

# **THE SUCCESSION (AMENDMENT) BILL, 2018: A RAY OF HOPE FOR INCREASED TENURE SECURITY AND ECONOMIC EMPOWERMENT FOR WOMEN.**

## **INTRODUCTION.**

In Uganda, land is described by the National Land Policy 2013 as the most basic resource in terms of the space it provides, the environmental resources it contains and supports, and the capital it represents and generates. In more recent times it has become a commercial asset that can be used and traded. It is a critical factor of production and an essential part of the national patrimony. It is also a key factor in shaping individual and collective identity through its history, the cultural expressions and idioms with which it is associated. For Ugandans land is perhaps, the most essential pillar of critical factor of production and an essential pillar of human existence and national development.

To put this into perspective further, according to the Ministry of Agriculture, Animal Industry and Fisheries website as of January 2019, agriculture which happens on land remains the major source of livelihood in Uganda and the greatest contributor to our GDP. According to the Uganda National Household Survey (UNHS) 2016/17, the bigger proportion of the working population is engaged in agriculture (36%). The total contribution to GDP as per the financial year 2016/17 was 24.9%. Women are responsible for an estimated 90 percent of Uganda's total food output.<sup>1</sup>

Land in Uganda is legally acquired in three ways, namely through succession or inheritance, purchase or as gift *inter vivos*. However land rights in Uganda particularly in rural areas and places with customary tenure S(which accounts for 80% of all land) are acquired through birth rights and they are traced through the patrilineal descent and this filters through statutory laws. Whereas some individuals acquire these rights before the demise of their benefactors, the majority acquire these rights through inheritance.

As noted earlier on, land is amongst many other things a cultural issue and as such there is cultural diversity in gender relations and property rights. However, what remains and cuts across different cultures is discrimination against women on land access, control and ownership. Culture prominently discriminates against women and girls over ownership and control of land while relegating their benefits to only access and use. This discrimination extends to succession and inheritance practice which have further hindered women's right to property while at the same time, the current Succession Act Cap 162 does not offer a conclusive protection for women.

The laws of succession are among the most abused laws by members of families of the deceased persons and clan leaders who often proceed to distribute property of the deceased in accordance with customary law which Practices and norms do not conform to the provisions of the Constitution. As a result the most vulnerable members of the society who are mainly widows and orphans are deprived of their property which results in landlessness.

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<sup>1</sup>FeedtheFuture Uganda; <http://reliefweb.int/report/uganda/uganda-acute-food-insecuritysituation-overview-jun-sep-2013>

## **HISTORY OF SUCCESSION AND INHERITANCE LAWS IN UGANDA.**

### **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.

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 to this day.<sup>2</sup>

### **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

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<sup>2</sup> Adopted from the LANDnet Issues and Position paper on the Succession Act, Cap 162, 2018.

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.<sup>3</sup>

### **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 in the laws of 1906 and 1972. 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 also 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 practiced to date. 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<sup>4</sup>. 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.

Other notable concerns include the discriminatory nature of some of the provisions of the Act and the obsolete fines and penalties raised by various stake holders such as the Administrator General's office as not being deterrent enough. Owing to the discriminatory nature of the law, LAW-U a civil society organisation petitioned the Constitution for certain declarations to be made.<sup>5</sup>

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<sup>3</sup> Ibid

<sup>4</sup> Page 278 of the Uganda Law Reform Commission study Report 2014.

<sup>5</sup> LAW AND ADVOCACY FOR WOMEN IN UGANDA VS. ATTORNEY GENERAL, Constitutional Petitions No. 13 of 2005 & No. 5 of 2006

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:*

*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.*

*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 2014 Uganda Law Reform Commission Report presented before the Commissioners also identified other challenges within the succession law. To date these gaps and challenges have never been addressed.

## **LAW REFORM AS A WAY TO IMPROVE TENURE SECURITY AND ECONOMIC EMPOWERMENT FOR WOMEN.**

Uganda is a signatory to and has ratified various international and regional instruments that champion gender equality and non-discrimination of persons. Some of these include the African Charter on Human and People’s Rights (ACHPR), The Convention on the Elimination of all Forms of the Discrimination Against Women (CEDAW), the Maputo Protocol among others.

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 conventions.

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. It was signed by Uganda on 30<sup>th</sup> June 1980 and ratified on 22/7/1985.

**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 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: This directly speaks to the issue at hand and mandating that states ensure that women and men alike have equal access and control over resources like land for development.

Having control over resources like land improves security of tenure for women and in turn increases productivity on these parcels of land. Increased productivity in an ideal environment directly translates to economic empowerment. Security of tenure refers to enforceable claims on land, with the level of enforcement ranging from national laws to local village rules, which again are supported by national regulatory frameworks. It refers to people's recognized ability to control and manage land— using it and disposing of its products as well as engaging in such transactions as the transferring or leasing of land.<sup>6</sup> Economic empowerment increases women's access to economic resources and opportunities including jobs, financial services, property and other productive assets like land and skills development and market information. It's also a process whereby women's and girls' lives are transformed from a situation where they have limited power and access to economic assets to a situation where they experience economic advancement

A study conducted in Uganda revealed that the major drivers for economic empowerment of women farmers depended on the agricultural enterprise. Throughout the enterprises however, land was found to be the key driver followed by proper farming methods, soil fertility and farm inputs.<sup>7</sup>

## **THE SUCCESSION (AMENDMENT) BILL, 2018.**

In response to the challenges raised by the various actors mentioned above, a private members bill was tabled in November, 2018 to provide some redress. The Bill was developed through a consultative process and the proposals made in the different engagements consolidated into a Bill. It is also an effort to bring the Succession Act into conformity with the Constitution, current policy and international best practices.

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<sup>6</sup> The Importance of Land & other Asset to Women's Economic Empowerment in Uganda. A study synthesis. Esther Obaikol & Justine Namaalwa Jjumba (PhD)

<sup>7</sup> Ibid

The Bill to seeks to address the following:

- a) Provide for gender equality in matters of Succession in accordance with articles 21 and 33 of the Constitution.
- b) Reservation of the principal residential property and other residential property for the surviving spouse and children.
- c) Revision of percentages of the distribution of the estate of an intestate in order to increase the percentage left to the surviving spouse.
- d) Provision for the appointment, powers and duties of guardians to be exercised by both mother and father.
- e) Provision for equal status of children of a deceased person whether or not born out of wedlock.
- f) Repeal provisions that were declared unconstitutional by the Constitutional Court in LAW-U V AG as well as those that have become obsolete.
- g) Harmonise the definition of child to conform to the Constitution.
- h) Revision of the provisions relating to domicile of spouses upon marriage.
- i) Provide for the lapse of probate or letters of administration after three years subject to renewal by Court

## **CONCLUSION.**

Cognisant of the fact that law reform alone is not enough to propel women to secure tenure and economic empowerment, it is a very big step in the right direction and offers protection and redress in cases where rights defined by law are violated.

Land is central to the economic and social life of women in Uganda. Disparities in control, ownership and use of land not only greatly impact on the wellbeing of the woman, but the family and thus a nation. Women in Uganda predominantly access land through either marriage or their male relatives. A study revealed that access alone is a myth as women derive no benefit from such land.<sup>8</sup> It noted that it instead serves the continuance of male autocracy through the subordination of women. This is visible though the production changes in divorced women and widows. The vibrancy of widows and divorced women in agribusiness can only be ascribed to their control over decision making in enterprise choice and use of proceeds.

Investing in women`s economic empowerment through for example law reform sets a direct path towards gender equality, poverty eradication and inclusive economic growth which are some of the issues that the SDGs wants to address globally. Women make enormous contributions to economies on farms, as entrepreneurs or employees or by doing un paid care work but yet they remain disproportionately affected by poverty, discrimination and exploitation.

In order to meet the sustainable development goals, there is need to economically empower women. Women`s economic empowerment increases the wealth and well-being of the entire population.

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<sup>8</sup> Ibid