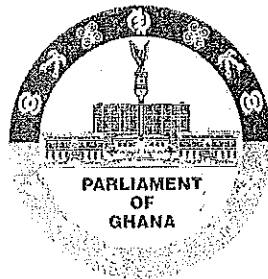


**IN THE SECOND SESSION OF THE SIXTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**



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

**ON THE
INTESTATE SUCCESSION BILL, 2013**

NOVEMBER, 2014

Acc No 1559 G₃

Class No BR/LSB/14-

1.0 INTRODUCTION

1.1 The **Intestate Succession Bill, 2013** was presented to Parliament and read the first time on **Monday, 16th December, 2013**. In accordance with Article 106(4) and (5) of the Constitution and Order 179 of the Standing Orders of the House, Mr. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report.

1.2 The Committee during the consideration of the Bill, was assisted by the Deputy Minister for Justice and Attorney-General, Dr. Dominic Akuritinga Ayine. Also in attendance for the consideration were Honourable Members of the Committee on Gender and Children and Officials from the Ministry of Justice and Attorney-General's Department. Representatives of the under-listed groups who submitted Memoranda, also participated in the discussion of the Bill.

- i. African Women Lawyers Association (AWLA) and LAWA (Ghana) Alumnae Incorporated
- ii. Office of the National Chief Imam-Ghana
- iii. United Muslim-Christian Forum (UMCF)
- iv. Ghana Muslim Mission

2.0 REFERENCE

2.1 The Committee referred to the following documents during its deliberations.

- i. The 1992 Constitution
- ii. The Standing Orders of Parliament

- iii. The Intestate Succession Act, 1985 (PNDC Law 111)
- iv. Memoranda from the Public

3.0 BACKGROUND

- 3.1 Before the passage of the PNDC Law 111, the customary law concept provided very little protection for surviving children and spouses, particularly wives. In some cases, the property of the deceased passed on to the children of the successor but not the surviving spouse and children, on the death intestate of the successor. As a result, there were often tensions between the nuclear family and the traditional or extended family unit as to the appropriate line of devolution of property upon the death intestate of a spouse.
- 3.2 To address the deficiencies in the customary law, the Intestate Succession Act, 1985 (PNDC Law 111) which is currently in operation, was enacted. The PNDC Law 111 was among others, aimed at preventing members of the extended family from taking over the assets of the deceased spouse for their own use, to the detriment of the surviving spouse and children. The PNDC Law 111 was therefore hailed as a source of relief, especially for women and children since they, in most cases, become victims of ejection and other forms of persecution, when the breadwinner of the family, usually the husband, died intestate.

3.3 After operating PNDC Law 111 for some time, certain challenges have come up. The welfare of surviving children is gradually becoming the sole task of a surviving spouse on the death intestate of the other partner as extended families are reluctant at taking such responsibilities. Consequently, the importance of the extended family is gradually shifting to the nuclear family as pertains in other parts of the world. The growing importance of the nuclear family has brought in its wake, issues of moral justice, one being that, a surviving spouse has to be adequately compensated for the services rendered the deceased spouse and the task of taking care of the children.

3.4 Although PNDC Law 111 provides some protection beyond the customary law, it appears to be overtaken by the changes in the Ghanaian family system. This is partly because, surviving spouses are in most cases, solely responsible for taking care of themselves and surviving children. Also, the Law is silent on the issue of joint acquisition of property and how this should affect the fraction of the estate that the surviving spouse is entitled to. The surviving spouse may therefore lose out on any investment made in the property. Again, even though, dependent parents sometimes have to take care of the surviving children in the event of the demise of both partners, no provision is made for dependent parents in

the Law. Furthermore, PNDC Law 111 makes no provision for children of the deceased who are still in school.

- 3.5 Another defect in the existing Law is that the provisions on the fractional distribution of the estate of the deceased had been difficult to implement. The specific portion of the estate fixed by the current law to devolve to the spouse irrespective of the number of spouses involved, creates a problem. The apportionment of the estate in fractions is also a source of insecurity as no specific item of the estate is clearly identified as going to one group or the other.
- 3.6 Lastly, there is no provision in the Law for polygamous marriages where the deceased is survived by a number of spouses and so they are all compelled to share the same fraction that the law stipulates for the surviving spouse. The requirement that the matrimonial home be shared between the surviving spouse and children of the deceased, some of whom may not be children of the surviving spouse has often resulted in acrimony.
- 3.7 The anomalies in the Law are such that they could not be treated in an amendment as the issues are numerous and intertwined. There is therefore the need to enact a completely new law, to address the changing circumstances. Hence, the introduction of the Intestate Succession Bill, 2013.

4.0 OBJECT OF THE BILL

4.1 The Bill seeks to make the intestate succession regime more responsive to the needs of the immediate family of persons who die intestate.

4.2 The Bill also seeks to provide a uniform intestate succession that will be applied throughout the Country irrespective of the inheritance system of the intestate and the type of marriage contracted.

5.0 OBSERVATIONS

5.1 The Committee noted the responsibilities to be shouldered by spouses and children of the deceased and therefore the need for them to have greater shares especially, where the deceased is survived by no parent. Whilst the Bill in Clause 5 gives 10 per cent of the estate in accordance with customary law, the Committee is of the opinion that 5 per cent be distributed according to customary law, while the remaining 5 per cent is added to the share of the spouse since the spouse will shoulder the greatest burden.

5.2 The Committee also observed that the Bill makes provision for the property rights of spouses of the deceased especially, where the surviving spouse contributed towards the acquisition of the property. This implies that spouses who contribute towards the acquisition of property with deceased spouse will be given

their contribution of that property before the remainder would be distributed in accordance with customary law. The surviving spouse will therefore not be disadvantaged in the distribution of that property.

5.3 The Committee again noted with satisfaction the provision in Clause 12 of the Bill which makes it obligatory for the needs of school-going and other dependant children of the deceased to be met before the distribution of the estate of the intestate. This will afford all those who depend on the estate for the payment of educational fees and other necessities of life, the opportunity to continue with their education or training. Any person who does not comply with this provision is subject to a fine or to a term of imprisonment or to both.

5.4 The Committee further observed that the practice where surviving spouse or children are ejected from the matrimonial home immediately after the death of the spouse is callous and brings untold hardships to the surviving spouse or children. To deter offenders, the Committee is of the view that the punishment of 500 penalty units provided for in the Bill is not deterrent enough to scare perpetrators of such offence. The Committee therefore proposes penalty units of 1000 with its corresponding prison term be adopted to make the offense punitive enough to ward off potential offenders.

5.5 The Committee is also satisfied with the introduction of other offences in the Bill which were not provided for in PNDC Law 111. Clause 27 of the Bill provides for offences such as locking up of property belonging to the deceased and taking possession of household property in the matrimonial home when the estate of the deceased has not been shared.

5.6 Finally, the Committee observed that no clear definition of "estate" has been given in the Bill. The Committee's view is that the nature of the self-acquired property of the deceased must be clearly stated. The Committee has therefore proposed an amendment under Clause 29 to give a better definition for "estate".

6.0 CONCLUSION

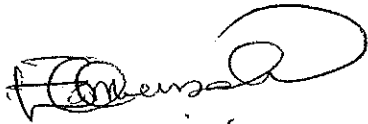
6.1 The PNDC Law 111 has been in operation for about twenty-eight years. It was an innovation which sought to prevent members of the extended family from taking over the assets of the deceased for their own use, to the detriment of surviving spouse and children. However, changing circumstances have made most of the provisions redundant. Hence the need to replace the Law.

6.2 The Committee is aware that this Bill was introduced into the 5th Parliament of the Fourth Republic but could not be passed before the end of the Term of the Parliament. The

Committee is optimistic that this time around the Bill will be passed.

6.3 The Committee therefore recommends to the House to adopt its Report and pass the Bill subject to the attached Amendments.

Respectfully submitted.



ERIC OWUSU-MENSAH
Clerk, Committee on
Constitutional, Legal and
Parliamentary Affairs



HON. ALBAN S.K. BAGBIN
Chairman, Committee on
Constitutional, Legal and
Parliamentary Affairs

NOVEMBER 2014

APPENDIX

AMENDMENTS PROPOSED TO THE INTESTATE SUCCESSION BILL, 2013

- i. Clause 4 – Amendment proposed – Delete sub-clause 1 and substitute with a new sub-clause as follows:
“(1) Subject to sections 8 and 9, where the estate includes only one house, the surviving spouse is entitled to fifty percent interest in the estate.”
- ii. Clause 4 – Amendment proposed – Add a new sub-clause 2 as follows:
“(2) subject to sections 8 and 9, where the estate includes one house and the surviving spouse partly owns that house, the estate available for distribution shall not include the part owned by the surviving spouse.”
- iii. Clause 5 – Amendment proposed – Sub-clause 1, paragraph (a), before “percent” delete “thirty-five” and substitute with “forty”.
- iv. Clause 5 – Amendment proposed – Sub-clause 1, paragraph (b), before “percent” delete “forty-five” and substitute with “fifty”.
- v. Clause 5 – Amendment proposed – Sub-clause 1, paragraph (c), before “percent” delete “fifteen” and substitute with “five”.

- vi. Clause 5 – Amendment proposed – Sub-clause 2, paragraph (b), before “percent” delete “forty-five” and substitute with “fifty”.
- vii. Clause 5 – Amendment proposed – Sub-clause 2, paragraph (c), before “percent” delete “ten” and substitute with “five”.
- viii. Clause 6 – Amendment proposed – change Clause 6 to sub-clause 6(1).
- ix. Clause 6 – Amendment proposed – Sub-clause 1, paragraph (a), before “percent” delete “fifty” and substitute with “forty”.
- x. Clause 6 – Amendment proposed – Sub-clause 1, paragraph (b), before “percent” delete “forty” and substitute “fifty”.
- xi. Clause 6 – Amendment proposed – Add a new sub-clause as follows:
 - “(2) where there are no surviving parent, the residue of the estate shall devolve in the following manner:
 - (a) fifty percent to the surviving spouse
 - (b) forty-five percent to the surviving children, and
 - (c) five percent in accordance with customary law.”
- xii. Clause 7 – Amendment proposed – Line 2, after “of” delete “time” and substitute with “seven years”.
- xiii. Clause 7 – Amendment proposed – make Clause 7 sub-clause 7(1) and add a new sub-clause as follows:

"(2) for the purposes of this Act, an "estranged spouse" means a spouse who has not lived in the same house with the other spouse for a period of not less than five years and who no longer has a normal relationship with the other spouse."

- xiv. Clause 8 – Amendment proposed – Delete sub-clause 2 and substitute with the following:
"(2) where the surviving spouse partly owns the matrimonial home, the estate available for distribution shall not include the part owned by the surviving spouse."
- xv. Clause 10 – Amendment proposed – Delete clause 10 and substitute with the following:
"where the deceased owned property in addition to the matrimonial home and the surviving spouse owns part of that property, only that part of the property owned by the deceased spouse is available for distribution."
- xvi. Clause 12 – Amendment proposed – Sub-clause 2, line 2, after "course" add "or learning a trade".
- xvii. Clause 12 – Amendment proposed – Sub-clause 2, line 2, after "made" add "for that child before the distribution of the estate".
- xviii. Clause 12 – Amendment proposed – Sub-clause 2, paragraph (a), lines 1&2, after "the" delete "university" and substitute with "tertiary".

- xix. Clause 12 – Amendment proposed – Sub-clause 2, paragraph (a), line 2, after “equivalent” delete “for the child” and substitute with “or for the apprenticeship and other related fees up to the completion of the training in the trade”.
- xx. Clause 12 – Amendment proposed – Sub-clause 2, paragraph (b), line 1, after “necessaries” delete “for the child”.
- xxi. Clause 12 – Amendment proposed – Sub-clause 2, paragraph (b), line 2, after “deceased” delete “before the distribution of the estate”.
- xxii. Clause 12 – Amendment proposed – Sub-clause 3, paragraph (b), line 1, after “and” delete “who”
- xxiii. Clause 13 – Amendment proposed – Sub-clause 1, line 2, after “estate” delete “devolves” and substitute with “shall devolve”.
- xxiv. Clause 13 – Amendment proposed – Sub-clause 1, paragraph (a), before “percent” delete “seventy” and substitute with “eighty”.
- xxv. Clause 13 – Amendment proposed – Sub-clause 1, paragraph (b), before “percent” delete “five” and substitute with “fifteen”.
- xxvi. Clause 14 – Amendment proposed – Delete “only” from the headnote.
- xxvii. Clause 14 – Amendment proposed – Sub-clause 1, paragraph (a), before “percent” delete “seventy” and substitute with “eighty”.

- xxviii. Clause 14 – Amendment proposed – Sub-clause 1, paragraph (b), before “percent” delete “twenty” and substitute with “fifteen”.
- xxix. Clause 15 – Amendment proposed – Delete clause 15.
- xxx. Clause 24 – Amendment proposed – Delete clause 24 and substitute the following”
“where the intestate is survived by a grandchild whose parent predeceased the intestate and that grandchild has been treated by the intestate as a child of the household and is dependent on the intestate, that grandchild shall be deemed to be a child for the purposes of this Act.”
- xxxi. Clause 25 – Amendment proposed – Paragraph (c), lines 1&2, after “of” delete “six months” and substitute with “one year”.
- xxxii. Clause 26 – Amendment proposed – Delete “against spouse and entitled person” from the headnote.
- xxxiii. Clause 26 – Amendment proposed – Line 11, after “than” delete “five hundred” and substitute with “one thousand”.
- xxxiv. Clause 27 – Amendment proposed – Line 6, after “than” delete “five hundred” and substitute with “one thousand”.

xxxv. Clause 27 – Amendment proposed - Delete the headnote and make clause 27 a sub-clause under clause 26 to become clause 26(2).

xxxvi. Clause 29 – Amendment proposed – Line 31, delete “moneys in bank accounts” from the definition provided for “household property”.

xxxvii. Clause 29 – Amendment proposed – Add the following definition:

“estate” means a self-acquired property in the nature of

- (a) real property
- (b) household property
- (c) cash and monies in bank accounts, bonds, proceeds, rights to proceeds of an insurance policy payable on the death of the insured person, a lump sum payment provided under a personal or similar plan, entitlements to damages,

which the intestate was legally competent to dispose of during the lifetime of the intestate in respect of which of the interest of the intestate has not been terminated by or on death.”