foreigner makes Ghana his domicile.

### **Clauses 18 & 19**

Clause 18 makes provision for succession by family under customary law and Clause 19 provides for situations where the intestate is not survived by a spouse, child or parent.

### **Clause 20**

This Clause makes provision for significant contributions to the intestate's family under small estates.

### **Clause 21**

This clause enables the Minister responsible for Justice to amend the value of small estates under the previous clause.

### **Clauses 22 & 23**

Clause 22 stipulates that where two or more persons are entitled to a share of the estate of the intestate, the beneficiaries will equally divide it among themselves.

Clause 23 stipulates that where spouses died for purposes of which it is not clear who died first, the older will be presumed to have died first.

#### **Clauses 24, 25 & 26**

Clause 25 provides for the maintenance of a grandchild of the intestate who is a dependent of the intestate. Clauses 25 and 26 prohibit the ejection of a spouse from a matrimonial home and unlawful deprivation by a person of a spouse or a person entitled to the use of the property.

#### **Clauses 27, 28 & 29**

Clause 27 relates to other offences and clauses 28 and 29 provide respectively for power to make Regulations and Interpretation, while clause 30 relates to repeals and savings.

### **6.0 OBSERVATIONS**

- 6.1 The Committee observed that intestate succession and its attendant socio-legal issues continue to pose challenges largely due to the plural legal nature of the family law system of the country. After over twenty five years of the coming into force of Law 111, there are still difficulties in its implementation and the gaps in the law have become more evident due to the increasing importance of the nuclear family. Consequently, the essence of the existing law seems to be withering.

The Committee having regard to a number of concerns which emerged during deliberations, particularly during the public hearings noted a number of key issues; some of which in the view of the Committee have been addressed by the Bill. These include: the need for enhancement of provisions for children of school going age, the need to put a cap on the amount of cash to be treated as household property, the need for enhancement of entitlements for the longest serving spouse

within the context of a polygamous marriage, status of additional spouse married under customary law in relation to the spouse under the ordinance and vice versa, the legitimacy of the rights if any of an estranged spouse, possible double inheritance by a customary successor both as a customary successor and a family member and the silence of Intestate Succession Act, 1985 (PNDC Law 111) on the issue of joint acquisition of property and how such acquisition should affect the fraction of the estate that the surviving spouse is entitled to.

#### **6.1.1 The need for enhancement of provisions for children of school going age**

The cumulative view of the public during the hearings in all the four regional capitals on the subject matter called for adequate provision to be made under the Bill to cater for children of school going age. While appreciating this concern of the public borne out of the absence of any such provision in Law 111 which has resulted in practical challenges in its implementation over the years, the Committee noted with satisfaction that Clause 12 of the Bill remedies the defect by making special provision for dependent children of school going age. It is the expectation of the Committee that, upon the passage of the Bill, the Minister would as soon as practicable initiate appropriate measures to enable affected beneficiaries to be availed of their entitlements under the law.

#### **6.1.2 The need to put a cap on the amount of cash to be treated as household property**

The public advocated that as household property has been defined in the bill to include cash and moneys in bank accounts, a ceiling should be placed on such moneys deemed as household property. In the absence of such ceiling, they argued that, where the deceased died possessed of only household property, the effect would be that aged and dependent parents who may have survived the deceased is entitled to nothing from the deceased's estate.

The Committee is therefore of the considered view that, the House critically consider this concern and make provisions for children of persons dying intestate according to their ages and status in life and also provide for surviving parents who may have solely depended on the deceased.

### **6.1.3 The need for enhancement of entitlements for the longest serving spouse within the context of a polygamous marriage**

The public also advocated the need to enhance the entitlements of a longer or longest serving wife in a polygamous marriage. This concern the Committee noted is born out of objective realities associated with the potentially polygamous nature of the Ghanaian society in which some male spouses are used to devoting more attention and care to their younger wives to the neglect of the older wives, a situation which eventually leaves them in a deplorable state. The Committee notes that even though clause 6 of the Bill provides for a situation where the intestate is survived by more than one spouse, there is no specific provision to compensate a longer serving spouse except that the Bill recognises the interest of a joint owner who is a surviving spouse and makes provision in respect of that in clause 10.

The Committee while recognising the legitimacy of the case of a perceived inequity against a longest serving spouse which may arise out of equal distribution of property amongst all the spouses the Committee is unable to make a recommendation to remedy the perceived inequity and therefore invites the House to consider the matter and give some direction in that regard.



#### **6.1.4 Status of additional spouse married under customary law in relation to the spouse under the ordinance and vice versa**

The case of a male spouse married under the customary law ignorantly taking on additional wives under the Ordinance and vice versa also featured prominently throughout the public hearings as a major concern for women in particular. The Committee observed that, even though any such subsequent marriage by the man within the above context would be illegal and therefore voidable, majority of women who fall victim to such cases tend to be either ignorant of the remedies available to them in law or afraid of the consequences of opposing their husbands in that regard.

The Committee is of the considered view that effective public education and strong advocacy in this connection is the right direction to pursue. In addition, the appropriate State agencies in charge of social welfare and legal aid need to be empowered to provide requisite assistance to persons who may suffer in this regard.

#### **6.1.5 The legitimacy of the rights if any of an estranged spouse**

Sections of the public also resented the provision for an estranged spouse captured in clause 7 of the Bill. They argued that this provision could occasion injustice to lawful beneficiaries and also lead to unjust enrichment of such spouse, particularly where the estranged spouse may not have rendered support in any form to the deceased or the children who may also not be her biological children and yet make gains upon the husband's intestacy.

Without prejudice to a spouses right to initiate divorce proceedings if that spouse feels strongly dissatisfied with the attitude of the other spouse who may have

become an estranged spouse the Committee considers the concerns of the public justifiable and accordingly recommends the deletion of the clause.

The Committee observed that where spouses are estranged and have been separated for a period of three years or more, the legitimacy of the rights of the estranged spouse should be determined and a percentage of the estate be apportioned to such spouse.

**6.1.6 Possible double inheritance by a customary successor both as a customary successor and a family member**

The issue of possible double inheritance by a customary successor both as a successor and as a family member was raised. The Committee observed that a customary successor who constitutes part of the larger family under customary law should not be allowed to inherit twice-as a family member and as a customary successor as by virtue of being a successor he is a member of the family.

**6.1.7 The silence of Intestate Succession Act, 1985 (PNDC Law 111) on the issue of joint acquisition of property and how such acquisition should affect the fraction of the estate that the surviving spouse is entitled to**

A cross section of the public raised issue about the fact that where a surviving spouse jointly acquires property with the deceased spouse, the surviving spouse should be entitled to a percentage more than the fifty percent share that spouse is entitled to by law. The argument they espoused is that, having contributed to the acquisition of that property, the surviving spouse is an automatic fifty percent owner of that property. In addition to this, by virtue of being the surviving spouse of the deceased, that surviving spouse is entitled to another fifty percent share of the deceased's property.

This concern the Committee observed, has been catered for in the bill. Upon the passage of this Bill, a surviving spouse who owns property jointly with the deceased other than the matrimonial home is entitled to an additional twenty-five percent share of the property by virtue of being a spouse in addition to the fifty percent share that spouse is entitled to by law as a joint owner of the property.

### **PROPOSED AMENDMENTS**

8.1 The Committee proposes the following amendments for consideration by the House:

- i. Clause 5 (1) – amendment proposed – paragraph (b) delete “forty” and insert “forty-five”
- ii. Clause 5 (2) – amendment proposed – paragraph (a) delete “forty-five” and insert “thirty-five”
- iii. Clause 5 (2) – amendment proposed – paragraph (b) delete “forty-five” and insert “sixty”
- iv. Clause 5 (2) – amendment proposed – paragraph (c) delete “ten” and insert “five”
- v. Clause 7 – amendment proposed – delete the clause
- vi. Clause 10 – amendment proposed – delete the clause
- vii. Clause 12 – amendment proposed – Headnote after “school-going” insert “and other”
- viii. Clause 12 (2)(a) – amendment proposed – after “fees” insert “up to the university level or its equivalent”
- ix. Clause 12 (3)(a) – amendment proposed – define “incapacitated” in the interpretation section as follows: “incapacitated” means a person who suffers from a mental disorder, is physically challenged or is vulnerable”

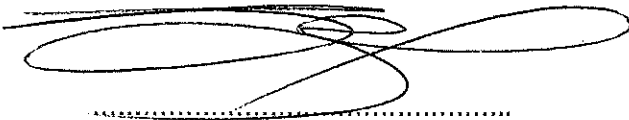
- x. Clause 12 - amendment proposed -- add a new sub clause (5) as follows :
- "(5) For the purpose of this section, educational needs include vocational training, apprenticeship and other forms of skill acquisition".
- xi. Clause 13 (2) – amendment proposed – after “surviving” delete “and child”
- xii. Clause 14 (1) – a mendment proposed – before “devolves” delete “estate” and insert “residue”
- xiii. Clause 15 – amendment proposed – delete “estate” and insert “residue”
- xiv. Clause 15 – amendment proposed – paragraph (a) delete “fifty” and insert “forty”
- xv. Clause 15 – amendment proposed – paragraph (b) delete “thirty-five” and insert “forty”
- xvi. Clause 15 – amendment proposed – paragraph (c) delete “ten” and insert “fifteen”
- xvii. Clause 17 – amendment proposed – line three after “residue” delete and insert “shall devolve in the following manner:
- (a) to the surviving,
- (b) where there is no child, to the surviving spouse, and
- (c) where there is no surviving spouse, to the surviving parent”.
- xviii. Clause 20 – amendment proposed – paragraph (a) line one delete “... one” and insert “ten” and repeat same in paragraph (b)
- xix. Clause 20 – amendment proposed – paragraph (a) line three after “both” delete
- xx. Clause 21 – amendment proposed – delete the clause

- xxi. Clause 22 – amendment proposed – delete the clause and insert “Subject to the rules of customary law related to a member’s interest in communal property, where two or more persons are entitled to share a portion of an estate under this Act, they shall divide it among themselves in equal shares”.
- xxii. Clause 24 – amendment proposed – in line five insert “grand” before “child”
- xxiii. Clause 25 (1) – amendment proposed – line two after “estate of” delete “a deceased person whether testate or interstate” and insert “an intestate where the matrimonial home is”
- xxiv. Clause 25 (1) – amendment proposed - paragraph (a) delete “where the matrimonial home is” and repeat same in paragraph (b), (c), and (d)
- xxv. Clause 25 (2) – a amendment proposed – delete and move to the interpretation section
- xxvi. Clause 26 – amendment proposed – line one after “estate of” delete “a deceased person whether testate or” and insert “an” and repeat same in Clause 27
- xxvii. Clause 29 – amendment proposed – “residue” delete “and” between “3” and “4” and insert “8, 10 and 12” after “4”
- xxviii. Clause 29 – amendment proposed – “spouses” delete “polygamous” and insert “polygynous” and after “marriage” delete all the words

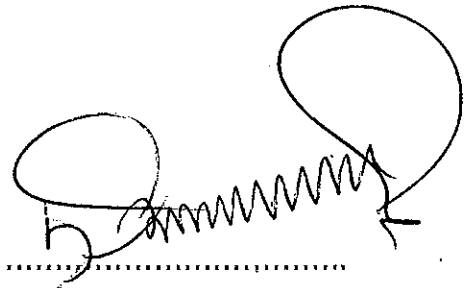
**8.0 RECOMMENDATIONS AND CONCLUSION**

The Committee has carefully examined the provisions of the Bill in the light of its object and purpose and is of the view that they are consistent with the Constitution and other relevant statutes and accordingly recommends its passage by the House subject to the above proposed amendments.

Respectfully submitted



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