

PNDC LAW 111 IN GHANA AND INTERNATIONAL HUMAN RIGHTS LAWS

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ABSTRACT: *The paper has discussed Ghana's PNDC Law 111 and related it to international human rights instruments such as the African Charter and the CEDAW on women's property inheritance rights. The objective is to find out if Law 111 fully promotes women's property inheritance rights. The findings are that: to some extent, Law 111 has addressed some injustices faced by women on intestate inheritance. However, Law 111 has certain weaknesses, which go against the equality clauses in the international human rights instruments. Due to the weaknesses, PNDC Law 111 has not fully met the standards set by the international human rights regimes on women's property inheritance. Since Law 111 is a national law on intestate succession, it needs to reform itself. The research is important because it highlights some of the weaknesses of law 111 on women's intestate property inheritance and calls for reform on the subject.*

KEY WORDS: PNDC Law 111, Intestate, women's property inheritance, International human rights instruments.

INTRODUCTION

In any society today, the reality of legal pluralism seems an undisputed phenomenon. In developing African societies in particular, the legal dimension of property inheritance, for example, is a complicated one. This is because different legal traditions, both formal and informal, on inheritance issues, coexist (see also Manuh 1988). In Ghana, both the state and indigenous legal institutions operate, and each tries in some ways to influence the effectiveness of the other. For example, the state approves indigenous laws on marriage, land transactions and arbitration on certain matters. Where there appears to be a misunderstanding is when it comes to matters pertaining to indigenous inheritance after death. Ghana promulgated the intestate succession PNDC Law 111 in 1985 as a substitute for indigenous systems of inheritance after death. This Law is meant to remove "anomalies ... in law relating to intestate succession and to provide a uniform intestate succession law". As such, PNDC Law 111 is a national law on intestate inheritance applicable to all "irrespective of the class of the intestate and the type of marriage contracted by him or her" (Government of Ghana, PNDCL 1985: i). The questions, therefore, addressed in this study are: what is PNDC Law 111 and what are the reasons for its promulgation? Has the PNDC Law 111 met the standards set by international human rights regimes on women's property inheritance rights? The research tries to find answers to the questions, discuss the findings and conclude. The main objective is to find out if PNDC Law 111 fully promotes women's property inheritance rights by relating it to international human rights

protocols. The research is important because it highlights some of the weaknesses of the law 111 on women's rights of intestate property inheritance; and calls for necessary amendment or law reform.

The idea of Ghana having more than one law governing its intestate succession and inheritance practices links the discussion with the discourse of legal pluralism or 'constituent orders' where the state laws and indigenous or local legal decision-making institutions mainly co-exist, operate, and interact; but also in some small or large measure seem influenced by transnational legal systems. Recent scholarship on the subject has shown the mutual constitutive nature of these systems rather than their separateness. In addition, definitions of 'the constituent orders' have been widened to include a range of informal ordering systems, sometimes called 'private governance', which are found in societies such as the United States with pervasive state law and in post-colonial nations. Because of this, plurality of legal systems now appears to be a fundamental characteristic of all societies, not only those like Ghana with colonial histories (Merry, 1992: 358). In this particular study the goal is not so much to highlight the operation of the constituent orders but relate the state law on intestate succession (PNDC Law 111) with the international human rights instruments such as the Protocol to the African Charter on Human and Peoples' Rights, the United Nations Charter and the Universal Declaration on Human Rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on women's property relations. The idea is to see whether PNDC Law is observes women's rights of intestate property relations. The intention of relating the intestate succession law to international human rights instrument is necessary because the latter "are a set of universal claims to safeguard human dignity from illegitimate coercion by state agents" (Brysk 2002: 3 as quoted in Merry 2007: 6). The foundational principle being that all humans possess certain inalienable rights by virtue of their humanity, irrespective of their place in society (Hellsten 2004:61).

METHODOLOGY

The research related the intestate succession, PNDC Law 111 to international human rights laws such as the African Charter on Human and Peoples' Rights, the United Nations Charter and Declaration of Human Rights, and the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW). As such the study has been based on textual materials. The international human rights instruments are used as the assessment criteria on Ghana's intestate, PNDC Law 111. The rationale was to find out whether law 111 observes or infringes on the international human rights laws in terms of women's property relations after the death of their husbands. The study is important because it has highlighted some of the weaknesses of PNDC Law 111 and asked for correction of the anomalies within the law for women to have full rights of inheritance.

RESULT/DISCUSSION

The analytical strategy adopted here is first gives reasons for the legal intervention in PNDC Law 111. This is followed by presentation of the Law 111, analysis of the international human rights instruments and finally, PNDC Law 111 is related to the international human rights instruments.

Reasons for Promulgation of PNDC Law 111

From 1884 to 1985, intestate succession was determined according to the provisions of Sections 10 and 48 respectively of the Mohammedan Marriage Ordinance (Cap. 129) and the Marriage

Ordinance (Cap. 127), where applicable. However, the law governing intestate succession in Ghana remains predominantly indigenous law. Under this law, the estate of the intestate continues to devolve to the matri-family or to the children (if any) of the deceased within the patri-family.¹ Thus, indigenous law together with manipulations from some family members apparently bereaves the widow and children of any property; they lose all support, maintenance and security.

Judicial decisions on the aspect of indigenous law show, for example, in the case involving *Quartey v Martey and Anor* in the formal court. In this case, Mr H.A Martey and Evelynna Quartey were married under customary law. On the death of the husband, the wife issued a writ of summons against the decedent's administrators claiming:

- One-third share of 70 cattle owned by the deceased,
- One-third share of a house at Accra and
- One-third share of cash.

The Ollennu (Judge) dismissed the plaintiff's claim stating:

By customary law, it is a domestic responsibility of a man's wife and children to assist him in the carrying out of the duties of his station in life, for example, farming or business. The proceeds of this joint effort of a man and his wife and/or children, and any property which the man acquires with such proceeds are by customary law the individual property of the man. It is not joint property of the man and the wife and/or the children. The right of the wife and the children is a right to maintenance and support from the husband and father. ... There is no evidence ... that the properties acquired by the late H.A. Martey were the joint property of himself and the wife (Offei 1998: 277).

The judicial decision and other steps taken in courts to help women have not actually helped matters much. If a man wishes to provide security for his spouse and children after his death, he has to make a gift to them while alive. If then a man fails to make the gift while he is alive, or fails to make testamentary disposition to that effect, the wife and children have no guarantee of any benefit of his estate.

The need for realistic and practical reappraisal of a woman's situation became more poignant in the face of concerns shifting from the extended family to a more nuclear family between which there is tension as to the appropriate line of devolution of intestate property. The contribution of the woman and children in the acquisition of property, coupled with new developments in family dynamics, gained so much prominence and significance that it is no longer realistic to deprive women and their children entirely of the benefit of the property. This called for a legislative intervention through the intestate succession, PNDC Law 111 in 1985.

PNDC Law 111

The attempt to make some changes in some aspects of the indigenous intestate led to the promulgation of intestate succession, PNDC Law 111 by the military government of the Provisional National Defence Council (PNDC) on 14 June 1985. The law became known as PNDC

¹ Some of the data on PNDC Law 111 partly came from interviews with Elisbert Ofosu-Ajare and Clement Amofa – both were lawyers at Trinity Chambers, Adum, Kumasi. I also used some unstructured research conducted by Clement Amofah. I am grateful for their availability and permission.

Law 111 on intestate succession. The intention of the statute was to determine intestacy and to substitute for indigenous legal practices on inheritance after death in Ghana. It, along with three other laws, namely the Customary Marriage and Divorce (Registration) Law (PNDC Law 112), the Administration of Estate (Amendment) Law (PNDC Law 113) and the Head of Family (Accountability) Law (PNDC Law 114) came about together (Awusabo-Asare 1990). The justification for such a legislative intervention appears in the Intestate Succession Law, 1985 Memorandum pages i-iv. The Memorandum, among other things, maintains that:

This Law is aimed at removing the anomalies in the present law relating to intestate succession and to provide a uniform intestate succession law that will be applicable throughout the country irrespective of the class of the intestate and the type of marriage contracted by him or her (Government of Ghana, PNDCL 1985: i).

In doing this, the law theoretically tilted the balance of convenience in favour of the conjugal family by providing adequate protection and security for the surviving spouse and children, and by removing the incongruence between the indigenous laws governing intestate inheritance and modern development in family dynamics. The relatively new law on intestate succession, known as the 1985 PNDC Law 111, therefore deals with the distribution of the estate of a person who dies without a testamentary disposition of self-acquired property.

Devolution of intestate property among beneficiaries

Section 3 of Law 111 provides that the surviving spouse and children are entitled absolutely to a house (if any) and household-chattel—where household-chattel includes furniture, implements, books, private cars, jewellery, household livestock, home appliances, simple agricultural tools and all the clothing and things used in the house. If there is more than one house, then the surviving spouse and children choose first. All the properties, less the house and household-chattel, form the remainder.

Having dispensed with the house and household-chattel, the law, under Section 6 distributes the remainder of the estate in specific fractions as shown in the following table.

Table on devolution of intestate property

| | All 4 exist | No Parent | No Children | No Child and Parent | No Spouse | No Spouse and Parent | No Spouse, Child, Parent |
|---------------|-------------|-----------|-------------|---------------------|-----------|----------------------|--------------------------|
| Spouse | 3/16 | 3/16 | 1/2 | 1/2 | - | - | - |
| Children | 9/16 | 9/16 | - | - | 3/4 | 3/4 | - |
| Parents | 2/16 | - | 1/4 | - | 1/8 | - | - |
| Customary Law | 2/16 | 1/4 | 1/4 | 1/2 | 1/8 | 1/4 | 1 |

(Government of Ghana, PNDCL 1985)

The table shows how the remainder of the intestate estate devolves among beneficiaries using PNDC Law 111. Thus, the essence of the law, as indicated, is to give the bulk of the estate to the surviving spouse and children. If no parent survives (biological or legal) then 2/16 will be added to the 2/16 of extended family making it 4/16. If there is no child, then 1/2 of the remaining assets go to the surviving spouse. One-quarter goes to the surviving parent(s), if any. The other 1/4 will go to the extended family. If there is no surviving parent, then 1/2 goes to the extended family. If

a child survives (male or female), then the child gets $\frac{3}{4}$ of the remainder, $\frac{2}{16}$ goes to the surviving parent and $\frac{2}{16}$ to the extended family. If there is no parent, the extended family's share becomes $\frac{4}{16}$.

Where the survivor is a parent(s), then the parent(s) gets $\frac{3}{4}$ of the remaining assets and $\frac{1}{4}$ is distributed to the extended family. If no spouse, child or parents survive the decedent, then it all goes to the extended family. However, where there is no child, no parents and no family, the Republic of Ghana takes the intestate property.

The law renders the marriage type irrelevant for the distribution of the estate. It therefore explicitly repeals Sections 48 and 10 of the Marriage Ordinance and Mohammedan Marriage Ordinance respectively. PNDC Law 264 amended PNDC Law 111 by the inclusion of section 16a and substitution of section 17. The effect of this law is, before the distribution of the estate, no person shall, whether the decedent died intestate or testate, eject a surviving spouse or child from the matrimonial home. As a statute, PNDC Law 111 supersedes and reforms the rules of indigenous law in as much as the latter affects inheritance.

International human rights protocols on females' inheritance

Internationally, there is significant shared concern on the issues of females' inheritance and property rights as an important pillar of social justice and equity. Regionally article 66 of the Protocol to the African Charter on Human and Peoples' Rights enshrines the principles of non-discrimination because of gender. Article 18 of the African Charter calls on all state parties to eliminate discrimination against women, and protect the rights of women and children. Thus, the implementation of the provisions by state parties will enable women to enjoy their human rights to the fullest (Limann 2003; Ghana Graphic Corporation 2006; Olowu 2006).

Some of the key provisions of the protocol include article 2, which talks about the elimination of discrimination against women, and calls on state parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. Importantly, article 2(1) b appears to protect the rights of widows. Article 2(2) seems to reiterate the same point, calling for the elimination of harmful cultural and traditional practices, which give rise to discriminations and biases. Article 3 discusses the right to dignity indicating that women have such an inherent right like men. The article asks for the recognition and protection of this right. The article also enjoins all state parties to take appropriate measures to ensure the protection of women's rights; protecting women from all forms of violence, and respect for their dignity.

Similarly, article 4 talks about the rights to life, integrity and security of person. As such, every woman, like every man, has a right to life, integrity and security of person. Article 7 indicates the need for state parties to enact laws to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. Finally, article 8 talks about access to justice and equal protection before the law. It indicates the fact that women and men are equal and shall have the same rights to equal protection and benefit of the law (Ghana Graphic Corporation 2006; Olowu 2006).

It is significant and refreshing that the Protocol in its first 8 articles made provisions that seem to address specifically different categories of women such as widows, divorced women or women separated from their husbands, and insists that like men, such categories of women should have equal access to right frameworks and should be treated with respect. Article 20 in particular reiterates how 'widows are subjected to all sorts of degrading and humiliating treatment by virtue of their status as widows' (Limann 2003: 16) and insists that they should not be denied custodianship of their children. The article is also against forced marriage of widows as seen in levirate marriages in certain societies in Africa.

Article 21(1) raises the perennial problem of widows' inability to inherit the estates of their husbands. The article explicitly maintains that:

A widow shall have the right to an equitable share in the inheritance of the property of her husband.

A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

What remains unspecified in the Protocol to the African Charter is the position of women in non-marital relationships and female children in relationship to property inheritance. The core human rights documents, such as the United Nations Charter and the Universal Declaration on Human Rights, explicitly mention discrimination based on sex as a violation of human rights. This idea is also stated in the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, adopted by the U.N. General Assembly in 1966 (Zwingel 2005: 92).

The first generation of rights underscores freedom of expression and protects the autonomous citizen, including women, against arbitrary governmental action of detention and torture. Nevertheless, it falls short in dealing with specific issues such as widespread forms of physical and mental violence committed against women by non-state actors within the family and by family members, and which might kill many women. Sometimes some of this violence could stem from property-related disputes. The failure of the first generation of rights to recognise this creates the impression that the international 'construction of civil and political rights ... obscures the most consistent harm done to women' (Charlesworth 1995: 107).

On the other hand, the second generation of rights deals with social, economic and cultural rights. In principle, it considers the situation of women within the family, their socio-economic status and cultural determinants that affect, define, and limit their lives (Hosken 1981: 3; Zwingel 2005: 93). When it comes to economic rights, the second generation of rights ignores unpaid work of women. Moreover, 'the specific economic situation of women, in many cases, their economic dependence on others, particularly in marriage, was not considered' (Charlesworth 1995; Nash 2002; Zwingel 2005: 93).

Similarly, the third generation of rights claims the right to cultural self-determination. It lays emphasis on the rights of groups or collectives and not on the individual. This is why this set of rights may carry potential danger for women in the sense that 'the precedence of group rights over individual rights is likely to make women's subordination within collectives more difficult to challenge' (Nash 2002: 418). This is dangerous because:

cultural self-determination, protected from legal regulation as a private matter, has often been invoked to justify traditional cultural practices that discriminate against women. At the same time, women are not understood as a group to which self-determination would be applied (Zwingel 2005: 94).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) intended to address the inadequacies in the international regimes focusing attention on discrimination as the root cause of most human rights violations against women. The Convention sees discrimination as both explicit and implicit. Thus, according to the CEDAW, discrimination refers to:

any distinction, 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, civic or any other field (Limann 2003: 10).

By identifying discrimination as not only explicit but also implicit, the CEDAW aims to remove the structural barriers that exist between the sexes that lead to discrimination against women. In spite of the fact that this international instrument came into force in September 1981, there appears to be still gross violations of women's human rights. Exacerbating the situation is the fact that many women are ignorant of their rights, let alone the rights frameworks to address their violations. The situation therefore called for an Optional Protocol to the Convention to redress the problems. The United Nations Commission on the Status of Women adopted the Optional Protocol to CEDAW on 11 March 1999. This is a new complaint mechanism, which permits women from the signatory countries to access the CEDAW and the Protocol to complain to the CEDAW Committee when domestic remedies have failed (Limann 2003: 10-11). The Optional Protocol further makes provision for an inquiry procedure. This means the CEDAW Committee is empowered to inquire into serious and systematic abuses of women's human rights in the signatory countries. This procedure supplements the report each signatory country presents to the Committee regularly. Apart from this, NGOs may submit 'shadow reports'. This may supplement or contradict what the state parties submitted. Through triangulation of these strategies, the Committee makes its observations and recommendations in areas where a particular country may be falling short in relation to the Covenant. Thus, it appears evident that the mechanisms are useful. This is because recommendations and concluding observations made by the Committee will supplement the country reports individually submitted to it. Equally important, it makes it possible for women to have direct access to CEDAW.

Apart from the CEDAW and Optional Protocol, other international bodies created by the UN for the advancement of women's rights, also play notable roles by promoting women's issues throughout the UN system. These include the Commission on the Status of Women (CSW), the United Nations Development Fund for Women (UNIFEM) and the International Research and Training Institute for the Advancement of Women (INSTRAW). The Mexico City Conference (Declaration and World Plan of Action for Implementation of the Objectives of International Women's Year), for example, brought about the establishment of INSTRAW and UNIFEM. The two institutions not only provide the institutional framework for research, but also help carry out training and operational activities in relation to women and development (Limann 2003; Olowu 2006: 79).

Perhaps, one of the greatest efforts of the UN occurred in April 2000 when the Commission on Human Rights adopted a resolution on women's equal ownership of, access to and control of land and the equal rights to own property and to adequate housing (Resolution 2000/13). Another effort took place on 23 April 2001 when the Commission on Human Rights adopted a similar resolution (Resolution 2001/34) on women's equal rights to property. The resolution further invited the Secretary General to encourage all organisations and bodies of the UN system to undertake more initiatives in promoting women's equal ownership of, access to and control over land, and the equal right to own property and adequate housing. It allocates resources for studying and documenting the impact of complex and perilous situations, particularly with respect to women's equal rights to own land, property and adequate housing (Benschop and Lacroux 2003).

The core provisions of the Protocols to CEDAW and of the African Charter are similar. While it may not be appropriate to suggest that the latter is a carbon copy of the other, it is undeniable that it draws on the norms and philosophy of CEDAW (Olowu 2006). The dissimilarity of both instruments lies in their perspective on women's rights in private spheres. For example, while CEDAW is quiet about women's rights in private spheres, the African Charter tries to influence and protect these rights. While CEDAW only wants to secure equality between husband and wife in marriage, the Protocol to the African Charter sees it necessary to change or modify traditional marital practices. Consequently, unlike the CEDAW, which is silent on polygamy, the African Charter requests state parties 'enact appropriate national legislative measures to guarantee that ... monogamy is encouraged as the preferred form of marriage...' (Art. 6(c), Art. 7(c) of Protocol to the African Charter). On the other hand, the Protocol to CEDAW obliges state parties to address 'the particular problems faced by rural women' (Olowu 2006: 97).

Current global population projections demonstrate that the greater percentage of African women live in rural areas (World Population Data Sheet 2003: 3-4). While 33 per cent of the total population live in urban centres, 67 per cent live in rural areas in Africa. In sub-Saharan Africa, an estimated 30 per cent of the population live in urban and 70 per cent in rural areas (Sass and Ashford 2002: 5-7). It is therefore surprising that, the Protocol to the African Charter, which post-dates the Protocol to CEDAW, does not consider this important element since most of the abuses and discrimination against women seem to occur in rural settings. This omission can be overcome when the provisions of the Protocol to the African Charter complements the global framework in CEDAW.

Law 111 and international human rights protocols

The question is, to what extent international conventions such as the Protocols to African Charter on Human and Peoples' Rights (African Charter) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) influenced PNDC Law 111 as reflected in the Constitution of Ghana?

PNDC Law 111 has two major limitations. First, as a statute it applies only to property not included in a valid will. For example, should a man die semi-intestate the law applies to only the part of his estate that has not been covered by the individual's will. Thus, an individual might override the provisions of Law 111 by simply making a will (Fenrich and Higgins 2001), even though this will be unconstitutional. This contradicts the provision in article 22 of the 1992 Constitution of Ghana.

The article speaks about property rights of spouses during marriage, divorce and after the death of a spouse as follows.

1. A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.
2. Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.
3. With a view to achieving the full realisation of the rights referred to in clause (2) of this article -
 - a. Spouses shall have equal access to property jointly acquired during marriage;
 - b. Assets that are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of marriage.

In accordance with the prescription of article 22(1) in particular, the surviving spouse can claim a reasonable share of the intestate property whether or not she was a beneficiary under the will. Some see this stipulation as not only going beyond the context of intestate succession, but also permitting 'courts to override a will to provide a reasonable share to a surviving spouse' (see Fenrich and Higgins 2001: 286). This means the surviving spouse has a constitutional right to claim her share of the estate even though it is subject to judicial consideration and discretion. This implies the courts are likely to consider factors such as independent means of the surviving spouse, other dependents of the deceased, and the provision the deceased made for the spouse during his life time in determining 'the reasonable provision'. Some are also of the opinion that the 'concept of reasonableness' excludes the application of a formula, which will lead the courts to give the same share to all widows in all cases. This means every case has to be determined on its individual facts or situation (see footnote 146 of Fenrich and Higgins 2001: 286).

On the other hand, another major limitation of the PNDC law is that it applies only to intestate self-acquired property excluding family and stool property, controlled and administered by lineage heads and stool occupants, usually men, on behalf of members of the family. This practice seems to be at variance with international regimes such as the CEDAW and the African Charter, which have not circumscribed women's inheritance and property rights to only self-acquired property. This perspective seems critical because, should a family decide to deny a widow a share of a member's estate, the only thing to do would be to classify such an estate as family or stool property.

Article 22(2) of the 1992 Constitution of Ghana has requested Parliament enact necessary legislation to address the property rights of spouses. This is significant because the legislation is supposed to define the method of distribution for estates. However, Parliament has failed in carrying out this constitutional request. Some think a spouse can rely on article 22 to claim her substantive rights directly provided for in article 22(3) without the help of new legislation, but so far, no case received this treatment (Fenrich and Higgins 2001: 286). It has also been suggested that the concept of equitable used in article 22(3) (b) seems to leave the distribution of property at the discretion of the court, which might not yield the expected result (WiLDAF-Ghana 2005: 12; Kuenyehia 1990).

On the other hand, although Law 111 in some way may have substantially addressed the injustices meted to surviving spouses and children by indigenous law by allotting a substantial amount of

the intestate to them, it has created other difficulties. It confers absolute right of succession to fractions of the estate to individuals. This strikes at the very root of the matrilineal and sometimes, the patrilineal concept of property whereby the property is communal. Typically, a house included in such estate remains as a memorial to the deceased and it is supposed to be available to other members of the family including those yet unborn. The statute destroys this practice affecting the roots of the local tradition.

The statute creates another difficulty in its definition of children. A child of a deceased includes all issues of the deceased, without regard to the type of union out of which the child is born. This implies children of the deceased, even if they are illegitimate, are entitled to portions of the property. Since PNDC law 111 provides that the surviving spouse and children are entitled to one house, it means the wife may be compelled to inherit and use the property together with the children. If one considers the possibility that she may be meeting these children for the first time and may have to live in the same bedroom with these children, some of whom are not her own, then the situation may become not only unrealistic, but may create tension and eventual polarisation among the inhabitants. Thus, it appears the law presumed the surviving children would necessarily be the children of the surviving wife, which might not always be the case.

The other area to examine is the age limit and circumstances of children who may inherit a portion. Law 111, like indigenous law, does not place any age limit for children that may qualify. Neither does it make room for the special circumstances of any of the children under which they may qualify to benefit from the property. Thus according to the law, a child of 40 years, married and gainfully employed, is entitled to equal share with the ten-year-old child simply by the fact that both are children of the deceased. This seems unfair to the younger child. The Will Act of 1971 (Act 360), Section 13(1), under which a person is under no obligation to make a disposition to an adult child may help avoid such situations. Law 111, however, does not make any provision for a cut off age and circumstances.

Moreover, Law 111 refers to spouse in the singular. While the law appears to target spouses in monogamous marriages, it also recognises the practice of polygamy—a feature accepted in indigenous law in Ghana. Thus the new law, like indigenous law, falls short of the provisions and expectations of the Protocol to the African Charter on Human and Peoples' Rights that state parties must 'enact appropriate national legislative measures to guarantee that ... monogamy is encouraged as the preferred form of marriage ...' (Art. 6(c), Art. 7(c) of Protocol to African Charter). The 2006 shadow report submitted to the CEDAW Committee by Ghana's branch of Women in Law and Development in Africa confirmed that a majority of marriages in Ghana are polygamous, 'customary law' marriages and that polygamy continues to be a source of discrimination against women (WiLDAF-Ghana 2006:1).

Law 111 directs that only one house, the matrimonial house, be apportioned to the spouse and the children. This suggests that even if there are four or more wives, they are all to share in the one house by co-habiting together with their children or, some similar arrangement. This is regardless of the fact that the deceased might have died possessing four or five houses. The more practical thing for each wife would have been to have one house. Under the law, they are all to take one. In doing so, it appears that the law presumes that all the rivals will understand each other and will

peacefully coexist. This may be far from reality as far as rivals are concerned. It seems unthinkable how the law may expect such rivals to live under the same roof without tension, quarrels and litigation. For instance, it is not clear as to how the law expects four or more wives to share one refrigerator along with all the children of the deceased.

In view of the above problems, apparently the only solution lies in liquidating the property and sharing the monetary proceeds. Thus, the law seems unintentionally designed to require the compulsory sale of such property. This too has its own difficulties. There is the possibility of the rich buying out the poor, thereby concentrating the property in the hands of the few rich. Moreover, the monetary proceeds shared may be too insignificant to support each of the beneficiaries individually. Within a short time, perhaps the money is gone leaving the spouse and children destitute. One would think this is precisely the problem the law seeks to avert.

The situation is different with a man in a polygamous marriage. Whereas such a husband is entitled to the spouse's portion in each deceased's wife estate, all his wives share in a single portion of his intestate property. In other words, if a husband survives all of his four or more wives each of whom had a house, he will end up having more houses. Conversely, if the polygamous husband dies before all the wives, all of them would have to share only one house, even if the man died possessing several houses. In comparative terms, therefore, between the polygamous husband and wives, the former is better disposed to benefiting from the marriages than the wives. Thus, according to the shadow report to the CEDAW Committee, women do not have the same rights and responsibilities during marriage or at its dissolution (WiLDAF- Ghana 2006). Such a seed for discriminatory treatment between husband and wives in polygamous marriages seems to contravene the spirit of the CEDAW, which eschews any form of discrimination against women. It also appears inconsistent with the equality clauses as reflected in the Constitution of Ghana.

Another difficulty that exists from the application of the law has to deal with the mathematical computation of the fractions. It is not easy to determine the fractional distributions of the estate. What for instance is $\frac{3}{16}$ of a cocoa farm? Yet more complex forms of property compound this problem further. It can be frustrating trying to determine with precision and satisfaction the portion of the estate that falls for distribution as provided by the statute. Law 111 intended to amend certain principles in indigenous law that discriminates against widows and children. However, the law did not go far enough. For example, like indigenous law, the new law has no provisions for divorced women and women in non-marital relationships. Neither has it dealt with the problem of primogeniture. Because of the above weaknesses of Law 111, some do not see much difference between it and patrilineal law on property inheritance. Because of the weaknesses, PNDC Law 111 does not fully meet the standards set by the international human rights regimes on females' inheritance.

CONCLUSION

This paper has discussed intestate succession, PNDC Law 111 in Ghana in relation to international human rights instruments on women property inheritance rights. The research findings have demonstrated that to some extent, Law 111 has addressed some injustices faced by widows and children under indigenous intestate inheritance rules by guaranteeing them portions of the intestate

property. However, Law 111 has certain weaknesses. For example, it endorses polygamy, which appears a source of discrimination against women's property inheritance rights. As such, it infringes upon the prescriptions of the African Charter that state parties should make appropriate laws to eliminate harmful cultural practices that negatively affect women's rights and that monogamy should be encouraged. Further, Law 111 does not address the situation of divorced women and women in non-marital relationships in relation to their property inheritance. Neither has the Law dealt with the problem of primogeniture. The Law, therefore, goes against the equality clauses in the international human rights instruments. Due to the weaknesses, PNDC Law 111 has not fully met the standards set by the international human rights regimes on women's property inheritance. Since Law 111 is a national law on intestate succession, it needs to reform itself to meet the international standards of inheritance as enshrined in the Protocols to both the African Charter and the CEDAW as reflected in the 1992 Constitution of Ghana. The research is important because, among other things, it highlights some of the weaknesses of the law 111 on women's intestate property inheritance and calls for amendment or reform of the law.

In the final analysis, the objective of the research is to find out if PNDC Law 111 fully promotes women's rights of intestate property inheritance by relating it to international human rights protocols. The research is important because it has highlighted some of the weaknesses of law 111 on women's rights of intestate property inheritance and calls for the necessary law reform on the subject. Some of the contributions of the research include the fact that the findings may inspire the government of Ghana to come out with law reform or amendment in the intestate succession, PNDC Law 111. This may help women to have a realistic claim to shares of their decedent husbands' estate. The research has also contributed to studies in law. As such, it has contributed to global theoretical knowledge on law and specifically to legal discourses in Ghana.

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