



**IN THE THIRD SESSION OF THE EIGHTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**

**REPORT OF THE
COMMITTEE ON CONSTITUTIONAL, LEGAL
AND PARLIAMNETARY AFFAIRS**

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INTESTATE SUCCESSION BILL, 2022

JUNE, 2023

**REPORT OF THE SELECT COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS ON THE INTESTATE
SUCCESSION BILL, 2022**

1.0 INTRODUCTION

1.1 The Intestate Succession Bill, 2022 was laid in Parliament on 24th June, 2022 by Hon Minister for Justice and Attorney-General, Mr Godfred Yeboah Dame, pursuant to Article 106 (1) of the 1992 Constitution.

1.2 The Bill was subsequently referred by the Rt. Hon. Speaker to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report, pursuant to Article 106 (4) of the 1992 Constitution and Order 179 of the Standing Orders of Parliament.

2.0 DELIBERATIONS

2.1 The Committee met on 29th May, 2023 and considered the Intestate Succession Bill, 2022. In attendance at the meeting to assist the Committee in its deliberations were Justice Dennis Dominic Adjei (Justice of the Court of Appeal), Hon Diana Asonaba Dapaah (Deputy Attorney-General and Minister of Justice) and the Technical Team from the Office of the Attorney-General's Department, Mr Nene Ahoma Korda (Ghana Bar Association), ACP Benjamin Osei Addae (Ghana Police Service), Ms Mercy Larbi (Deputy Commissioner, Commission on Human

Rights and Administrative Justice), Cyril Fayose (Christian Council) and Togbe Tepre Hodoir (National House of Chief).

2.2 The Committee also acknowledges the support of the representatives from Parliamentary Network Africa (PNAfrica) and Women in Law and Development in Africa (WiLDAF).

2.3 The Committee is grateful to all the participants for their invaluable contribution as well as the successful collaboration with the PNAfrica and WiLDAF.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of Parliament;
- iii. Intestate Succession Act, 1985 (PNDC Law 111);
- iv. Marriages Act, 1884-1985 Cap. 127; and
- v. Marriage of Mohammedans Ordinance Cap. 129.

4.0 BACKGROUND AND JUSTIFICATION FOR THE BILL

4.1 Customary law provided very little protection for surviving spouses as it often results in acrimony between the nuclear family and the traditional family unit as to the appropriate line

for devolution of property of a deceased persons who died intestate.

- 4.2 The Intestate Succession Act, 1985, (PNDC Law 111) was introduced to curb the injustices, which traditional customary practices and diverse systems of inheritance meted out to spouses, particularly women, upon the death of a person intestate.
- 4.3 Thirty-Six years after the enactment of the PNDC Law 111, it has been observed that the rules of succession under the law have proven discriminatory and passed its time.
- 4.4 Some of the provisions of the law including the fractional distribution of property of the deceased have proven difficult to implement. Also, the law has no provisions for polygamous marriages in cases where a number of spouses are survived by the deceased. The existing law is also deficient in the devolution of assets jointly acquired by both spouses, as well as where there are dependant parents, and school-going children of the deceased.
- 4.5 The Intestate Succession Bill, 2022 was therefore introduced to enhance the protection afforded surviving spouses beyond what customary law and the PNDC Law 111 provides.

4.6 The Bill therefore seeks to cure anomalies in the existing law and provide a uniform intestate succession law applicable to all types of inheritance in Ghana.

5.0 OBJECT OF THE BILL

The object of the Bill is to remove the anomalies in the present law relating to intestate succession and to provide a uniform intestate succession law that will be applied throughout the country irrespective of the inheritance system of the intestate and the type of marriage contracted.

6.0 HIGHLIGHTS OF THE BILL

4.7 Clause 1 makes provision for the devolution of the estate of a person who dies without making a will to be determined by the law and the rules of private international law.

4.8 Clause 2 deals with intestacy and partial intestacy. The clause provides an explanation to intestacy and partially intestate.

4.9 Clause 3 stipulates that the spouse and children are entitled absolutely to the household property of the intestate.

4.10 Clause 4 makes provision for instances where the estate includes one or more houses and the avenue for redress where

there is disagreement between surviving spouse and the children.

4.11 Clause 5 deals with the apportionment of the estate of an intestate who is survived by a spouse and a child.

4.12 Clause 6 provides for the devolution of the estate of an intestate who is survived by more than one spouse.

4.13 Clause provides for appropriation of property to surviving "estranged spouse" and provide definition for "estranged spouse".

4.14 Clause 8 provides the option to interested surviving spouse who wants to buy out the estate where it is only one house.

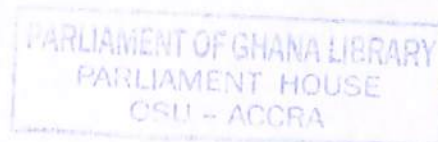
4.15 Clause 9 provides the surviving spouse with an option to buy out the share of the other beneficiaries.

4.16 Clause 10 deals with joint ownership of property other than the matrimonial home.

4.17 Clause 11 provides for the sale or redemption of a mortgaged estate.

4.18 Clause 12 provides for the children of the intestate who are in school or learning a trade and other dependants of the deceased.

- 4.19 Clause 13 provides for an intestate survived by a spouse only.
- 4.20 Clause 14 provides for intestate survived by only a child and not a spouse.
- 4.21 Clause 15 stipulates the percentage that the surviving parent is entitled to, where there is neither a spouse nor a child.
- 4.22 Clause 16 provides for situations where a foreigner makes Ghana his or her home.
- 4.23 Clause 17 deals with rules for the determination of the family which is considered for the purpose of succession to the property of an intestate.
- 4.24 The Bill in clause 18 takes cognizance of situations where the intestate is not survived by a spouse, child or parent.
- 4.25 Clause 19 provides for small estates. This is to limit fragmentation and ensure that the beneficiaries under an intestacy receive something substantial.
- 4.26 Clause 20 enables the Minister responsible for Justice to alter the value of small estates under clause 19.
- 4.27 Clause 21 provides for the sharing of a portion of the estate by two or more persons.



- 4.28 Clause 22 provides for the situation where spouses die more or less at the same time.
- 4.29 Clause 23 provides for the maintenance of a grandchild of the intestate who is a dependant of the intestate.
- 4.30 Clause 24 prohibits the ejection of a spouse from the matrimonial home.
- 4.31 Under clause 25 the unlawful deprivation of a spouse or a person entitled to the use of a property of an intestate by another person is prohibited.
- 4.32 Clause 26 stipulates other offences, Clause 27 provides for Regulations and Clause 28 is the interpretation clause.
- 4.33 Clause 29 is the repeal and savings clause. The clause repeals the Intestate Succession Act, 1985 (P.N.D.C. L. 111) and saves notices, orders, directions, appointments or any act lawfully made or done under the repealed enactment.

7.0 OBSERVATIONS

7.1 Devolution of Estate of a Muslim Intestate

The Committee received memoranda and presentations from the Muslim Community expressing concerns about the failure

of the Bill to acknowledge the Islamic system of inheritance as contained in the Holy Qur'an, and also recognised under the Marriages Act, 1884-1985 (CAP 127). They averred that Muslims like practitioners of other religions are protected under the Constitution, specifically, Articles 21(1) (c) and 26 (1) of the 1992 Constitution, which guarantees the right to practise any religion of choice and to manifest such practice.

They further submit that it was in recognition of these inalienable rights under the Constitution that the Marriages Act, 1884-1985 (CAP 127) provides that, "On the death of a Mohammedan whose marriage has been duly registered under this Part, succession to the property of that Mohammedan shall be regulated by Mohammedan law" (Section 8 of CAP 127).

In their view, the Bill in its current form has failed to acknowledge the inalienable right of Ghanaian Muslims to practice, manifest, profess, enjoy, maintain and promote the Islamic system of inheritance provided under CAP 127.

The Committee however expressed contrary opinion. In the view of the Committee, the Bill is only also seeking to repeal the Intestate Succession Act, 1985 (PNDC Law 111). The laws relating to marriages in Ghana such as Marriages Act, 1884-1985 (Cap. 127) and Marriage of Mohammedans Ordinance (Cap. 129) are still in force. Consequently, Section 28 of

Marriages Act, 1884-1985 (Cap. 127) is still relevant to the devolution of the estate of deceased Muslims who registered their marriages under CAP. 127.

The Committee further contend that any attempt to make exceptional provision for Islamic religion under the proposed legislation will be contrary to the provisions of Articles (17) (2) and 35 (5) of the 1992 Constitution on equality and non-discrimination.

7.3 7.2 Education on registration of Islamic Marriages

Under CAP 127, Mohammedans law of inheritance is applicable only to Muslim spouses who have registered their marriage under the said law. It was further noted that Islamic System of Inheritance is so cardinal to the tenets of Islamic religion, yet overwhelming majority of Muslims are unaware that they have to register their marriages in order to benefit from the application of Mohammedans law of inheritance.

The Committee accordingly urges the Muslim community to intensify education on the need to register their marriages in order to enjoy the application of the law on Islamic inheritance to the estate of a deceased Muslim. Muslim marriage celebrants are also encouraged to acquire requisite licenses as specified under Section 24 of CAP 127 to qualify them to officiate Islamic marriages.

7.4 Distinction between 'Spouse' and 'Estranged Spouse'

The Committee also observed an attempt by the Bill to distinguish between 'spouse' and 'estranged spouse' survived by a deceased intestate. The former being the spouse who was in normal relationship with the deceased intestate and the latter is the spouse who had not lived in the same house with the deceased intestate for five years and above and was also not in normal relationship with the deceased intestate.

The Committee was of the view that, the recognition of 'estranged spouse' under the proposed legislation will give cause to avoidable litigations because the definition of 'estranged spouse' is not only ambiguous but difficult to ascertain. Moreover, the current laws relating to marriages in Ghana do not recognise 'estranged spouse'. Accordingly, the Committee proposed for deletion of that provision as provided in clause 7 of the Bill.



7.5 Prohibition of ejection of a spouse from the matrimonial home

The Committee observed that adequate provision has been made for the protection of a surviving spouse and the children from being ejected out of their matrimonial home before the distribution of the estate of the deceased. Under the Bill, it is

unlawful to deprive the surviving spouse, or the children of their place of abode which was being shared with the deceased. The proposed penalty for unlawful ejection under the Bill is a fine of not less than seven hundred penalty units and not more than one thousand penalty units or a term of imprisonment of not less than two years and not more than four years or to both the fine and imprisonment is adjudged by the Committee to be satisfactorily deterrent.

8.0 CONCLUSION

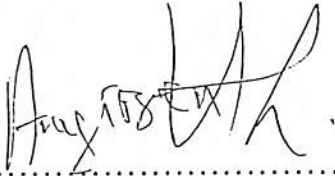
The Committee has thoroughly considered the memorandum accompanying the Bill indicating the weaknesses in the current intestate succession law (P.ND.C L. 111), as well as the mischiefs the Bill seeks to cure. The views of the general public were also sought, as part of the consideration process of the Bill by the Committee. After extensive deliberations and stakeholders engagement, the Committee concludes that a need for a revised law on intestate succession in Ghana is long overdue.

Accordingly, the Committee recommends to the House to adopt its report and pass the Intestate Succession Bill, 2022 into law,

in accordance with Article 106 of the 1992 Constitution subject to the amendment proposed attached as Appendix A.

The Committee further recommends for extensive public education after the passage of the Bill into law to ensure smooth implementation and enforcement.

Respectfully submitted.



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Hon. Kwame Anyimadu-Antwi
(Chairman, Committee on Constitutional,
Legal, and Parliamentary Affairs)



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Mrs. Akua Durowaa Owusu-Agyekum
(Head, Legal Committees Cluster)

June, 2023

PROPOSED AMENDMENTS TO THE INTESTATE SUCCESSION BILL, 2022

i. Clause 4 – Amendment proposed – *delete* sub-clause (1) and *insert* the following:

“(1) Subject to sections 8 and 9, where the estate includes only one house, the interest in the house shall devolve in the following manner:

(a) Where the intestate is survived by a spouse and a child,

(i) fifty percent to the surviving spouse; and

(ii) fifty percent to the surviving child;

(b) where the intestate is survived by a spouse and parent but no child,

(i) sixty percent to the surviving spouse; and

(ii) forty percent to the surviving parent;

(c) where the intestate is survived by a child and parent by no spouse,

(i) sixty percent to the surviving child; and

(ii) forty percent to the surviving parent.”

Clause 4 – Amendment proposed – Sub-clause (2) line 3, after “part” *insert* “of the house”

Clause 4 – Amendment proposed – *Insert* a new sub-clause after sub-clause (3) as follows:

“(…) Where the estate includes more than two houses and there is more than one surviving spouse, each surviving spouse is entitled to one house and the surviving children are entitled to another.

- ix. Clause 12 – Amendment proposed – Sub-clause (1) (a) (ii), line 2 of subparagraph *delete* “and” and *insert* “or”.
- x. Clause 12 – Amendment proposed - after sub-clause (1), *insert* a new sub-clause as follows:
- “(2) Where the estate of the deceased cannot cater for the educational training of all the children of the deceased, the following shall apply:
- (a) a child who is eighteen years or below will have priority to be catered for from the estate over a child who is above the age of eighteen years;
- (b) where all the children are above eighteen years, a younger child among the children shall have priority to be catered for from the estate over an older child; and
- (c) where a younger child has an alternative means by which the educational training of the child can be financed, provision shall be made out of the estate of the deceased for other necessities for the child and the provision for educational training out of the estate of the deceased will fall to the next older child.”.
- xi. Clause 13 – Amendment proposed – Sub-clause (1) (a), *delete* “eighty” and *insert* “seventy”; and paragraph (b), *delete* “fifteen” and *insert* “twenty-five”.
- xii. Clause 13 – Amendment proposed – Sub-clause (2), line 1 after “parent” *insert* “and surviving child”.
- xiii. Clause 14 – Amendment proposed – Sub-clause (2), line 2, *delete* “children” and *insert* “child”.