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1.0. INTRODUCTION

1.1. About this Issues Paper

Under Article 2 of the Constitution of the Republic of Uganda, 1995, it is stated that the Constitution is the supreme law and any law or custom which is inconsistent with the Constitution shall be void to the extent of the inconsistency. Similarly, Article 31 of the Constitution of Uganda, 1995 provides for the rights of the family and states that Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit properties of their deceased spouses and to enjoy parental rights over their children.

Despite the constitutional provisions on equality before the law, inheritance and succession laws continue to be discriminatory against women. In 2007, the Constitutional Court in the land mark decision of Law and Advocacy Uganda(LAW-U) Vs Attorney General Constitution Petition No. 13 of 2005/5 of 2006, made a ruling nullifying the sections in the Succession Act which are discriminatory. And yet 10 years later, The Succession Act has not yet been amended to align its provisions with the court's decision and constitutional provisions on gender equality. This has had the subsequent effect of creating an implementation gap for actors in the law of Succession that requires urgent redress.

Despite the existence of several reports on the subject including a comprehensive study report by the Uganda Law Reform Commission of 2014, we believed the production of this issues

paper embraced a participatory and inclusive approach taking into account the contemporary values and trends of in Uganda today as well drawing attention to emerging issues at hand in order that they may be treated with the urgency they deserve.

The participatory process took the form of consultative meetings with various stakeholders including members of the Academia, the judiciary, office of the Administrator General, advocates in private practice, civil society organizations among others. This enriched the literature review that took into consideration all the studies and court decisions on the subject.

The paper also makes recommendations beyond the Succession Act that encompass all the 5 succession laws thus highlighting the need for an omnibus amendment of the same to ensure complete reform on the Law of Succession.

1.2. OBJECTIVES OF THE ASSIGNMENT

The main objective of the issues/position paper is to draw attention to issues that are currently in the Succession Act and related laws despite the existence of a constitutional decision on the same and the Uganda Law Reform Commission report. The paper also brings to light contentious and controversial issues not initially addressed in the law or previous reports

1.2.1 Specific Objectives

The specific objectives are:

(a) Identify current challenges involved in the implementation of the Succession laws not previously reported.

(b) Identify areas that require legal reform.

(c) To be used as an advocacy tool to draw attention to the urgent need to address the issues discussed therein.

1.3 Methodology

The paper utilized qualitative approaches that sought responses from various government institutions, the judiciary, private sector, academia and civil society organisations considered to be key actors in succession and inheritance matters.

1) Sampling

The consultative meetings to gather information adopted a purposive sampling technique where respondents were chosen basing on their knowledge and deep understanding of the subject of study. This provided a balanced data for legislation, advocacy, implementation, awareness creation and monitoring.

2) Discussion and consultations with stakeholders.

Consultative meetings were organized on 10th and 24th November and 7th December, 2017 to get the consensus on the issues that need to be addressed in the amendment of the Succession Act. At the end of the second meeting, participants were requested to fill in the form in the Appendix to seek their views on the proposals for amendment of the Succession Act. Results from these consultations informed the drafting of the clauses to the Succession (Amendment) Bill.

3) Review of existing Literature and Research.

This included reading literature and statutes related to the law of succession, best practices from countries with more progressive

laws was undertaken. Relevant international instruments and other literature were reviewed. Decided cases were also referred to in order to bring out judicial interpretations and construction of the law on different matters related to the law of succession.

2.0 HISTORICAL BACKGROUND TO SUCCESSION AND INHERITANCE IN UGANDA.

2.1. Review of national legislation on Succession.

Succession Ordinance 1906

The origin of Uganda's law of succession can be traced as far back as the Succession Ordinance of 1906 which was adopted from the English law. The Ordinance introduced the British models of succession and inheritance into Uganda as the law applicable to all cases of intestate or testamentary succession. However, the Ordinance exempted the estates of all natives of the protectorate from the operation of the Succession Ordinance and the estates of Mohammedans also were also exempted from provisions of Part V of an intestate's property. The Ordinance did not exhaustively provide for testate succession and generally fell short on intestate succession especially with respect to the different interests in an intestate's property of the Ugandans who were left to apply customary and cultural practices of succession despite the legal regimes. The Ordinance further discriminated against illegitimate children and relatives in succession matters by its recognition and preference of legitimate children and relatives. 'Illegitimate' children took a secondary position only if at the time of writing the will or intestate's death they had acquired the reputation of being such a relative.

The Ordinance saved the application of religious and customary law by natives in succession matters. Hence, Africans' religions (Muhammedans) and customary practices continued to influence their decisions in handling succession matters. Those Africans who preferred the customary way of handling succession still continued to apply customary practices alongside the statutory law. This sowed the seeds of pluralism that surrounds the law of succession in Uganda today.

In matters of testate succession, the Ordinance presupposed that it was only the husband who could make a will as well as appoint a testamentary guardian for his children. The widow of an intestate was entitled to 1/3 (one third) of the estate while two thirds of the estate went to the lineal descendants. Under the Ordinance, a widow's entitlement was about 30% compared to the 15% which is given to the widow(s) under the current Succession Act.

Succession (Amendment) Decree, 1972

Due to the shortcomings in the Succession Ordinance of 1906, the law was subsequently amended in 1972 by the Succession (Amended) Decree. The Decree provided for succession to estates of Ugandans dying intestate and restricted the rights of illegitimate and adopted children. The definition of a child in the Decree included legitimate and adopted children.

The Decree introduced "dependant relatives" as a category of beneficiaries to a deceased's estate, recognized polygamy and the concept of "customary and legal heir." It also emphasized male preference when choosing a legal heir.

During intestacy, the matrimonial home was protected and did not form part of the estate to be distributed. The widow's share was reduced to 15% down from the 30% provided for in the Succession Ordinance of 1906. It further provided that each category of lineal descendants, wives and dependant relatives were to be entitled to share their proportion of the deceased's estate in equal proportions. Any child of the deceased would take the deceased lineal descendant's share if he or she survived the intestate.

In the second schedule to the Decree, re-marriage by a widow terminated her right of occupancy of the matrimonial home which was not the case for the widower who was allowed to remarry and maintain occupancy of the matrimonial home. At the same time preference was given to the father's side during the appointment of a statutory guardian of minor children. It should be noted that many of the provisions above were largely discriminatory on the basis of sex. The application of such provisions left women in an inferior position to that of the men. Such provisions were later criticized as falling short of the constitutional principle of equality between men and women and need to be reconciled with the Constitution.

The Succession Act, Cap 162

The current Succession Act, Cap 162 is a replica of the Succession (Amendment) Decree, 1972. It contains the abovementioned anomalies and gaps. Several studies have been carried out in Uganda and recommendations made to address the gaps identified in the Succession Act. These studies include the Commission on Marriage, Divorce and Status

of Women of 1965 which culminated into what is commonly referred to as the Kalema Commission Report of 1965. One of the recommendations led to the enactment of the Customary Marriages (Registration) Decree, 1973 (Decree No. 16 of 1973) which recognized customary marriages and validated otherwise invalid marriages solemnized before the coming into force of the Decree. The Kalema Commission recognized that most marriages were celebrated under customary law. In some instances, a husband who initially married under the Marriage Act went ahead and married under customary law. The subsequent customary marriage would be invalid but the Customary Marriage (Registration) Decree validated them. The status of a wife is important under succession law as it determines her entitlement to the estate of the deceased husband. If a woman was not married to the deceased, her entitlement to the estate becomes a contentious matter.

Another study was conducted by the Ministry of Gender and Community Development Study of Women and Inheritance in Bushenyi District (Project paper No. 4.of July 1994). This study established that customary clan structures that control the administration of property after death were still firmly entrenched in the communities studied. This was indicative of what was happening across most cultures in the country. As a result, even where a will exists, the customary norms may override it and it was either not followed to the latter or was completely disregarded.

Customary practices of succession are still being todate. According to the Domestic Relations Bill Report, formal

institutions are only resorted to when the customary mechanisms fail to resolve a dispute over administration of an estate[1]. Other challenges identified included centralization of the office of the Administrator General; unrealistically light penalties in the law; complex and expensive procedures for getting letters of administration or grant of probate.

The 2014 Uganda Law Reform Commission Report also identified other challenges in the succession law. These include the discriminatory nature of the provisions of the Succession Act and obsolete fines and penalties.

2.2 Uganda's obligation to international conventions on equality and non discrimination.

Uganda is a signatory to and has ratified various international and regional instruments that champion gender equality and non-discrimination of persons. **Article 18 of the African Charter on Human and People's Rights** calls on all states parties to eliminate every form of discrimination against women and to ensure protection of the rights of women as stipulated in international declarations and convections.

The Universal Declaration of Human Rights, 1948 also champions for equality of men and women before the law. Its provisions have been incorporated in the Constitution of the Republic of Uganda, for example Articles 31, 33 and 34 of the Constitution are a replica of some articles in the 1948 Declaration.

1 Page 278 of the Uganda Law Reform Commission study Report 2014.

The Convention on the Elimination of all Forms of the Discrimination Against Women (CEDAW) is an international Treaty adopted in 1979 by the UN (United Nations) General Assembly. CEDAW has been ratified by 189 states including Uganda which ratified it on 22/7/1985. Uganda signed the treaty on 30 June 1980.

Article 1 defines discrimination against women in the following terms:

Any discrimination, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic social, cultural, civil or any field.

Article 2 of CEDAW mandates that states parties ratifying the convention declare intent to enshrine gender inequality into domestic legislation, repeal all discriminatory provisions in their laws, and enact new provisions to guard against discriminations against women.

Article 14 of CEDAW obliges state Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

Article 15 of CEDAW obliges state parties to guarantee women equality with men before the law, including a legal capacity identical to that of men. It accords to men and women the same rights with regard to the law relating to movement of persons and the freedom to choose their residence and domicile.

Article 16 of CEDAW prohibits discrimination against women in all matters relating to marriage and family relations. In particular, it provides men and women with the same right to enter into marriage, the same right to freely choose a spouse, the same rights and responsibilities during the marriage and at its dissolution, the same rights and responsibilities as parents, the same rights to decide freely and responsibly the number and spacing of their children, the same personal rights as husband and wife, include the right to choose a family name, a profession and occupation, the same rights as spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for valuable consideration.

In some progressive jurisdictions, the Courts have gone ahead to directly apply and enforce CEDAW for example, In ***Dhungana v. Nepal Supreme Court of Nepal, Writ No 3392 of 1993 unreported***, a law in Nepal gave preference to males regarding

ancestral property inheritance. The Forum for Women, Law and Development asked the Supreme Court of Nepal to overturn this law, citing CEDAW, which had the status of national law in Nepal. Instead of striking down this law directly, the Court directed the government to pass legislation within one year in consultation with women's groups, sociologists and other concerned actors after studying legal provisions in other countries.

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, better known as the Maputo Protocol guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality with men, improved autonomy in their reproductive health decisions and an end to female genital mutilation. The Maputo Protocol has several provisions on the property rights of women, including Articles: 6(j) for married women; 7(d) on the equitable sharing of property on the dissolution of marriage; 20(c) which covers the state's obligation to promote women's access to and control over productive resources such as land, and to guarantee their right to property; and 21 on inheritance.

Article 20 provides that State Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

(a) That widows are not subjected to inhuman, humiliating or degrading treatment;

(b) That a widow shall automatically be the guardian and custodian of her children, after the death of her husband unless this is contrary to the interests and welfare of the

children;

(c) That a widow shall have the right to remarry, and in that event, to marry a person of her choice.

Article 21 of the Maputo Protocol provides that a widow shall have the right to an equitable share in the inheritance of property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it. It further provides that women and men shall have the right to inherit, in equitable shares, their parents' properties.

The protocol is a product of the African union requiring buy-in and domestication by member states. These ideals have been accepted as local to Africa as opposed to viewing them as foreign and imposed on the African continent whose context is different. As a signatory to these instruments, Uganda has an obligation to fulfill its commitments to eliminate discriminatory provisions in its laws.

3.0 LITERATURE REVIEW

According to Parry and Clark (The Law of Succession Eleventh Edition (2002), the law of succession is generally concerned with the transfer or devolution of property of a deceased person upon death. Succession relates to that which descends to the heir on the death of the owner.

Black's Law Dictionary (8th Edition) defines succession as the acquisition of rights or property by inheritance under the laws of descent and distribution. Succession is a legal term which is ordinarily called inheritance.

The law of succession is composed of intestate and testate succession. Testate succession refers to a situation where a deceased person dies after having a written legally valid will or testamentary disposition. In the will, a person expresses his or her wishes regarding the disposal of his or her property and other rights or obligations. The testator is expected to name an executor or executrix of the will and the beneficiaries of the estate. Where there is no executor, and no residuary legatee or representative of a residuary legatee, or he or she declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he or she had died intestate or any other legatee having a beneficial interest, or the Administrator General, may be admitted to prove the will and letters of administration may be granted to him or her or them accordingly (See section 199 of

the Succession Act, Cap 162)

The major benefit of testate succession is that it allows a person to dispose of his or her property without following any rigid rules of distribution. Where there is a will, an estate will be managed in a more organized manner. The testator's wishes are known and his or her properties will be ascertainable. The testator's property is properly distributed in the will and where the immediate family members are catered for, the courts will respect the testator's wishes. Where there is unreasonableness in the distribution or conditions are weird, the will can be set aside upon application to court.

Intestate succession refers to situations where a person dies without leaving a valid will to dispose of his or her property. Section 202 of the Succession Act provides that subject to section 4 of the Administrator General's Act, administration shall be granted to the person entitled to the greatest proportion of the estate. Under section 27, children are entitled to 75% of the estate. The courts, have held that a widow is the best person to administer an estate as she will take care of it for the benefit of the orphans and herself. In **Re Kibiego [1972] E.A.179** the applicant applied for letters of administration intestate to the estate of her husband a Nandi. The application was granted. Madan J. said

> *"A widow is the most suitable person to obtain representation to her deceased husband's estate. In the normal course of events, she is the person who would rightly, properly and honestly safeguard the assets of the estate for herself and her children. It would*

be going back to a mediaeval conception to cling to a tribal custom by refusing her a grant which is obviously unsuited to the progressive society of Kenya in this year of grace. A legal system ought to be able to march with the changing conditions fitting itself the aspirations of the people which it is supposed to safeguard and serve."

It is proposed that the principles in the case of **Re Kibeigo** are adopted and codified in the proposed amendment to the Succession Act.

According to the Uganda Law Reform Commission Study Report on the Review of Laws of Succession in Uganda, 2014, most Ugandans don't make wills due to superstition that people attach to writing a will. Some people believe that writing a will hastens one's death. Another reason is lack of awareness about how to write a valid will and lack of attention to its importance. There is therefore need to sensitize the public about the importance of writing wills.

Through consultations, It came to bear that in order to coerce the public to plan their estates beforehand the use of inheritance tax could be adopted taking the example of the United States of America. The inheritance tax is usually determined by the amount of property received by the beneficiary, as well as by the beneficiary's relationship to the decedent and is basically, a tax on the right to receive the property. In the United States, an intestate estate is the most exposed to estate and inheritance tax liability. The greater the value of the estate, the greater the tax

burden on the estate - and potentially on the beneficiaries of the estate. This is a powerful inducement for many people to seek estate-planning advice.

The law on intestacy is pluralistic in nature as it is governed by both Section 27 of the Succession Act and customs and traditions. Many people rely on customs and religious practices to determine succession matters even with the existence of the law. This is premised on the fact that the Constitution allows for the operation of customary law in as far as it is not detrimental to the rights of the marginalized. The entire law on intestacy is complaisant and is responsible for majority of the challenges faced in implementation of the Succession Act. Its reform is therefore urgent. Some of the salient challenges with the law on intestacy include;

a) Distribution of an intestate's estate is currently governed by common sense of the Judicial officer adjudicating the matter following the Constitutional Court's decision in LAW-U V AG[2]. This leaves room for possible injustices by judicial officers who are not gender sensitive and responsive.

b) Section 27 makes no reference to a female intestate which may be premised on the believe at the time that women cannot own property alone. This is in contravention to Article 26 of the Constitution.

c) Over reliance on custom and tradition yet some customary practices are detrimental to the rights of marginalized groups given that they are oppressive and discriminatory in nature.

2. Law and Advocacy Uganda(LAW-U) Vs Attorney General Constitution Petition No. 13 of 2005/5 of 2006.

3.1 . Issues for amendment in the succession act.

3.1.1 Discriminatory Nature of the Law.

In LAW AND ADVOCACY FOR WOMEN IN UGANDA VS. ATTORNEY GENERAL, Constitutional Petitions No. 13 of 2005 & No. 5 of 2006, the petitioner, an association that advocates for women rights in Uganda, filed two separate petitions that were later consolidated. The petitions were brought under Article 137(3) of the Constitution of the Republic of Uganda, 1995 and Constitutional Court (Petitions and References) Rules 2005 (S. 1. No. 91 of 2005) challenging the constitutionality of some sections of the Penal Code Act and the Succession Act.

Sections 14, 15, 23, 26, 29, 43, 44 of the Succession Act were challenged in the petition. The petitioner alleged that the above sections are contrary to Articles 20, 21, 24, 26, 31, 33 and 44 of the Constitution.

One of the issues was whether section 2(a) (1) (ii), 23, 26, 27, 29, 43 and 44 of the Succession Act are inconsistent with Articles 20, 21, 24, 26, 31 and 44 of the Constitution.

The Constitutional Court held that:

1. Under Article 274 of the Constitution of the Republic of Uganda, 1995, a Court is enjoined to construe any existing law with such modifications, adaptation, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of the Constitution. Under Article

137(3), the Constitutional Court was only required to declare whether or not an Act of Parliament or any other law or anything done under the authority of any law or any act or omission by any person or authority is inconsistent with or is in contravention of the provisions of the Constitution. The court is also enjoined to grant redress where appropriate.

The judges opined that the provisions of the Article do not seem to give this Court a mandate to modify a law which it has found to be inconsistent or in contravention with the provisions of the Constitution.

2. The provisions of Section 2 (n) (i) and (ii), 14, 15, 26, 27, 29, 43, 44, of the Succession Act and rules 1, 7, 8 and 9 of the Second Schedule to the Succession Act are inconsistent with Articles 21(1), (2), (3), 31 and 33(6) of the Constitution and therefore null and void.

The Petition was allowed.

Where as this decision has been applauded as being progressive in terms of uplifting the constitutional principles on equality and non-discrimination, many critics are of the view that the Court should have used the opportunity to pronounce itself on the changes to be made in the Succession Act basing on the principles of Judicial Activisim.

Borrowing from a renown Ugandan Scholar, “There is need for a bold and courageous Judiciary to take the challenge of public

interest litigation and through judicial activism give life and vitality to the Constitution. There is need for judicial creativity to bring new thinking to old problems and seek new solutions. There is need for judicial courage to follow on these new solutions to give full meaning to the Constitution."[3]

There is a string of authorities supporting this preposition. Lord Scarman in **Duport Steels Ltd. vs Sirs (1980) 1 WLR 142 held** as follows:

> *" ...in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes, and un-makes, the law: the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable...."*

In RWANYARARE-V-ATTORNEY GENERAL (Constitutional Application No. 6 of 2002 arising from Constitutional Petition No. 7 of 2002)] the Court also found courage to do away with

3 Public interest in litigation in Uganda practice and procedure shipwrecks and seamarks by Philip Karugaba.)

the protections under the Government Proceedings Act (Cap. 77) and to grant an injunction against the Government.

The Non-Smokers rights case was also path-breaking by the trial Judge. As one commentator put it; "by courageous and liberal interpretation to the Constitution, this decision seems not only to have potentially opened wide the flood gates for public interest litigation in Uganda, but to have torn out the gate posts and cast them asunder."

3.1.2 Non-Conformity with the 1995 Constitution of the Republic of Uganda.

Article 21 of the Constitution of the Republic of Uganda provides for equality of men and women in all spheres of political, economic, social and cultural life and in every other respect and they shall enjoy equal protection of the law. A person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic, standing, political opinion or disability. (See Article 21(2) of the Constitution). For purposes of article 21, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.

The CEDAW Committee's General Recommendation No. 33 on Women's Access to Justice, adopted in July 2015, stresses the importance of women's access to justice in diverse legal systems and in all areas of law for all women. It encompasses all justice settings (formal, informal or semi-formal), sources of law (common law, civil law, religious law, customary law or mixed

legal systems), and the full range of legal domains (criminal, civil, family, administrative and constitutional). The General Recommendation situates the obligations of States parties to ensure women have access to justice, within the broader context of persistent obstacles and restrictions that prevent women from realizing their right of access to justice on the basis of equality. While the Constitutional Court ruling invalidated a number of discriminatory aspects of the Succession Act, the Act still contains many provisions that either distinguish between sexes or refer to only one sex.

Some of these references can be easily remedied; for example, section 9, which addresses the acquisition of a new domicile, should be amended to refer not to men but to persons (see also gendered language in sections 20, 23, 29, 36, and 276).

Align the age of minors throughout the Act to match the Constitution. Whereas the Constitution defines a minor as a person below the age of 18, the Succession Act in its current form states that only persons who have attained the age of 21 can make wills which is contrary to the spirit of the Constitution.

3.1.3 Challenges posed by Definitions.

The definition section of the Succession Act requires a number of amendments, to bring its terms in line with the Constitution, provide greater clarity on the implementation of succession law, and to reflect modern concepts and terminology around the mentally disabled and other vulnerable persons. These include;

a) Dependent Relative.

Given the current social trends, families are no longer as extended as they used to be previously and are now more nuclear in nature. It is on this basis results of the consultations propose that the definition of dependent relative for purposes of intestacy needs to narrowed down. Basing on the legal principles of equity, one should not be enabled to reap where they did not sow.

"If we are working for the benefit of our children , should dependent relatives still stand to benefit from one's estate or should it be restricted to just children."

b) Legal Heir.

Section 2(n) defines "legal heir" to mean the living relative nearest in degree to an interstate under the provisions set out in Part III to this Act together with and as varied by the following provisions –

(i) between kindred of the same degree a lineal descendant shall be preferred to a lineal ancestor and a lineal ancestor shall be preferred to a collateral relative and a paternal ancestor shall be preferred to maternal ancestor;

(ii) where there is equality under subparagraph (i) of this paragraph a male shall be preferred to a female.

In the above definition, a male heir is preferred to a female one. That reference on the basis of sex is discriminatory. This provision should be made gender sensitive.

c) Customary heir:

Remove the definition of "customary heir," as under the

amended section 27, a customary heir is no longer entitled to a portion of the estate by virtue of this position (and there are no constitutionally valid provisions that relate to this role). Form A ("Form of notice to be given to customary heir") should also be removed. In the alternative if the provision is maintained, it is also proposed that any amendment to the Succession Act should state in very clear terms what the role of the customary heir is. In light of the many wrongs customary heirs have committed against widows, it should state very clearly that their powers are limited to a customary role. An exhaustive list should be developed showing all the powers that this role is confined to.

d) Husband and wife.

Amend the definitions of husband and wife, which currently do not reflect testate deaths (only intestate). These definitions can simply refer to male and female spouses.

e) Illegitimate child

Remove the definition of "illegitimate child," and the distinction between an "illegitimate child" and "persons of legitimate birth" in sections 6 and 7. Not only is the definition confusing[4], but distinguishing between these categories for purposes of determining domicile (which follows the father for legitimate children and the mother for illegitimate children) is outdated and not promoting equality.

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4 No definition is given for "person of legitimate birth," while the Succession Act provides that "'illegitimate child' means an illegitimate child recognized or accepted by the deceased as a child of his or her own."

3.1.4 Widow's Priority to Administer an Estate.

The principle in the Kenyan Case of **Re Kibiego [1972] EA 172** where Court held that A widow of whatever race is the proper person to obtain letters of administration to her husband's estate particularly where the children are underage should be codified and included in any amendment.

In order to protect the interests of the deceased's children who are not biologically related to the surviving spouse, the law should make provision for co-administration of the Estate together with at least one of such children.

This priority should be extended to protect both male and female spouses(widows and widowers).

3.1.5 Domicile.

The Succession Act provides for domicile for purposes of determining the law applicable in Succession matters. In determining the domicile of origin, the Ugandan Succession Act distinguishes between persons of legitimate birth and illegitimate birth whereby, the former acquire the domicile of their mothers while the latter acquire the domicile of their fathers[5]. which was earlier on in the paper noted to be discriminatory.

Section 7 of the Succession Act provides;

"The domicile of origin of an illegitimate child is in the country in which, at the time of his or her birth, his or her mother was domiciled."This is discriminatory.

5 Page 30 of the Uganda Law Reform Commission Study report on the review of laws on Succession in Uganda, 2014.

The case of **Kajubi v. Kabali (1944) EACA 14** hinted on non-discrimination of children born out of wedlock as far as succession rights were concerned. One judge said there is no bastardy law in Africa. The deceased had 7 children with his wife whom he married under the Marriage Ordinance. He had 43 children with other mothers. The children of the wife married under the Marriage Ordinance wanted a bigger share of their father's estate. But the clan leader distributed the property to all the children of the deceased and he used his discretion to determine the scheme of distribution. This was challenged by the children of the official wife, hence giving rise to the case. The court of appeal upheld the decision of the clan leader.

All children are equal and have rights of succession to a parent's property.

It is time therefore to amend the Succession Act to bring it in tandem with current terminology and thinking.

Sections 14 and 15 of the Succession Act refer to domicile of a married woman depending on that of her husband. Section 14 of the Succession Act, which provides that a woman acquires the domicile of her husband upon marriage, was among the provisions nullified by the Constitutional Court.

There is no provision on a husband taking on the domicile of his wife.

There are three types of domicile, that is, domicile of origin, domicile of choice and dependent domicile acquired by minors

and married women. Domicile is defined in Black's Law Dictionary (8th Edition) at page 523 as "the place at which a person has been physically present and that the person regards as home; a person's true fixed principal and permanent home to which that person intends to return and remain even though currently residing elsewhere." A person can have only one domicile at any given time. Every person has a domicile of origin acquired at birth from his or her parents but may subsequently acquire a domicile of choice other than in a country of birth. Domicile of choice is a place where a person has decided to call home and it is proved by showing that the person has abandoned his or her domicile of origin and has intention – animus manendi - of residing in another country different from where he or she was born. Residence is a physical act and refers to presence in a locality. Where this personal presence is accompanied by the required state of mind, neither its character nor its duration is in any way material. (See THORNHILL vs. THORNHILL [1965] E.A.268 at page 274) In **Kiyingi vs Kiyingi, Matrimonial Cause of 2004** the High Court ruled that Dr. Kiyingi had convinced court that he had not abandoned his domicile of origin, Uganda. That he had not acquired a domicile of choice in Australia where he was working. So the Ugandan courts had jurisdiction to hear the case).

Under the common law, a woman at marriage automatically acquired the domicile of her husband, that is, dependent domicile. However, under the Domicile and Matrimonial Proceedings Act of 1973, the obnoxious common law concept of a wife's dependent domicile was abolished. Henceforth, a married woman is free to acquire an independent domicile just

like any other person.

In **Hough v Hough, H.C. Divorce Cause No. 1 of 2006** in Fort Portal, the petitioner and the respondent entered into a marriage on 12/12/1997 in UK. From that time up to the time they moved out of the UK, they were domiciled in the UK. However, on 11/1/2003, they both shifted to Uganda and expressed their respective intentions to live in Uganda permanently. The High Court held that the common law concept of dependent domicile is untenable in the face of the provisions of equality and non discrimination between the sexes which are enshrined in the Constitution. The court referred to Article 21(2) and 33(1) of the Constitution of Uganda and further held that a married woman is free to opt for and acquire a domicile of her choice independent of that of her husband. Justice Rugadya Atwoki said "to hold otherwise would .... be discrimination against women which is unconstitutional." The court held that the wife who had petitioned for divorce had acquired a domicile of choice in Uganda. She was an English woman who had moved to stay and work in Uganda. Her husband was also British. The court granted divorce to the parties.

The issue whether a married woman who is an adult of sound mind should have her domicile dependent on that of her husband as stated in the Succession Act. Sections 14 and 15 are therefore discriminatory and outdated.

Where the spouses were both born in the same country there may be no controversy. But a married woman should be treated with equality as espoused in the Constitution of the Republic of

Uganda and the international instruments mentioned earlier in this paper.

Note that domicile is referred to in the Succession Act because of section 4 of the Act which states thus

(1) Succession to the immovable property in Uganda of a person deceased is regulated by the law of Uganda, wherever that person may have had his or her domicile at the time of his or her death.

(2) Succession to the moveable property of a person deceased is regulated by the law of the country in which that person had his or her domicile at the time of his or her death."

Sections 14 and 15 of the Succession Act should be repealed.

3.1.6 Inheritance rights of persons of unsound mind/ Mental illness.

The Succession Act should be amended to update the treatment of those who lack mental capacity to make succession-related decisions. While the term "lunatic" is not defined, section 17 states that "lunatics" cannot acquire a new domicile independently. Later provisions refer to "insane persons" and "persons of unsound mind" in different contexts. The Succession Act should introduce modern terminology and definitions of those who lack mental capacity, and should make clear that such lack of capacity should be either medically diagnosed or determined by a court. Persons of unsound mind are also entitled to a share in the estate of their parents. They have rights to make wills during lucid moments. The amendment should specifically bring out this aspect.

3.1.7 Distribution of an Intestate Estate.

Section 27 of the Succession Act governs the distribution of property of interstate deceased persons. Where a male dies intestate, his property is distributed according to the percentages provided.

The section has no provision for a female intestate. It is recommended that the section should apply to properties of both females and males. Currently, under Section 27 of the Succession Act Cap 162 a spouse is entitled to 15% of the deceased spouse's estate whether it is a monogamous or polygamous relationship. The challenge this section presents is that men and women under the Article 31 of the Constitution are equal at the start, during and dissolution of marriage. Death dissolves a marriage. Doesn't this imply that at dissolution by death, they are entitled to 50% of the estate? If the spouses have participated in the accumulation of wealth together why should the surviving spouse(s) take only 15% of the estate in contravention with the Constitutional Provisions on gender equality. Through consultations it was recommended that a surviving spouse's percentage be increased to 50% and the percentage of distribution to widows should be specified in case of a polygamous marriage.

3.1.8 Testamentary Guardian

Section 43 of the Succession Act governs the appointment of a testamentary guardian. And is to the effect that it is only a father who by will can appoint a guardian or guardians for his child minority age. There is no provision for a mother to appoint a guardian for her child who is still a minor.

Equally, Section 44 of the Succession Act which governs the hierarchy of people who can be appointed statutory guardians leaves out female relatives.

3.1.9 Rights of Occupancy by Children

Section 26 & Second Schedule to the Succession Act discriminates between male and female children as far as their rights of occupancy and the residential holding is concerned.

The **Second Schedule** provides under rule (1) and (2) that "……. any children, under eighteen years of age if male, or under twenty-one years of age and unmarried if female, who were normally resident in the residential holding shall be entitled to occupy it or who were normally resident with the intestate prior to his or her death, shall be entitled to occupy it."

Article 257 of the Constitution of the Republic of Uganda, 1995 defines a "child" as a person under the age of eighteen years.

Consequently, different references to children whether male or female under the Succession Act is discriminatory. For a female child she must be under 21 years of age and unmarried. This is also discriminatory. The law must treat females and males equally as pronounced under the articles of the Constitution referred to above.

In addition, it was proposed basing on current economic and social trends that the right of occupancy for children is not just terminable upon acquiring of the age of majority but other factors such as the level of education especially school going

children, cases of children with terminal illness and disability should all be considered as parameters to determine a child's right of occupancy beyond just the age as is currently the case in the Act.

3.2.0 Step-children's entitlement to the estate of a deceased step parent.

A step child is widely defined by most dictionaries as a child of your spouse by a former marriage. English Law on inheritance states that, for inheritance purposes, the definition of "children" is different from "step-children". For example, if you had two biological children and one step-child and your Will states that your Estate goes to "your children", then the law interprets your Will as meaning that you only want to benefit your two biological children and exclude your step-child. Their rules on Intestacy also set out an order of priority for relatives to inherit your Estate in the absence of a Will. This list of relatives does not include step-children. Therefore, if you have step-children that you would like to benefit from your Estate after your death, then you must put in place a legally valid Will specifically naming the step-child or step-children you wish to include.

The Ugandan Succession Act is silent on the question of step children and as it is now, they are free to benefit from the estate of the step parent either as children or as dependents. Which scenario has caused a lot of confusion in the courts of law.

Through consultations it was suggested that the law could either consider widening the definition of dependents to include step children or the right of step children to benefit under the rules

of intestacy completely removed unless provided for in a valid will. The position of step children needs to be clarified through further discussions in order that it is clearly spelt out in any proposed amendment.

3.2.1 Property outside the Jurisdiction

Section 331 of the Succession Act is about procedure where deceased has left property in Tanzania and Kenya. The section provides:

(1) Any person applying to the High Court for a grant of probate or letters of administration shall, if at the time or at any time after he or she has reason to believe that the deceased has left property in Tanzania or Kenya, notify the court to that effect.

(2) The court may at the time of granting probate or letters of administration, or at any time after that, on being notified of the existence of property belonging to the deceased in either Tanzania or Kenya, order that no claims other than claims entitled to priority be paid until the expiration of a period not exceeding eighteen months from the making of the order.

(3) A statement duly certified by the Supreme Court of Kenya or a High Court in Tanzania and filed in the High Court of Uganda …….

It is rather obsolete to refer to Kenya or Tanzania only. What could have been the rationale for choosing these two countries only? If it were that they were the other East African countries, then it is out of date as Rwanda and Burundi are now part of East African Community.

It is proposed that where there is a reference to **"Tanzania or Kenya"** the words **"in a foreign country"** should be substituted.

3.2.2 Matrimonial Property

Article 26(1) of the Constitution provides that every person has a right to own property either individually or in association with others. However, the issue of what constitutes matrimonial property has been a subject of many court cases. It is sometimes a contentious issue in divorce cases. Then upon the death of one of the spouses, contentions arise as to ownership and rights of occupancy of the matrimonial home.

Some cases of divorce can be reviewed to give a clear perspective and similar principles adopted in the law of succession.

In **MUWANGA vs. KINTU High Court Divorce Appeal No. 135 of 1997**, Bbosa.J pointed out the challenges that the courts will continue to face when determining what constitutes matrimonial property in Uganda. She observed as follows:

> *"Matrimonial property is understood differently by different people. There is always property which the couple chose to call home. There may be property which may be acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should, in my view be considered differently. The property to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to."*

In **CHAPMAN vs. CHAPMAN (1969) 3 ALL E.R. 476** shortly after their marriage, the couple bought a matrimonial home. A deposit of 800 pounds was paid. The husband contributed 680 pounds and the wife 120 pounds. The balance was raised by mortgage with a building society. It was agreed between the parties that that the wife shall pay all housekeeping expenses out of her earnings whilst the husband paid the running expenses of the home including the rates and mortgage installments. This arrangement was honored for two years, the duration of the marriage. Then the spouses separated and the house was sold at a profit leaving them with a balance of 916 pounds. On the question how, this amount should be divided, the Court of Appeal held that since the husband and wife put all their financial resources into the purchase of the house without reserving any separate interests, as a joint enterprise, they acquired joint interests in it. Accordingly, they were equally entitled to share the windfall which had arisen on the sale of the house.

The issue of how a court should determine a contributing spouses' share in joint property has come up in several cases before the High Court and Court of Appeal in Uganda. In **KAGGA Vs. KAGGA High Court Divorce Cause No. 11 of 2005** Mwangusya J. said:

> *"Our courts have established a principle which recognizes each spouse's contribution to acquisition of property and this contribution may be direct, where the contribution is monetary or indirect where a spouse offers domestic services. ……. When distributing the property of a divorced couple, it is immaterial that one of the spouses was not as financially endowed as the*

other as this case clearly showed that whilst the first respondent was the financial muscle behind all the wealth they acquired, the contribution of the petitioner is no less important than that made by the respondent."

The court proceeded to order for the registration of 50% interest in the parties' matrimonial house and for the transfer of several other houses in favour of the wife, despite the judge's finding that the wife had only rendered domestic services, as opposed to the respondent husband who was the financial muscle behind all the wealth.

However, the contributing spouse's share is not restricted to a maximum of 50% share either in the matrimonial home or in other jointly owned property. For example in MAYAMBALA vs MAYAMBALA High Court Divorce Cause No 3 of 1998, the wife's interest in the matrimonial home was established at 70% and the husband 30%. Similarly, in KAGGA vs KAGGA (supra), the court awarded the wife several other houses and properties in addition to the 50% share she received in the parties' matrimonial home.

In the Ugandan case of **JULIUS RWABINUMI vs HOPE BAHIMBISOMWE Civil Appeal No. 10 of 2009**, the court distinguished between individually owned property of the appellant where the respondent had no claim for contribution from those that the court found to either be joint property or those where the respondent had made a contribution for which she was either to be refunded or to be paid a share as was determined by the court. Justice Kisakye emphasized thus:

"In my view, the Constitution of Uganda(1995), while recognizing the right to equality of men and women in marriage and at its dissolution also reserved the constitutional right of individuals, be they married or not, to own property either individually or in association with others under Article 26(1) of the Constitution of Uganda, 1995. This means that even in the context of marriage, the right to own property individually is preserved by our Constitution as is the right of an individual to own property in association with others, who may include spouse, children, siblings or even business partners. If indeed the framers of our Constitution had wanted to take away the right of married persons to own separate property in their individual names, they would have explicitly stated so."

Through consultations, these positions were agreed to as progressive and members were of the opinion that these principles espoused in these precedents should be codified into law through the proposed amendment of the Act Succession Act. It was also proposed that occupancy rights be limited to the surviving spouse and children including the young adult children who are still in secondary schools or tertiary institutions. it was proposed basing on current economic and social trends that the right of occupancy for children is not just terminable upon acquiring of the age of majority but other factors such as the level of education especially school going children, cases of children with terminal illness and disability should all be adopted as parameters to determine a child's right of occupancy

beyond just the age as is currently the case in the Act.
Members also proposed that the amendment caters for couples that had more than one residential holding both in an urban area and the rural area normally the village(country home) as this is becoming a common trend especially in Uganda.

Members also suggested that the doctrine of survivorship and joint ownership should be re-emphasized in the law on matrimonial property.

3.2.3 Making a will by a married man.

Section 36(2) provides that;

"A married woman may, by will dispose of any property which she could alienate by her own act during her life'. It was noted during the consultative meeting that this provision excludes men and would be unconstitutional since it is gender insensitive. Therefore it should be amended to read thus:

A married person may, by will, dispose of any property which he or she could alienate by his or her own act during his or her life".

This proposed amendment is in line with article 26 of the Constitution on right to own property singly or in association with others. If a person can own property then that person should also have a right to dispose of the property in a valid will.

3.2.4 Rights of Cohabiting persons.

This topic is still very controversial given society's moral and religious fabric and also the challenges of defining who exactly would quality as cohabitee protected under the law and

whether all categories warrant equal protection. For example, during consultations the following questions emerged. Should cohabitees be just single women and men living together or should the definition be broader? How far are we going to include cohabitees in terms of a share in the estate?

Some of those consulted opined that if this matter is included in the Succession (Amendment) Bill, it will be opposed by those who think recognizing rights of a formerly cohabiting persons dilutes the chastity of the institution of marriage and would subsequently fail any efforts at an amendment. It was proposed that given the intricate details that cohabitation relationships may carry, a separate law catering specifically to the interests of people in these relationships is drafted.

Although, the children born outside marriage can benefit from their parents' estate since the law makes no distinction between children. The cohabiter's right to succession is still debatable. It is recommended that they should be considered if they can prove that they contributed either directly or indirectly to the wealth of the deceased and are on equitable grounds entitled to a share and the principle in the recently decided case of **Haji Musa Kigongo v Olive Kigongo Civil Suit No 295 of 2015** applied.

The plaintiff and the defendant had been living together in the suit property for nearly 26 years and had two children together and it was their residential home until 2015 when the plaintiff withdrew from their home citing irreconcilable differences. The defendant was still in occupation of the suit property which she referred to her matrimonial home since she claimed there was a

customary marriage celebrated between the two in 1992 at her parents' home in Mbarara which the plaintiff denied and stated that the two had only been cohabiting. The suit property which was the centre of controversy is registered in the names of the plaintiff as the proprietor.

The defendant lodged a counterclaim in which she alleged that for the last 26 years she had relied on the plaintiff's representation and assurance that the suit property was jointly owned, had overseen its construction and that she was entitled to the suit property by ***operation of the doctrine of proprietary estoppels and partnership.*** In her written statement of defence she stated that the defendant had requested her to oversee and monitor the construction of the said property and in due course she contributed financial resources and committed much of her time to the said construction.

> *" The court held that the defendant had not produced any tangible evidence leaving the court in doubt as to whether there was in fact a customary marriage and as such there was no legal marriage between the two and therefore the suit property cannot be matrimonial property.*
>
> *However, on the issue of whether the defendant had any interest in the suit property, the court relied on the doctrine of proprietary estoppel which is an equitable doctrine arising when the representation consists of a promise of an interest in land. Three factors are required to establish such proprietary estoppels; an*

assurance, a reliance and a change of position or detriment in which estoppel in equity will only arise if these three elements are proved.

The court held that the defendant had come to the court in equity and Section 14 of the Judicature Act that allows the court to apply principles of equity where no express law or rule is applicable to any matter in issue before the High Court in conformity with the principles of justice, equity and good conscience. Until the relationship took another turn, there is no evidence that the plaintiff ever objected to the fact that the defendant was his wife. The two parties behaved and intended to live like a married couple. They shared the suit property as their 'matrimonial home.' The plaintiff has not produced any evidence to establish that the defendant had not acted to her detriment or her prejudice by taking the suit property as her home. The defendant was assured that she had a home for life and it did not matter whether she made any financial contributions to its construction; for as long as she lived on the assurance by the plaintiff that she was a wife and that she had security of tenure."

It was suggested that the principles of equity in this case be used to protect the interests of cohabitees in residential holdings upon dissolution of the relationship either by separation, death, or other legally recognized modes.

3.2.5. Separation

Section 30 of the Succession Act provides that in order to benefit from the estate a spouse should not have been separated from the spouse as a member of the same household at the time of death with their spouse. Case law has put this period at six months and it is now judicially noticed. Sub section 3 provides that to avoid losing this right to inherit, the surviving spouse must apply within six months after the death to obtain a waiver of this rule by the court hearing the application for letters of administration.

The provision is lacking because the consideration for waiver of this provision does not take into account or consider the spouse at whose instance the termination occurred. This leaves it open to any form of separation including abandonment, furthermore, it does not take into account any contributions made by the other spouse to the wealth of the deceased as a ground for waiver of this provision (whether financial or non-monetary) or spouses that return to their ailing spouses' sick beds right before death.

The 2014 report by the Uganda Law reform Commission recommended that the amendment should borrow from the UK Law where a distinction is made between judicial separation and other forms of separation for clarity.

Furthermore, consultations of legal practioners proposed that an amendment to clarify as to all possible scenarios of separation to ensure that justice and fairness is served.

3.2.6 Sanction for failure to return revoked probate or letters

Section 335 of the Succession Act provides:

(1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.

(2) If that person willfully and without reasonable cause omits so to deliver the probate or letters, he or she shall be punished with a fine which may extend to two thousand shillings or with imprisonment for a period not exceeding three months or with both.

Firstly, the word "forthwith" is not specific. Time limits should be set within which the grant or letters must be delivered. A period of 7 days from the date of the court order is recommended.

Subsection (2) provides for **a fine which may extend to two thousand shillings** (2000/=). This is too little and unrealistic given the inflation in Uganda over the years. A fine of 50 currency points is proposed for contravening the section.

Thirdly, the wording of the subsection is not strong enough for a penal provision. Subsection (2) should be redrafted thus"
"A person who contravenes this provision commits an offence and is liable, on conviction, to a fine of 50 currency points or imprisonment for 12 months or both."

Section 328 of the Succession Act states that refunding of one legatee to another shall be without interest. Where one party has benefited from the estate it is reasonable to charge interest.

3.2.7 Sanction for intermeddling in an Estate

Section 11 of the Administrator General's Act, Cap 157 provides for intermeddling with property of the deceased. It provides thus:

(1) When a person dies, whether within or without Uganda, leaving property within Uganda, any person who, without being dully authorized by law or without the authority of the Administrator General or an agent, takes possession of, causes to be moved or otherwise intermeddles with any such property, except in so far as may be urgently necessary for the preservation of property, or unlawfully refuses or neglects to deliver any such property to the Administrator General or his or her agent when called upon so to do, commits an offence; and any person taking any action in regard to any such property and of the steps taken to the agent, and if that person fails so to report he or she commits an offence.

(2) Any person who commits an offence under this section is liable on conviction to imprisonment for a period not exceeding three months or to a fine not exceeding two hundred shillings or to both, but without prejudice to any civil liability which he or she may have incurred.

Section 268 of the Succession Act, Cap.162 bears the description of a person who intermeddles and states as follows: "A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of the executor, while there is no rightful executor or administrator in existence, thereby makes himself or herself executor of his or her own wrong."

The Succession Act is quiet about any penalty for intermeddling. It is proposed that this Act should also bear the penal provision

for intermeddling and not leave it in the Administrator Generals Act. Cross referencing between legislations is cumbersome for the persons who need to refer to the law.

In **Namirimu vs. Mulondo & 2 Ors. (High Civil Suit No. 27 of 2011) {2015} UGHCFD 48**, the Plaintiff happened to be a partner of the late Samuel Kayondo Ndaula, the son and heir of the Late Zerubaberi K. Kyamagwa. The plaintiff took advantage of the laxity of the late Samuel Kayondo and the vacuum of the leadership created to gain access to the estate of the late Zerubaberi K. Kyamagwa and sold off property belonging to the late Zerubaberi K. Kyamagwa. By lodging this suit the plaintiff sought to take over and extend her influence through possible plunder, confiscation and possible obliteration of whatever little remains of the erstwhile vast estate of the late Zerubaberi Kyamagwa.

It was held:

1) That if Court was to allow the suit it would be rewarding the plaintiff's attempts at primitive accumulation of undeserved wealth leading to unjust enrichment.

2) That Court would be blessing the confiscation of an entire estate including the desecration of burial grounds by a stranger.

3) Court cannot be party to the plaintiff's underhand dealing and as a result dismissed the case with costs.

She had Letters of Administration for the estate of Samuel Kayondo Ndaula, her partner. She wanted also to benefit from the estate of her 'father-in-law'. The High Court would not allow

a stranger to do so.

The penalty for intermeddling in an estate is very small and not punitive at all. Punishment for an offence ought to be punitive to the accused and deterrent to any other person who may be tempted to intermeddle in a deceased person's estate. Stringent punishment would also discourage property grabbing where widows and orphans are chased away from the land and left destitute.

Consequently, some participants at the consultative meeting proposed 12 months imprisonment or 1000 currency points.

From International Justice Mission's interactions and casework interventions in Mukono District, intermeddling is the most rampant offence. The Mission proposed at least one year of imprisonment and 200 currency points for estates under 50 Million shillings; 1 year imprisonment and 400 currency points for estates above 50 million.

The study by International Justice Mission indicated that the second most rampant offence is eviction of widows and orphans. It was proposed that Section 29 of the principal Act should be amended by inserting a new subsection (3) to read as follows-

"(3) A person who evicts or attempts to evict the occupants of the principle residence commits an offence and is on conviction liable to imprisonment of 7 years or 500 currency points or both.

3.2.8 Administration of an estate by clan leaders

Other recommendations proposed are that clan heads should be permitted to administer estates, provided they have been registered with the Administrator General. It was further proposed that guidelines for their operations should be developed for the avoidance of abuse to power and instances of discrimination against women. The basis of this was that in Uganda, organizations like Justice Centre Uganda and Uganda Law Reform Study reports of 2003 and 2014 respectively indicated that most people rely on traditional clan leaders to resolve succession disputes. They only go to court as a last resort when the traditional mechanisms have failed. It was recommended that guidelines in the law for elders be developed by the Administrator General. The only challenge may be abuse of office by the clan heads entrusted with administration. An offence can also be included in the guidelines to cover this vice.

3.2.9 Restrictions on Administration of an estate

There should be limitation on the period of administration whereby the letters of administration expire naturally unless extended by court upon application by the administrator of an estate. Three years of administration should be sufficient. This will minimize abuse of the powers granted. Once an inventory is filed in court indicating how properties have been distributed or managed, the grant should lapse unless the court grants an extension.

It is also proposed that immediately upon death, the office of the Administrator General or any other person should administer the estate in the interim until the administrator is appointed? It is

important because it is usually during this time that estates are plundered and mismanaged.

3.3. CONCLUSION

Pursuant to the review of literature above, the Succession Act needs to be amended to bring it in conformity with the Constitution of the Republic of Uganda, 1995 and international instruments. The issues that need urgent attention are the gender insensitive sections which discriminate between men and women, the protection of rights of children, surviving spouses and persons who cohabited with the deceased before his or her death. The right of occupancy of the matrimonial home also needs to be streamlined as discussed above. There is also need for sensitization of people about succession, inheritance and gender sensitivity. Administration of Estates also requires streamlining.

The above matters shall be captured in the Draft Clauses for the Succession Amendment Bill.

Appendix 1

Form for proposals on Amendment of the Succession Act Cap 162.

Workshop Wrap-up Date: ……

1. Which issue should be of the greatest interest in the amendment of the Succession Act? Explain briefly please.
2. What amendments do you propose for the Succession Act?
3. Why do you propose that amendment?
4. Please draft the amendment proposed in 3 above.
5. What other recommendations do you give?

Thank you for giving your feedback.

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