



Gender Transformation & Empowerment

THE SUCCESSION (AMMENDMENT) ACT, 2021 POLICY BRIEF

**COMPLIANCE OF TO INTERNATIONAL HUMAN
RIGHTS STANDARDS: GAINS AND LOSSES**

2022

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1.0 INTRODUCTION

Achieve gender equality and empower all women and girls is a global goal espoused under the Sustainable Development Goal (SDGs). Gender equality is not only a fundamental human right, but a necessary foundation for development, peace and prosperity of nations. It is essential for the wellbeing of women, families and communities. There are many obstacles that have hindered achievement of this goal based on country specific experiences. At the heart of the many obstacles is the absence of legal and policy frameworks that support and advance women's empowerment and participation in all spheres of life and society.

International human rights law represented in the various treaties, declarations and conventions provide the broader framework within which domestic laws are set for advancing gender equality and women's empowerment as emphasised in SDG target 10.3. This target articulates the linkages between law, policy and practice and reducing inequality, calling on States to 'ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard'.¹

Article 8 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ("Maputo Protocol") calls for the reform of existing discriminatory laws and practices in order to promote and protect the rights of women. Women cannot enjoy their rights in society if from the beginning laws are drafted in a such a way that they discriminate or bars them from accessing these rights and opportunities equally with men.

1 UN Women (2018), *A Practitioner's Toolkit on Women's Access to Justice Programming* York. Module 1: *The Theory and Practice of Women's Access to Justice Programming*; United Nations: New York

It is therefore important, that countries write or reform laws to conform to the recognised and guaranteed human rights standards as stipulated in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on Human and People's Rights, the protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa and all other international and regional conventions and covenants relating to the rights of women.

UWONET with the support of the International Development Law Organization (IDLO) has conducted an analysis of the Succession (Amendment) Bill 2021, now the Succession (Amendments) Act of 2022. The purpose of the analysis was to assess whether the Succession Amendment Bill, 2021 (now Act of Parliament) is compliant to national, regional and international women's and human rights standards. The analysis also sought to examine whether conformity to women's and human rights standards of its own is synonymous with responsiveness or sensitivity to women's needs for access to justice as well as highlight the gains for reinforcing gender justice in the Succession Amendment Bill/Act and gaps for further revision or amendment in future.

This informed the development of this policy brief which purposes to highlight the gains and gaps in the Act. It is hoped that the policy briefs will be used for public engagement on key issues in the Act for its implementation.

BACKGROUND

The principal law on succession in Uganda is the Succession Act, Cap 162, which commenced on 15th February 1906. Essentially being one of the laws Uganda, inherited from the colonial government, it had not received major amendments in line with changing international best practices on matters of inheritance or succession. Due to passage of time, some aspects of the Act became outdated, especially in light of the Constitution, Government policies, emerging international best practices, and the legal environment. The Act was therefore in need of urgent modernization to guide the processes that accrue upon a person's death and to enhance the protection of the rights of children and spouses. The Succession Act has witnessed a number of reviews to improve its implementation and reflect the wishes of the people of Uganda, as well as the prevailing Government policy. The following are the major reviews and happenings that tell the journey of the Succession Act, Cap 162 till its recent amendment in April 2022.

1. The origin of Uganda's law of succession is traced as far back as the Succession Ordinance of 1906 which was adopted from English law. There were shortcomings in the Ordinance that led to the Kalema Commission of Inquiry of 1965, which sought to review the Succession Act then as instituted by the government.
2. The Kalema Commission of Inquiry Review culminated into the 1972 Succession (Amendment) Decree, which among others recommended the Act to be amended to;
 - a. provide for succession to estates of Ugandans dying intestate and restricted the disposal of property by will among other things;
 - b. recognised the rights of illegitimate and adopted children;
 - c. introduced dependent relatives as a category of beneficiaries to deceased's estate;
 - d. recognised polygamy, the concept of customary and legal heir; and
 - e. introduced the concept of a male preference to the female when a legal heir.

3. Many of the provisions in the Decree of 1972 were discriminatory on the basis of sex. The current Succession Act, Cap 162; before the current amendments, was a replica of the 1972 Ordinance and therefore fell short of the human rights standards in the Constitution of Uganda and largely remained discriminatory against women.
4. In 2012, the Uganda Law Reform Commission commissioned a review of the Succession laws in Uganda. The review culminated in the study Report on the Review of Laws on Succession in Uganda of 2013 which examined succession laws in Uganda for purposes of ensuring among others that, the provisions of the laws of succession are in conformity with the 1995 Constitution of the Republic of Uganda, national laws and international and regional human rights standards and practices.
5. There have also been several court decisions that progressively interpreted the Succession Act, while taking into account values and trends in developments and aspirations of the Ugandan society. With these amendments, some gaps were created resulting into enforcement challenges and legal uncertainty including;
 - a. The Constitutional Court, in the case of Law Advocacy for Women in Uganda v Attorney General, Constitutional Petitions No. 13/05 and 05/06, declared provisions of the Succession Act relating to the distribution of estates of intestate persons unconstitutional and discriminatory against the female gender. The Succession Act, which was enacted in 1906, provides that a widow ceases to occupy the principal residential property when she remarries but the Act is silent on widowers who remarries.
 - b. In the case of Law & Advocacy for Women In Uganda Vs. Attorney General of Uganda, Constitutional Petition No. 13 of 2005, the Constitutional Court held that Sections 2(n) that provides for legal heir, (L) (ii) that defines illegitimate child, 23 that provides for mode of computing degrees of Kindred, 26 that provides for devolution of residential holdings, 27 that provides for distribution on the death of a male intestate, 29 that provides for reservation of a principal residential holding from distribution, 43 that grants rights of appointment of testamentary guardianship to only the father, and 44 that provides for appointment of statutory guardians

only upon death of a father of the Succession Act are inconsistent with Articles 20,21,24,26,31 and 44 of the Constitution. Despite the court decisions, there have not been comprehensive and well thought out jurisprudence to reflect the developing trends and interests of the people.

- c. In the case of Administrator General Vs. Charles Acire & Another. IICCS. 235/1994, Court pointed out the fact that Section 311 of the Succession Act which provides that, “where any person entitled to a share in the distribution of the/ estate of an intestate is a child, the Succession law does not make provisions specifying the duties of the person holding the property, manner of investing the property, provisions for account to the child when he or she becomes of and does not provide penal for breach of these duties. Such gaps needed to be remedied.
6. Some provisions of the Succession Act were further affected by the recent amendment of the Children Act of 2016, on provisions relating to the appointment of guardians, their removal, conduct and holding of property belonging to children. Part VIA of the Children Act specifically;
- a. prohibits the grant of guardianship to a person other than the citizen of Uganda (see Section 3A);
 - b. requires an application for legal guardianship to be made to the High Court, by a person above 18 years; (see Section 43B);
 - c. allows family members of a child to appoint a customary guardian for a child in accordance with their custom, culture or tradition (see Section 43C);
 - d. provides for the appointment of a guardian by agreement or deed by the parents of a child;
 - e. provides the conditions upon which guardianship may be granted by court;
 - f. provides for revocation of a guardianship order;
 - g. provides for the registration of guardian order; and
 - h. Provides for the grant of probate or letters of administration for
 - i. estates of children where a guardian is already appointed.

The above changes in the Children's Act, meant that Sections 43, 44,45,46, 183, and 270 of Succession Act were no longer good law as far as the appointment, powers removal of a guardian of a child are concerned.

7. In 2018, the Uganda Women Parliamentary Association (UWOPA), working together with a Coalition of Civil Society Organizations led by LANDNET proposed a Private Members Bill to amend the Succession Act of 1906. The Bill was assigned to Hon Rosette Mutambi, by UWOPA leadership at the time; to move as a private members Bill. The choice of a private members Bill rather than government sponsored, was informed by the fact that, many gender related bills hardly come to the floor of Parliament as a direct initiation by Government. Those that come as government sponsored barely see the light of day in terms of enactment. A case in point is the Marriage and a Divorce Bill, 2009 which was introduced in the 8th, 9th, and 10th to no success. On the other hand, a couple of bills introduced by the Women's caucus in the past received better attention as they were moved by individual members of Parliament and UWOPA. These include, the Prevention and Prohibition of Female Genital Mutilation Act, 2010, Prevention and Prohibition of Trafficking in Person's Bill, 2010 and Domestic Violence Act, 2010 (later taken over by Government), were all bills enacted by the 8th Parliament.

In the 9th Parliament (2011- 2016), the gender bills being moved by the women's caucus lapsed with the 9th Parliament including the Marriage and Divorce Bill and Sexual Offences Bill (both being government sponsored bills). This necessitated the re-introduction of these two bills, with two new ones including the Succession (Amendment) Bill 2018 and the Employment (Amendment) Bill, 2018.

8. The Succession (Amendment) Bill, 2018 was presented to the House and accordingly referred to the Committee on Legal and Parliamentary Affairs pursuant to Rule 128 of the Rules of Procedure of Parliament. On 12th August 2019, Government introduced in Parliament, five Bills namely, the Succession (Amendment) Bill, 2019, the Administration of Estates (Small Estates) (Special Provisions) (Amendment) Bill, 2019, the Probate Resealing (Amendment) Bill,

2019, the Estate of Missing Persons (Management) (Amendment) Bill, 2019, the Administrator General's (Amendment) Bill, 2019. All these Bills were accordingly referred to the Committee on Legal and Parliamentary Affairs pursuant to Rule 128 of the Rules of Procedure of Parliament.

9. The Committee analysed the Succession (Amendment) Bill, 2018 and the Succession (Amendment) Bill, 2019. Since the private member's Bill was tabled first and broader in scope, proposals in the Succession (Amendment) bill of 2019 were incorporated into it. On 30th March 2021, Parliament considered and passed the Succession (Amendment) Bill, 2018 and the Clerk to Parliament transmitted a presentation copy to the President for assent. The President, in accordance with article 91 (3) (b) of the Constitution withheld his assent to the Bill and dually returned it to Parliament for reconsideration on Clause 14 and Clause 17 which sought to replace sections 27 and 30 respectively.
10. The 11th Parliament instead picked up the Succession (Amendment Bill), of 2018 and re-introduced it, as the Succession (Amendment Bill) of 2021 as a government Bill. The Succession (Amendment) Bill, 2021 was read for the first time on 5th October, 2021 and pursuant to Rule 129 (1) of the Rules of Procedure of Parliament of Uganda, referred to the Sectoral Committee on Legal and Parliamentary Affairs for scrutiny. It was enacted on 8th February 2022 by Parliament and assented to by the President on 10th April 2022.
11. The Succession (Amendment) Bill, 2021 contains 73 clauses, wherein, it proposes to amend 68 Sections out of 339 Sections currently in the Succession Act and insert 9 additional Sections in the Succession Act. These are assessed in view of their compliance to the Constitution, emerging international best practices on women and human rights.

2.0. ANALYSIS OF PROPOSALS IN THE SUCCESSION (AMMENDMENT) ACT, 2021

2.1 Legitimate and illegitimate children

The Succession Act, cap 162 which covers all matters related to succession in Uganda discriminated children based on the marital status of their parents which is contrary to Article 21 of the constitution and other international and regional instruments. Article 1 and 2 of the Universal Declaration on Human Rights (UDHR), entitle children their equal human rights as human beings without distinction of any kind based on birth or other status as well as equal treatment before and under the law (Article 7 of UDHR). Article 25 of the same convention specifically entitles special care and assistance to all children whether born in or out of wedlock. The principle of non-discrimination is further provided for in Article 3 of the African Charter on Rights and Welfare of Children (ACRWC), where every child is entitled to the enjoyment of their rights and freedoms irrespective of the child's or his/her parents' or legal guardians' birth or other status. These standards of equality, non-discrimination and children's welfare have been domesticated in the Article 21, 34 of Uganda's Constitution as well as Section 3,4,6 of Children's Act as amended in 2016. There is there no illegitimate child in Uganda. All children are equal in rights and therefore can inherit from their parents, whether born in a legitimate or illegitimate marriage.

Clause 1 (a) of the 2021 Bill has amended the principal Act (Succession Act, cap 162) in Section 2 by repealing the words "legitimate and illegitimate" appearing in paragraph (b). The Succession Amendment Act, 2022 as enacted is now in compliance with standards of equality, non-discrimination, and children's welfare according international and regional law as well as the National Constitution.

2.2 Customary Heir or Heiress in Succession Matters

Clause 1 (c) the Succession Amendment Bill of 2021 proposed an amendment into section 2 of the principal Act by substituting for paragraph (e) to introduce a customary heiress into the law of Succession in Uganda as enacted in the Succession Amendment Act of 2022. A “Customary heir or heiress” is a person recognised under the rites and customs of a particular tribe or community of a deceased person as being the customary successor of that person. This practice of appointing a customary successor to succeed a deceased person is has been a common practice in Uganda, but largely excluded female persons.

- *The amendment only introduces a positive proposal of a ‘customary heir’ which was not known in the previous section of the Law on succession. This introduces equality for women and men under the law of succession and deals away with discrimination based on gender as required in Article 21, 32 and 33 of Uganda’s Constitution.*
- *The reformation of the law to introduce equality for women and men domesticates women’s rights as provided for in the UDHR (Articles 1,2,6), CEDAW (Articles 1,2,15), ACPHR (Articles (3, 19) and Maputo Protocol (Articles 1).*

2.3 Dependent Relative and Lineal Descendent

Clause 1(e) of 2021 Bill, proposed to amend the Act by substituting for paragraph (g), with a new definition of ‘dependent relative’. The definition ‘dependent relative’ had created absurdity and inequality in the law.

Previously, in the Principal Act, a ‘**dependent relative**’ included a ‘**wife**’, a ‘**husband**’, a ‘**son**’ or ‘**daughter**’, as dependents of the deceased person. This would have entitled such persons to benefit twice under Section 27 of the Act in the case of intestate succession, first a lineal descendent and as dependent relatives. This definition has been improved to restrict dependent relatives to only persons who are wholly dependent on the deceased person, but not lineal dependents. The term “dependent relative” now includes, ‘a parent, a brother or sister, niece or nephew,

a grandparent or grandchild who, on the date of the deceased's death, was wholly dependent on the deceased for the provision of the ordinary necessities of life suitable to a person of his or her station'. Dependent relatives are common in extended families in Uganda, therefore making the law more accessible to the most vulnerable in society who would otherwise be left out because of unclear legal regimes.

The term 'lineal descendant' is now defined in the Act as proposed by the 2021 Bill in Clause 1 (j) by inserting a new provision under section 2 of the Succession Act. This definition was previously not in the Succession Act despite being extensively used in the law. A 'lineal descendant' means a person who is descended in a direct line from the deceased person and includes a child and grandchild of the deceased and any person related to the deceased in a direct descending line up to six degrees downwards.

Clarity of law makes it more accessible to the most vulnerable in society such as women, the old and children would otherwise be left out because of unclear legal regimes. This is in line with human rights standards which call for legal reform to enhance enjoyment of women's rights and general human rights standards.

2.4 Domicile of origin of a Child of Legitimate and Illegitimate Birth

The Succession Act, 1962 distinguished between children of legitimate birth and illegitimate birth whereby, illegitimate children acquired the domicile of their mothers while legitimate acquired the domicile of their fathers. The 2021 Bill proposed the deletion of Sections 6, 7 and 15 of the Act, relating to domicile of origin of a child of legitimate birth and illegitimate birth and insertion of new sections to rectify the law in line with the Article 21 of the Constitution, section 4, of the Children's Act and international instruments. This has changed with the new amendment as the domicile of a child now follows the domicile of the father or mother or guardian. Where the parents do not have the same domicile, the domicile of the child will be derived from the person who has custody of the child. This section of the law had disadvantaged women in illegitimate marriages and their children.

- *The amendment is good as it complies removes distinction between and amongst children based on the gender and marital status of their parents. This domesticates Articles 1, 2, 7, 25 of UDHR, Articles 3, 4, 6, 18, 19 and 20, 24, 25 of ACRWC as well as Article 21, 34 of Uganda's Constitution and Sections 4 of Children's Act*
- *The section also reforms the law to introduce equality for women and men as required in the UDHR (Articles 1, 2, 6), CEDAW (Articles 1, 2, 15), ACPHR (Articles (3, 19) and Maputo Protocol (Articles 1).*

2.5 Domicile of a Married Woman

The Succession (Amendment) Bill, 2021 amended Sections 6, 7, 9, 13, 74, 15 and 18 of the Succession Act by clauses 3, 4, 5, 6, 7, 8 and 9. Section 15 of the principal Act obligated a woman to acquire the domicile of her husband upon marriage, without giving such a woman a choice and prescribing the same for a man. This section of the law created a distinction between persons based on gender and marital status. However, with the new amendments in the law, the new improvements favour gender equality. A person may, now, upon marriage, acquire the domicile of his or her spouse by choice. A spouse may, also upon dissolution of a marriage or upon judicial separation or any other separation recognised under the laws of Uganda, acquire any other domicile of choice. Men and women can now acquire domicile of their spouse by choice. Even men can acquire the domicile of their wives. It does not necessarily now follow that a woman must acquire the domicile of their husband upon marriage.

This enhances the principle of equality for women and men under the law as required in the UDHR (Articles 1, 2, 6), CEDAW (Articles 1, 2, 15), ACPHR (Articles (3, 19) and Maputo Protocol (Articles 1) and article 21 of the constitution of Uganda.

2.6 Reservation of Residential Holding and Property

Clause 13 and 21 of the 2021 Bill makes provisions for reserving Principal Residential Property and any other property from distribution upon death. Clause 13 amended Section 26 of the Act to devolve the residential holding and any other residential property to the surviving spouse and lineal descendants ONLY. The clause further creates an offence against a person who attempts to evict a beneficiary in occupation of the residential holding.

On the other hand, clause 21 amended section 36 of the Act to require a married person or a person who has children to, while making a will, reserve the principal residential property and any other residential property from being disposed of by a Will. This provision allows a person making a will to dispose of the residential property only if he or she has provided alternative reasonable accommodation for the surviving spouse or children.

This is one of the most progressive amendments to the Act, because this area has been a source of conflict in distribution of the estate of the deceased in Uganda. In the past, it was common for the deceased to give away all their property in a Will including the residential holding often times leaving women and children homeless. Where a person dies without a Will and intestacy rules of distribution have to be applied, residential holdings were also distributed without any option for the surviving spouse (s) and children.

This provision therefore enhances the protection of the security of women and children to the residential holding and penalizes anyone who disposes them hence forth.

- *The amendment enhances protection of women's right to property as per Article 26 of the Constitution and Maputo protocol in article 21 on the right to Inheritance. In article 21 (2) of the Maputo Protocol, a widow shall have the right to an equitable share in the inheritance of the property of her husband and the right to continue to live in the matrimonial house and in case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.*

- *Protects women from negative cultures which have disposed women in the past from the estates of their deceased spouses as required by Article 33 (6) of the Constitution and article 6 of the Maputo Protocol which empowers women to have the right to acquire her own property and to administer and manage it freely.*

2.7 Distribution of Property of an Intestate

The principal Act has been amended by the 2021 Bill by substituting for section 27 in the old provision, a new schedule of distribution of property of an intestate. An Intestate is a person who dies without making provision for distributing his or her estate or without making a valid Will disposing of his or her property. Section 27 of the Succession Act is perhaps the most popular one in the law of Succession in Uganda because it, is the most applied since majority of people pass on without writing wills.

Where one dies without distributing their property properly or does it partially, the rules provided under Section 27 of the Succession Act, would be applied. The distribution schedule was declared unconstitutional in the case a Law and Advocacy for Women in Uganda Vs. A.G, thereby leaving a lacuna in the law. It was challenged on the fact that it discriminated between women and men as it referred to distribution for a male intestate and not for a female intestate.

The principal Act has been amended to substitute a new schedule of distribution of property of an intestate. Where the intestate is survived by a spouse, a lineal descendant, a dependent relative and a customary heir.

Class	Percentage Entitlement (before amendment)	Percentage Entitlement (after amendment)
Spouse	15	20
Dependent relative	9	4
Lineal descendants	75	75
Customary heir	1	1
Total	100	100

- * The amendments have brought women and men to the same level in the law in terms of equality as spouses who can own property legible for distribution.
- * They have also moved women and men as spouses from one point to another (15% to 20%)
- * The desirable entitlement though, was 50% in all cases to go to the spouse and the rest of 50% to be divided amongst lineal descendants and dependent relatives because the spouse usually contributes the biggest in terms of the estate and not the dependent relatives or lineal descendants. This particular area may need further amendment in the future.
- * Notwithstanding the distribution schedule, the estate of the intestate must set aside twenty percent of the estate which shall not be distributed, but shall be held in trust for the education, maintenance, and welfare of the following categories of lineal descendants until they cease to qualify as such-
 - a minor child of the intestate and where he or she attains eighteen years of age, or;
 - a lineal descendant of the deceased who is above eighteen years of age but below twenty-five years of age if, at the time of the death of the intestate, was undertaking studies and was not married;
 - a lineal descendant of the intestate, who has a disability at the time of the death of the intestate was not married and was wholly dependent on the intestate for his or her livelihood.
- * The amendments further provide twenty percent share specified for minors, lineal descendants still at school as well as those with disability to be deducted from the gross estate before the distribution of the estate under the provided schedule. Where an estate produces an income by way of periodical payments, then 20 percent is expected to come from that income. Where there, are no minors, school going lineal descendants or disabled, the twenty percent will form part of the distribution schedule.

- * Under the new amendment, a spouse who remarries before the estate of the deceased is distributed shall be entitled to the share he or she would be entitled to under main schedule of distribution.

These are all positive amendments which will protect the women, children and most vulnerable of the estate during succession. These amendments further secure women's economic agency during succession matters. This has been a point of contention in Uganda, as women who were separated or choose to remarry before the death of the intestate would be dis- entitled under Section 30 of the principal Act.

2.8 Distribution of Property Between Members of Same Class

Clause 15 of the 2021 Bill amended the principal Act by substituting section 28, with a new drafting that clarifies the distribution of property between members of the same class. Lineal descendants, spouses and dependent relatives of an intestate shall share their proportion of a deceased intestate's property in equal share. A person aggrieved by the distribution of property under this section may challenge the decision of the administrator in a court of competent jurisdiction. This amendment maintains the earlier discrimination in the law which set aside 15% and 50% under Section 27 1(a) and in 1 (c) respectively for wife or wives to share in case of demise of the husband.

This provision does not provide for the scheme of determine the various contribution of the 'wives. The amendment should have gone ahead to provide for a scheme of distribution amongst the spouses (wives) where there is more than one. As it is, this distribution scheme will only affect women but not men, because when a wife, dies, the husband (spouse) would take all the 20% provided in the scheme.

This anomaly needs to be cured at law to ensure the distribution scheme is clarified by in terms of the numbers and contribution of each wife. Laws that are not clear in drafting are a source of conflict and hinder women's access to justice. This is contrary to 8 of the Maputo protocol as well as article 21 of the Constitution.

2.9 Separation and Succession

Clause 17 of the Bill amended Section 30 of the principal Act which barred a spouse of a person who dies intestate from benefiting in the estate of the deceased if, at the time of death, the spouse had separated from the intestate as a member of the same household. Initially under this section, only a person who was away for education purposes was excepted.

Section 30 was unfair since it totally disinherited the separated spouse without considering other grounds which caused the separation and the contributions made by the other spouse prior to separation. Among the several reasons why a person may abandon the other spouse, or matrimonial home can be normal wear and tear of marriage wherein, parties may separate for a time to allow a cooling off issues causing separation. This was unfair to women who are most of the time are victims of domestic violence, and a lot of times are in and out of the matrimonial home for safety reasons. This is change in the law is progressive as it protects women from being dis associated for their late spouses because of reasons related to domestic violence. The provision also allows victims of gender-based violence to have redress since it makes it a material fact if at the time of separation, it is the intestate who caused the separation.

Section 30 previously further disallowed children of the intestate to benefit from the estate notwithstanding the disinheritance of their parents because once the parent was separated from the intestate, the children would not benefit from the separated parent.

With the amendment, the following grounds have been included to exonerate the separated spouse; where-

- * the surviving spouse has been absent on an approved course of study in an educational institution;
- * the deceased at the time of his or her death, was, the one who had separated from the surviving spouse as a member of the same household;
- * the deceased is the one who caused the separation.

The amendment now empowers the children of the intestate to benefit from the estate notwithstanding the disinheritance of their parents

The same section empowers a spouse to, within 6 months after the death of spouse, make an application to court to disapply the provision separation. Where court made a declaration, the law authorizes the surviving spouse to take no more than a proportion of the property of the intestate that he or she is entitled to under section 27; or a proportion of the property that was acquired before the surviving spouse separated from the intestate as a member of the same household.

- *The law now enhances rights a separated spouse who can now still benefit from property that he or she acquired before separation unlike before where one would be totally disinherited without considering any contributions made by the other spouse prior to separation. This enhances the economic rights of women and men equally as required in Article 26 of the Constitution and article 6, 21 of Maputo Protocol which provides the right to acquire property, administer and manage property freely and the right for widows to inherit their husband's property.*
- *The law now prevents women from being disinherited due to reasons associated with violence against women which is prevalent in Uganda. This is progressive as it domesticates CEDAW and DEVAW in local legalization.*
- *The law now allows children of the intestate to benefit from the estate notwithstanding the that their parents were separated. This enhances children's rights as per Section 4 of the children's Act, article 34 of the Constitution and article 18 of ACRWC which prohibits depriving a child of maintenance by reference to the parents' marital status.*

2.10 Making a Will and Providing Maintenance in a Will

Section 36 (2) of the Principal Act allowed a spouse during the subsistence of a marriage to hold property in his or her name and may by will, dispose of such property. This section previously provided for only a married woman and not men. The same section in 36 (3) allowed a person who is 'deaf' or 'dumb' or 'blind' to dispose of his or her property by Will if

he or she is able to know what he or she does by it. The law is now amended to make the provision apply to all parties in a marriage, male or female. The law in this section; is further amended to adopt use of non-stigmatizing language in reference to persons of unsound mind, the deaf, dumb, or blind to refer to such people being, persons suffering a mental illness, persons with hearing impairment, physical impairment, speech impairment and visual impairment.

Under 36 (6) of the Amendment now, a married person making a will shall reserve the principal residential property and any other residential property from being disposed of in the will for the welfare of the spouse or spouses and lineal descendants of the testator. This was not part of the old section of the law, as aggrieved lineal descendants, or spouses, would only apply to court for a remedy. This is more progressive as it removes the burden from the survivors but imposing the obligation on the testator to reserve the residential holding and property.

Section 37 of the principal Act imposed an obligation on a testator to make provision, in a will, for the maintenance of only dependent relatives. The obligation to make provision for maintenance has been expanded from dependent relatives, to also include the surviving spouse and lineal descendants. This provision also makes additional protection for a lineal descendant, who is suffering a mental or physical disability to be maintained.

Section 38 of the principal Act allowed a dependent relative to apply to court for an order provision to be made in a will where none was made for the maintenance by a testator. The amendment has been expanded to specifically to direct a testator to make provision in a will not just for dependent relatives, but for lineal descendants and surviving spouse. The law envisages such maintenance to come from estates that produce income and where the estate of the deceased person does not produce any income, from the general distribution of the estate of an intestate under section 27.

The amendments to this section require that maintenance order by court secured under section 38 can be terminated, in the case of;

- a. a spouse, upon him or her remarrying;
- b. a child, until the child completes his or her education or attains or attains 25 years of age, whichever first occurs;
- c. lineal descendant who is by reason of mental or physical disability, upon ceasing of the disability or marriage, which ever first occurs; and
- d. a dependent relative, as may be ordered by court.

- *The amendments uphold Article 26 and 33 of the Constitution which now puts women and men at par in matters of owning and disposing off; of any property which they would be entitled to dispose of during their life or which they are entitled to under a will. This is in line with international human rights standards as buttressed in article 6 of the Maputo Protocol.*
- *The amendments also uphold the rights of persons with disability in line with international human rights standards on disability issues.*
- *The amendments further impose an obligation on a testator to make provision, in a will, for the maintenance of his or her children and spouse (s) in addition to dependent relatives. This will enhance the rights of children, spouse (s) and dependent relatives and ensure their needs are catered for until the age of majority or completion of education or remarriage in the case of spouse. This enhances rights of persons with disability, children, and women's rights generally.*

2.11 Guardianship of Children of a Deceased Person

Guardianship issues were generally dealt with in clauses 24, 25, 26, 27 and 29 of the 2021 Bill which amended Sections 43, 44, 45, and 46 of the Principal Act.

Section 43 of the Principal Act previously allowed only a father of a child to appoint a guardian by a will, depriving the mother of such a child the ability to do the same. The law now grants both parents of a minor, power to appoint a guardian to a minor and to bar the deprivation of any person parental responsibility over a child. This is one of those provisions that were affected by the decision in *Law & Advocacy for Women in Uganda Vs. Attorney General*. The amendments enforce constitutional standards which provide for parental responsibility to lie with both the parents.

Where no appointment of guardian was done by will, Section 44 of the Act restricted the appointment of a guardian to the father only. The amendment to this section expands the provision to include the mother of a minor. The amendment is in accordance with the law on equal rights for women and men in all matters.

Section 44A has introduced the appointment of a customary guardian as well as regulating the relationship between the surviving spouse and the person appointed a customary guardian. This new insertion introduces a new concept of a customary guardian into the succession law, which previously was not known to this law except as an unwritten customary practice. A “customary guardianship” means having parental responsibility of a Ugandan minor by a Ugandan citizen, resident in Uganda, in accordance with the customs, culture or tradition of an indigenous community in Uganda. This cultural practice is practiced in many cultures in Uganda, where a child may be given to a guardian from amongst the relatives where one or two parents are deceased. This proposal is welcome in the law, since it is not *ultra vires* to the rights of women and general human rights standards, but rather, enhances the enjoyment of rights of children without parents or those unable to take care of them.

Amendments to Section 45 of the principal Act on removal of a guardian are aligned with the recent amendments in the children’s Act of 2016 relating to appointment of guardians, their removal, conduct and holding

of property belonging to children under Part VIA of the Children Act which specifically;

- * prohibits the grant of guardianship to a person other than the citizen of Uganda (see Section 3A);
- * requires an application for legal guardianship to be made to the High Court, by a person above 18 years; (see Section 43B);
- * allows family members of a child to appoint a customary guardian for a child in accordance with their custom, culture or tradition (see Section 43C);
- * provides for the appointment of a guardian by agreement or deed by the parents of a child;
- * provides the conditions upon which guardianship may be granted by court;
- * provides for revocation of a guardianship order;
- * provides for the registration of guardian order; and
- * provides for the grant of probate or letters of administration of estates of children where a guardian is already appointed.

Section 46 of the principal Act is further amended (by inserting 46A and 46B) to define the powers that can be exercised by a guardian, including being the personal representative of the minor, where directed by Court to have custody of the of a minor's property. The provision further obligates a guardian to safeguard the property of a minor and account for such property in his or her custody. The provision also punishes a guardian who misapplies the property of a minor with imprisonment for a period of five years as well as making good the loss caused to the minor.

This sections also provide for termination of guardianship and the application of the Children Act Cap 59 which currently regulates matters of guardianship.

The following key conclusions can be made on compliance to national and international women and human rights standards;

- *Both parents can appoint a guardian to a minor in a will which again is in consonance with the standards in articles 31 (4) and (5); 33 and 34 (1) of the Constitution providing for the right and duty of parents to care for and bring up their children.*
- *Both women and men now have equal parental responsibility over a child in succession matters as prescribed by the Constitution and in section 4, 5 and 6 of the children's Act of, Constitution, Article 18 of CRC, Article 4, 18, 18 and 20 of ACPHR, Maputo Protocol (article 1,2,6 and 7) and CEDAW (Article 1,2,3,5,15 and 16)*
- *Sections 43, 44, 45 and 46 of the Succession Act have been aligned to the Children's Act as far as the appointment, powers, and removal of a guardian of a child is concerned which has streamlined issues of Guardianship in the children's Act and Succession Act.*
- *Clarity of law is important, as it enhances access to justice and enjoyment of human rights generally.*

2.12 Attestation of a Will

Section 50 required that every will to be attested by two or more witnesses each of whom must have seen his or her mark to the Will or person sign the Will in the presence of the testator. The Succession Act did not guide on where to place the attesting signature. In most cases, the attesting witness would sign or place a mark on the last page of the Will, thereby making such Wills susceptible to forgery by removing or distorting those pages that are not signed by the attesting witness or the testator.

The law now requires under Section 50 (c) that anyone attesting to a will; to write his or her name and address on every page of the Will, in the presence of the testator. This will enhance the identification of the attesting witness and enhance authenticity of Wills by ensuring that each page is signed by the attesting witness, thereby preventing rampant

cases of forged Wills as has been the case in the past affecting largely widows and their children.

2.13 Taking Benefit in a Will one has attests to

Clause 32 of the Bill amended Section 54 bars an attesting witness to take a benefit, be it by appointment or by bequest, from a will he or she attests to. An attesting witness is anyone who authenticates a will by appending his or her signature or special mark on the will as a witness. The 2021 Bill proposed to amend the earlier provision of the law which barred such a person from taking any benefit from the will. The law was maintained thus resolving the question of whether one can take any benefit from a Will, be it a gift or appointment or any other benefit under the will one attests to or not. Thus, to ensure that attesting witnesses remain credible during the processes of authenticating a will, there is need to bar such persons from drawing benefit from the will. This amendment is not ultra vires to the enjoyment of rights of beneficiaries but contribute to reduction of forgeries of wills by persons attesting wills which enhances the protection of the most vulnerable who are widowed women and their children.

2.14 Proving a Will in which you have interest in or are an executor

Clause 33 of the Bill amended Section 55 of the principal Act disqualified a person, who, by reason of interest in a will, or being an executor of will; to be a witness to prove the execution of the will or to prove the validity or invalidity of the will. This means that, a person who has interest in the will or was appointed executor in a will could not provide evidence to prove the validity or invalidity of the Will. This section is now amended to allow a person who has been appointed executor to prove the will. It also now allows one who is named in the will or has interest in the will to be a witness in proving the validity on invalidity of the Will. Usually, the close people around the dying persons are spouses, lineal descendants and dependent relatives who also are the likely beneficiaries. So, making this distinction would have made the law un implementable, again to the detriment to those that need this most. However, for a person who participated in writing or preparing a will, except an advocate, cannot be a witness during the process proving of execution or to prove the validity of a Will. This amendment is progressive as it will further enhance the

enjoyment of rights of beneficiaries in wills and reduce on fraudulent persons from benefiting.

2.15 Property transferable by gift made in contemplation of death

Clause 36 of the Bill amended Section 179 of the Succession Act which allowed a ‘man’ to dispose of movable property by gift made in contemplation of death by will. The amendment no longer discriminates against women in so far as ability to dispose of movable property by gift which applied to men only. This Section is one of those that were affected by the decision of Court in the case of Law & Advocacy for Women in Uganda I/s. Attorney General of Uganda, Constitutional Petition No. 13 of 2005. The amendment to this section now, provides that, any gift which was made in contemplation of death of a value exceeding five hundred thousand shillings to be in writing. The proposed amendment reaffirms a person’s right to own and dispose of property as recognized in Article 26 of the Constitution, including women who are equally entitled as men to own and dispose off property. This equality standard at law is further buttressed under Article 6 of the Maputo Protocol.

2.16 Eligibility to Administer Estates and Priority of the Surviving Spouse to Administer

Clauses 37, 38, 40, 42, 43, 44 and 45 of the 2021 Bill amended Sections 183, 184, 189, 190, 192, 200, 202 and 204 of the Succession Act.

The amendments to Section 184 and 190 of the Succession Act prescribe the eligibility for grant of probate and letters of administration. The amendments to the section bar grant of probate to any person who is a ‘minor’ or is of ‘unsound mind’. The amendments also change terminology used to refer to a person of “unsound mind” to “mental illness” which harmonizes the provision with the Mental Health Act, 2018. This means that; for one to be barred from being granted probate, it must be proved that they suffered from an existing certifiable disease by a mental practitioner. This is in line with the best practice in matters of disability as provided for in the Convention on the Rights of Persons with Disabilities.

Furthermore, the amendment prescribes for a ‘fit and proper person’ test before one is granted probate or letters of administration, which gives court discretion to determine whether a person appointed is fit to administer the estate properly mentally or otherwise. This is welcome and progressive as it enhances better rules for administration of estates of deceased persons thus more protection for the beneficiaries.

Section 200 of the Succession Act is amended by substituting words “next of kin” the word “the spouse and lineal descendants of the deceased person” The grant of Letters of administration was limited to persons who are related to the deceased person by blood as provided in Part III of the Act or by marriage. This amendment therefore emphasizes the position of “the spouse and lineal descendants of the deceased the most entitled persons to benefit from the estate of a deceased person under Section 27 of the Act. The amendment furthermore requires the person applying for letters of administration to inform the spouse or lineal descendants of this intention before letters of administration are granted. This enhances the rights of the affected in terms of right to information during matters of succession.

A new insertion of Section 201A in the principal Act granting preference to the surviving spouse the right to administer the estate of his or her deceased spouse is good at law. Section 201A grants the surviving spouse preference over any other person in the administration of the estate of a deceased spouse. This resolves, a long-standing concern in practice, where grant of letters of administration tended to disfavor women during matters of succession, yet the spouse(s) and lineal descendants are the most entitled in the process.

However, in the same amendment also allows the Administrator General to disregard this preference where the surviving spouse is not a fit and proper person or where the Administrator General finds it necessary to grant letters of administration to another person. This is common where there is more than one spouse (wives), since in the Ugandan culture, it is difficult to find a woman being married to more than one spouse (husband). In some instances, court has, especially in polygamous relationships, granted administration to another person other than the surviving spouse (s). This gives the Administrator General leverage in administering the estate of the deceased presented with such challenges.

Section 204 of the principal Act which requires that if there are two or more persons who are entitled to the same proportion of the estate, those persons are equally entitled to administration, and a grant may be made to any one or some of them with a citation to others. The amendment is progressive since Section 204 was unfair because the person to whom letters are granted would easily disinherit the other beneficiaries as letters could be granted to a person without informing all the persons who are equally entitled to the estate of a deceased or would not be considered before a grant was made.

These various amendments do not contradict with any national and international women and human rights standards in the various frameworks but instead enhance their rights. They following are key positives in the law;

- *The amendments emphasize that probate and letters of administration cannot be granted to a minor or one with a mental health illness except as certified by law and by court*
- *The spouse and lineal descendants of the deceased are the most entitled persons to benefit from the estate of a deceased person under Section 27 of the Act, which enhances their rights to the estate of their deceased.*
- *The surviving spouse has preference over any other person in the administration of the estate of their deceased spouse, both men and women. This section is progressive as it puts women and men at par in the law of succession.*
- *The amendment now empowers women by giving them priority as spouses in matters of succession which has not been the case largely. Women have been for long been the most disadvantaged by culture in terms of administering the estate of their deceased spouses. Article 33 (6) of the Constitution deals away with retrogressive cultural impediments against women.*

- *The amendment now requires a person applying for letters of administration to inform the spouse or lineal descendants of this intention and process. This enhances rights of the affected beneficiaries in terms of right to information during matters of succession.*
- *The amendments still allow the Administrator General to grant letters of administration to another person where the surviving spouse is not a fit and proper person which may be necessary for harmony in society.*

2.17 Administration during minority

Clause 47 of the Bill proposes to delete Section 216 of the Principal Act which empowers the grant of letters or probate to a minor. The amendment sought to delete Section 216 in order to harmonize the provisions and remove an absurdity which allowed a minor to administer estate, yet this is specifically prohibited in Section 184 of the Principal Act which bars a person from being appointed executor if he or she is a minor.

This strengthens the constitutional position on the age of majority as 18 years in all matters as per Article 34 of the Constitution, Section 2 of the Children's Act and CRC article 1 and article 2 of the ACRWC.

2.18 Revocation, annulment and duration of letters of administration or probate

Section 234 of the Act has been amended to allow revocation of the grant of probate or letters of administration for just cause. A just cause for revocation includes procedural and substantive grounds relating to the grant and administration of the estate. The amendment includes amongst the grounds for revocation of probate or letters of administration; mismanagement of the estate. The amendment has now created criminal sanctions against an executor or administrator where the grant was obtained fraudulently by making a false suggestion, or by concealing from court something material to the case or for mismanagement to the estate.

The amendment requires an executor or administrator against whom criminal sanctions have been imposed to, in addition to imprisonment, make good the loss suffered to the estate. Court has been empowered with the amendments; to appoint another executor or administrator in the same process of revoking letters or probate.

Section 244 of the principal Act has been amended to provide for time frame within which to apply for probate and letters of administration. The Succession Act did not prescribe the time within which a person may apply for letters of administration or probate. Usually, there is delay in applying for grants which not only affects the beneficial interests of the beneficiaries, but also occasions loss to the estate. People also apply for probate or letters long after the death of the deceased, which gives unscrupulous people the opportunity to strip the estate of its beneficial value.

This section now prescribes a time frame within which to apply for probate from the date of death of the testator which shall be made within one year from the date of death of the testator according to the amendment. The new amendment further empowers a beneficiary under the estate to apply for letters of administration where a person named as executor in a will does not apply for probate within the time prescribed (one year), to apply where no application has been made. This has provided a remedy in situations where executors appointed in the will refuse or neglect to apply for probate.

Sections 258 and 259 of the Act were amended respectively to, among others-

- a. prescribe a duration for carrying out the functions of administrator or executor within 2 years from the date of grant;
- b. allow court to extend the time for carrying out the functions of administrator or executor for further period of 2 years on the consent of the beneficiaries and where it is in the best interest of the beneficiaries.
- c. Grant court powers to extend time for the administration of estates with minor children in order to ensure that such estates are adequately administered until all the minors cease to qualify to benefit from the trust created under the proposed Section 27(2).

The above amendments on Revocation, annulment and duration of letters of administration or probate are progressive in as far as administration of estates is concerned.

- *They now provide for clarity on timeframe when the administration can come to a close. This has been a point of contention since the law did not prescribe a time within which a person should have exercised the powers and functions of an administrator or executor to wind up matters regarding the estate. Some executors and administrators have abused their positions to hold onto the estate without distributing it to the beneficiaries as required by their appointment, whilst others may neglect their duties or mismanage the estate.*
- *Criminal sanctions can be pressed against such executors or administrators as well as requiring them to make good the loss they cause to the beneficiaries.*
- *There are now options for the beneficiaries on how to proceed where the executor does not perform his or her duties within the prescribed time.*

2.19 Procedures of Lodging of Caveats

Sections 253 to 255 of the Succession Act which empower a person to lodge a caveat against the grant of probate or letters of administration have been amended to address the legal and practical challenges embedded in them which has impeded the quick disposal of succession disputes. Under these new amendments, where a person lodges a caveat under section 253, he or she shall, within fourteen days of lodging the caveat, serve a copy of the caveat to the petitioner for probate or letters of administration. Once a caveat is lodged in respect of the petition lodged for probate or letters of administration, court shall suspend the proceedings in the matter until the caveat has been withdrawn, lapsed or a suit for the removal of the caveat has been filed and determined by court.

Under the old section 255, it was mandatory to give notification to the caveator before any proceedings can take place but did not prescribe the nature of notification. It has been amended to prescribe the procedure that must be followed upon the filling of a caveat and the duration within which the caveat shall lapse, if not removed. The law now provides that where a petition for probate or letters of administration in respect of which a caveat has been lodged shall, within six months from the date the caveat was lodged, file a suit for removal of the caveat and the one who lodges a caveat shall within six months from the date the caveat was lodged, commence proceedings to prove the objections contained in the caveat. Where there is failure to comply with time frames, the caveat lapses and where it does, no further caveat is lodged in respect of the same estate.

2.20 Intermeddling in the Estate of the Deceased Person

Clause 55 amends Section 268 of the Act relating to intermeddling in the estate of a deceased person has been amended. Section 268 deems intermeddling to occur when a person does any act which belongs to the administrator or executor of the estate when there is no substantive administrator or executor. The section however allows the intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his or her funeral, or for the immediate necessities of his or her own family or property; or dealing in the ordinary course of business with goods of the deceased received from another person.

The Bill proposed amendments to Section 268 are not ultra vires to any laws of Uganda and international human rights standards and therefore contribute to enhancing rights of beneficiaries and access to justice who are especially women and children. Specifically, the amendments now have;

- * created an offence against a person who intermeddles with the estate of a deceased person.
- * expanded the definition of intermeddling to include instances where an administrator or executor is in existence; which previously was not in the section.

- * allowed a spouse or lineal descendants to intermeddle in order to provide for the funeral of a deceased person and immediate necessities of the family;
- * limited the intermeddling to 3 months and obligate the spouse or lineal descendants to inform the Administrator general of the intermeddling
- * required a person who intermeddles in the estate and causes loss to make good the loss caused to the estate

2.21 Disposal of property by executor or executrix or administrator

Clauses 56 and 57 of the Bill amended Section 270 and 271 of the Succession Act to empower an executor or administrator to dispose of the property of the deceased, either wholly or in part, in such manner as he or she may think fit. Section 271 prohibited the executor or administrator to purchase either directly or indirectly, any part of the property of the deceased and made such sale voidable at the instance of any other person interested in the property. The amendments have further enhanced protection of the beneficiaries in Section 270 to-

- a. allow the executor or administrator to sell property of the estate only with the written consent of the surviving spouse and lineal descendants;
- b. allow a guardian to consent to the sale of property where the beneficiary is a minor;
- c. require the administrator or executor to account to the beneficiaries the proceeds from sale;
- d. give the beneficiaries the first option to buy the property being sold and;
- e. bar the executor or administrator to purchase the property of estate

Where consent is withheld unreasonably; the amendments provide that the aggrieved person can apply to court for redress; and empower court to grant consent to the disposal of property belonging to an estate where consent is unreasonably withheld.

This section of the law had previously been used by executors or executrix or administrators to enrich themselves at the expense of the beneficiaries, as it had empowered them to sell off the property belonging to the estate without the consent of the beneficiaries at prices which are below the market value and without accounting to the beneficiaries the proceeds arising from such sale. This largely affected, women, children, and other vulnerable members of society where the estate is stripped of its assets and properties, leaving the beneficiaries in a precarious situation.

The Amendments to these sections of the law enhance protection of women, children and most vulnerable in society by putting in place those checks to actions of executors and administrators which may disadvantage the most vulnerable in society who cannot afford and easily access justice.

2.22 Powers of Several Executors or Administrators

Clauses 58 and 59 of the Bill amended Sections 272 and 273 of the Act to guide on what happens where there several executors or administrators. Section 272 of the Act provides that when there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by anyone of them who has proved the Will or taken out administration. Section 272 has been abused in situations where a single executor or administrator applies and is granted letters or probate of an estate without the consent of the other persons appointed executor or administrator. Section 272 has thus been amended with a new insertion of subsection requiring that where there is more than one executor or administrator, probate or letters of administration may, with the consent of all the other executors or administrators, be granted to a sole executor or administrator or any other number of executors or administrators. The amendments now require consent from one executor or administrator in estates where there is more than one executor or administrator, to be taken, before managing the estate thereby protecting

testamentary privilege and consent of beneficiaries in the estate of concern.

2.23 Liability of executor and administrators

Section 332 of the Act is amended to provide that when an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, or fails to account to the beneficiaries or the estate the proceeds accruing to the estate he or she is liable to make good the loss or damage so occasioned and face punishment of three years or to a fine not exceeding one thousand currency points, or both. The amendments occasioned to this section will enhance effectiveness by ensuring that administrators and executors are adequately punished for their actions and omissions. It should be noted that incidents of administrators or executors acting in a manner that is detrimental to the estate have caused untold plight and suffering yet the law did not effectively deal with such conduct.

3.0 DOES CONFORMITY TO INTERNATIONAL HUMAN RIGHTS STANDARDS TRANSLATE TO WOMENS ACCESS TO JUSTICE IN UGANDA?

Uganda has embedded international women and human rights standards in its constitution and local legislation as well as policy. Uganda ratified CEDAW without reservations in 1985 before the promulgation of the Constitution and the Maputo Protocol in 2010. Objective VI of the Ugandan Constitution requires the Government of Uganda to “ensure gender balance and fair representation of marginalized groups on all constitutional and other bodies.” Article 21(1) (2) and (3) provide for equality of men and women as one of the approaches to push for inclusiveness of women in all aspects of life in Uganda. The Constitution provides for the ‘Rights of women’ in articles 31, 32 and 33. Article 50 provides for the enforcement of human rights, by allowing any person, whose Constitutional rights have been violated either by the state or by non-state actors, to seek recourse in the courts of law.

Uganda has gone ahead to domestic international human rights standards in various legislations. In Uganda, we have laws on domestic violence, trafficking in persons, female genital cutting and the recent amendments on the succession law on separation, child custody, maintenance and inheritance.

Despite Uganda’s alignment to international standards in law and policy in line with women’s rights, gender gaps in access to justice persist. A study report by LAPSNET summarized in a presentation² documents a myriad of challenges towards access to justice for women. Thus, beyond conformity to international human and women rights standards, there are several challenges limiting access to justice for women that if not addressed will impede the right to justice for women and consequently

2 Namubiru Sylvia Mukasa (2015), *Access to Justice for Women in Uganda: The Affordability of Access to Justice for Women in Uganda & the Plight of LASPs and Legal Fees in case of having to pay fees after losing a case. A Presentation to FIDA–Uganda Advisory Committee, 26th November 2015, Metropole Hotel*

other human rights of women. These are briefly summarized in the next sections;

Financial challenges still bar many women from enforcing their rights. Women do not constitute a homogeneous group and that among them are differences created by social status, education, and financial position. In some instances, women who are educated and financially strong, may have a sound capacity to pursue legal justice than poor women. This impacts on how the different categories of women may experience gender related barriers in accessing justice. Uganda has a legal aid policy and a draft legal aid law yet to be enacted. Legal aid in Uganda is largely offered by Justice Centres under the Justice, Law and Order Sector (JLOS,) Law Development Centre (LDC) Legal Aid; Law Society, FIDA Uganda and some scattered service aid providers among non-state actors. Efforts to spread across national legal aid coverage are thus very important in order to reach out to the most vulnerable and unreached in society, which include women.

Limited physical access to justice institutions and services. Most of the JLOS services remain in the urban areas. This creates a physical barrier that may result in victims or users choosing to relinquish their rights to pursue other options. For women, the maternal functions and other household responsibilities limits them to access justice and the long distances to cover to reach a service point. Although, the Judiciary has introduced circuits for hearing cases, the challenge of distance is yet to be dealt with.

The Justice system is adversarial and unfriendly. Women form the majority of the illiterate population and find it hard to access justice institutions and mechanisms for fear of the procedures, technicalities and complexities involved. Within the traditional justice and informal justice mechanisms, women are subjected to the same patriarchal norms that reinforce inequalities and violence. To encourage compliance and increase access to the formal and informal systems, all procedural steps should be simple, inexpensive, and easy to carry out.

Women's access to justice is affected by laws not being implemented.

Once parliament has passed bills to repeal or amend discriminatory laws and/or enact gender-responsive legislation such has been done on many issues in Uganda, it must be followed with measures to secure and monitor implementation of such legislation. This entails continuous analysis of impediments to the implementation of laws already in place. Such laws on domestic violence, trafficking in persons, female genital mutilation, and now succession may still not be useful for enhancing women's rights if effective implementation is not undertaken.

Conformity to international human rights standards is not sufficient without reforming the justice system.

According to UN Women³ system reform requires formal and informal justice institutions to implement effective policies and procedures and improve access to services for women. One of the ways of system reform is to deal with strengthening the capacities of formal and informal justice actors in identifying and eliminating institutional and gender constraints. Legal rights can be undermined by unsupportive implementers of the law, including judges, traditional leaders, land registry officers, land board tribunal members, and schools, which prepare the next generation of practitioners. In Uganda, although there are ongoing efforts at various levels to strengthen the justice, law and order sectors in gender responsiveness, there is less attention being paid to informal ones, yet they are closer to women physically and procedurally. The Local Council Courts for example have received less attention as dispensers of justice at community level, though they are recognised in the law.

Engendering the training curriculum of national justice institutions that address the strategic needs of poor women

such as community police stations and formal and informal courts, which deal with violence-related cases, small commercial claims, and personal status issues (marriage, divorce, child custody and maintenance and inheritance) is a starting point to system reform.⁴ This is the ideal in faster justice system reform but has not been holistically embraced in Uganda. Thus, we still see largely patriarchal systems both in the formal and informal institutions which continue to perpetuate the age-old discriminations

³ www.unwomen.org

⁴ *Ibid*

that laws such as succession Act now are reforming and aligning to international human rights standards.

Without community education and engagement, conformity to international human rights standards will not enhance women's right to justice. Community education and engagement is necessary, to support the empowerment of women and enhance awareness and understanding of their rights and ways of accessing justice services. Women and girls need to be empowered with the tools to know, claim and exercise their rights and extending knowledge of women's rights to men, boys and community power structures.⁵ This should be accompanied with equipping women and men, girls and boys in Uganda with Knowledge of the laws affecting them.

This also comes along with active education on negative harmful practices against women to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate discrimination against women.⁶ These practices are deeply embedded in the mindset of people and cannot be destroyed overnight. So much as Uganda conforms to all these standards, there must be accompanying education for individual and social change and on laws affecting individuals. Otherwise, legal reform, will go ahead of mindset change but be faced with the challenge of implementation, thus rendering laws redundant and ineffectual in protecting and⁷ enhancing women's rights.

Increasing the number of women in the justice institutions. This would make the system more hospitable to women. When women encounter fellow women in the judicial systems, it encourages their individual participation. The State can use statutory quotas to boost women's participation in courts, tribunals and other judicial or quasi-judicial bodies.

5 *The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)* 220 East 42nd St, New York, NY 10017, USA. United Nations; New York, 2018.

6 www.unwomen.org

7 *Ibid*

The justice sector needs more financing especially in areas affecting women most. Budgets must be scrutinized to ensure that adequate financial and human resources are allocated to the effective implementation of legislation.⁸ There is need to provide adequate budgetary and other resources for the implementation of the laws and ensure the functionality of institutions of justice open to women. Within the justice sectors, more attention needs to be paid to the underfunded institutions in which women encounter the justice sector. These include; the police, lowest magistrates courts, human rights tribunals, Local council Courts and other informal justice institutions.

⁸ UN Women and the Inter-Parliamentary Union (2021), *Gender-responsive law-making Handbook for Parliamentarians* No. 33. UN Women and the Inter-Parliamentary Union

4.0 CONCLUSION

Whereas Uganda, as a signatory to the international instruments on women and human rights standards, has made progress in ratifying and domesticating these standards into the national constitution and a good number of local legislations affecting women's rights including the recently amended Succession Act, a lot remains in ensuring that, these benefit women's lives in terms of enhancing and protecting their rights.

Constitutional and legislative advancements as well as reform have been made in favour of women in Uganda, yet transformative power of the law cannot be galvanized without continuing reforms in the wider justice systems of the country. The effective implementation of the 2030 Agenda for Sustainable Development in Uganda will thus not be achievable without access to justice. A lot more will need to be done by working closely with the Justice, Law and Order Sector and non-formal institutions in which women come in contact with; in order to improve women's access to justice.

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Publications

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2. UN Women (2018), A Practitioner's Toolkit on Women's Access to Justice Programming York. Module 1: The Theory and Practice of Women's Access to Justice Programming; United Nations: New York
3. UN Women and the Inter-Parliamentary Union (2021), Gender-responsive law-making Handbook for Parliamentarians No. 33. UN Women and the Inter-Parliamentary Union

Bills

4. Succession (Amendment Bill) Bill of 2018
5. Succession (Amendment Bill) Bill of 2021

Acts

6. Children's Act, Cap 59
7. Succession Act, Cap 162.
8. Succession (Amendment), Act of 2022

International Instruments

9. Convention the Convention on Elimination of all forms of Discrimination Against Women (CEDAW),
10. Convention on the Rights of the Child (CRC), 1989
11. Convention on the Rights of Persons with Disabilities (CRPD), 2006
12. Declaration on the Elimination of Violence Against Women (DEVAW), 1993
13. Universal Declaration on Human Rights (UDHR), 1948
14. Convention on Economic, Social and Cultural Rights (ICESCR), the International Convention on Civil and Political Rights (ICCPR).

Regional Instruments

15. African Charter on the rights and Welfare of the child (ACRWC), 1999.
16. African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 (Maputo Protocol)

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