

INHERITANCE LAW IN UGANDA: THE PLIGHT OF WIDOWS AND CHILDREN

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I. INTRODUCTION

A. INTRODUCTION TO THE PLIGHT OF WIDOWS AND CHILDREN IN UGANDA

To be a widow in Uganda is to be an outcast. Too often, when a woman loses her husband, she is also cast out of her family, forced from her home, stripped of all her property, and separated from her own children.¹ It is not uncommon for relatives to take over a widow's home and grab all of the property and surrounding land for themselves. Because customary law views a wife as an outsider to her husband's clan, if she wishes to remain in her home with her children, she may have to submit to being "inherited" by one of her deceased husband's relatives.

The widow's children suffer gravely as a result of these practices. Following the death of their father, children are frequently taken from their mother and must start a new life with their father's relatives. Daughters will typically be married off quickly to another clan. As a new wife, the daughter now finds herself an outsider in her husband's family and unable to return to her own family because they cannot afford to return the "brideprice" they received for her. The cycle of exclusion continues when her own husband dies and she is again left destitute.

This report exposes many of the injustices in Uganda's inheritance law, as well as in the customary and religious laws and traditions that usually govern inheritance in Uganda. The report urges the government of Uganda to end the harmful laws and practices that characterize the country's current inheritance regime. Part I of this report provides an introduction to the plight of widows and children in Uganda, the background of this report and investigation, and a summary of proposed remedies. Part II describes certain exploitative cultural and religious practices that dominate the inheritance process in Uganda. Part III presents the key areas of inequality in Uganda's official succession laws. Part IV addresses the government's duty under international and constitutional law to

1. See generally Uganda Law Reform Commission, A Study Report on the Reform of the Law of Domestic Relations, Pub. No. 2, 243-306 (2000) [hereinafter LRC Report]; U.S. Dep't of State, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, 2005, Uganda (2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61598.htm> [hereinafter Country Reports: Uganda]; Sylvia Tamale & Jennifer Okumu-Wengi, *The Legal Status of Women in Uganda*, in *Women, Laws, Customs and Practices in East Africa* 1-5 (Janet W. Kabebere-Macharia ed., 1995).

draft, implement, and enforce new laws of succession. Part V sets forth proposals for legal reform, and Part VI concludes by emphasizing the urgency of this issue in the face of Uganda's health and economic obstacles.

B. BACKGROUND OF THE REPORT AND INVESTIGATION

This report was prepared by the students of the International Women's Human Rights Clinic (IWHRC or "the Clinic") at Georgetown University Law Center (GULC). To better understand Uganda's inheritance laws and their impact on Ugandan widows and children, students and faculty of the Clinic, in collaboration with attorneys from Law and Advocacy for Women in Uganda (LAW-U), undertook a fact-finding trip to Uganda in March of 2004. During the trip, Clinic students and Clinic and LAW-U supervisors conducted over fifty interviews, meeting with widows and widowers, cultural and religious leaders, members of Parliament, judges at several levels of Uganda's judiciary, private attorneys, police officers, and various government officials. The findings from that trip form the factual basis for much of this report.

C. REMEDIES

Inequality in inheritance is supported by both statutory law and the informal use of customary and Islamic laws in Uganda, despite the fact that the people of Uganda embraced the ideal of gender equality over a decade ago when the country ratified one of the most progressive and democratic constitutions in Africa today. Uganda's 1995 Constitution guarantees that "[a]ll persons are equal before and under the law" and "shall not be discriminated against on the ground of sex"² Further, the Constitution provides that "[w]omen shall be accorded full and equal dignity of the person with men"³ and prohibits any "[l]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status"⁴ Despite the pleas of Ugandan women for equal and accessible protection of their right to inherit property,⁵ Parliament has failed to reform Uganda's succession laws to comply with even the minimum requirements of the country's Constitution and international human rights law.

In addition to adopting an equality-based Constitution, the people of Uganda, through their delegated government representatives, have chosen to ratify without reservation several international and regional instrument expressing core principles of basic human rights, including the right to equality and equal

2. UGANDA CONST. arts. 21(1)-(2).

3. *Id.* art. 33(1).

4. *Id.* art. 33(6).

5. See Ministry of Women in Development, Recommendations Made by the Women of Uganda to the Constitutional Commission 14, 17-18 (1991) [hereinafter Women's Recommendations]. In this compilation of Ugandan women's recommendations to the Constitutional Commission, Ugandan woman specifically called for equal inheritance rights.

protection of the law.⁶ Uganda's Constitution and its ratification of internationally recognized human rights norms compels the government to act now to remedy the inequality that pervades Uganda's inheritance regime, specifically the rules and practices that govern intestate succession, which is the succession of an estate in the absence of a will. The government's continued failure to enact and enforce equal succession laws in compliance with international human rights law deprives women of the economic means to sustain themselves and their families and prevents them from reaching their full capacity as contributing members of Ugandan society.⁷

The desperate situation of widows and orphans in Uganda stands as an avoidable obstacle to the nation's continued development. The inequality in Uganda's inheritance regime compounds the two greatest challenges facing Uganda today: poverty and the HIV/AIDS epidemic. By denying women the right to own and inherit property from their husbands and fathers, the law robs women of the power to make their own economic and reproductive choices and prevents them from actively participating in the country's developing economy. This systemic subordination of women undermines the government's efforts to eradicate poverty and combat HIV/AIDS by making women financially dependant upon men.⁸ The inheritance regime lies at the heart of women's subordination. If the government sincerely intends to make progress on these fronts, it must take immediate steps to place women on equal footing with men, to provide

6. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979), arts. 1-2, 15-16, *entered into force* Sept. 3, 1981, *ratified by Uganda* July 22, 1985, *available at* <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> [hereinafter CEDAW]; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, arts. 17, 23(4), *entered into force* Mar. 23, 1976, *ratified by Uganda* Sept. 21, 1995, *available at* <http://www1.umn.edu/humanrts/instree/b3ccpr.htm> [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, arts. 2(2), 3, *entered into force* Jan. 3, 1976, *ratified by Uganda* Apr. 21, 1987, *available at* <http://www1.umn.edu/humanrts/instree/b2esc.htm> [hereinafter ICESCR]; Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., Pt. 1, at 71, U.N. Doc. A/810 (1948), arts. 1, 2, 16(1) (Dec. 10, 1948), *available at* <http://www.un.org/Overview/rights.html> [hereinafter UDRH]; African [Banjul] Charter on Human and People's Rights, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), art. 18, *entered into force* Oct. 21, 1986, *ratified by Uganda* May 10, 1986, *available at* http://www.achpr.org/english/_info/charter_en.html [hereinafter African Charter].

7. *See* Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Consideration of Uganda's Initial and Second Periodic Reports, paras. 332, 341, CEDAW A/50/38 (Jan. 23, 1995), *available at* http://www.bayefsky.com/.html/uganda_t4_cedaw.php (focusing on Uganda's failure to provide equal inheritance rights as a primary concern).

8. The CEDAW Committee cites unequal inheritance rights as a contributing factor to women's lack of economic and political advancement, vulnerability to domestic abuse and HIV/AIDS. *See* CEDAW Committee, General Recommendation No. 15, Avoidance of Discrimination Against Women in National Strategies for the Prevention and Control of AIDS, U.N. Doc. A/45/38 at 81 (9th Sess. 1990), *reprinted in* COMPILATION OF GENERAL COMMENTS AND GENERAL RECOMMENDATIONS ADOPTED BY HUMAN RIGHTS TREATY BODIES, U.N. Doc. HRI GEN 1 Rev.6, at 240 (2003), *available at* <http://www.un.org/womenwatch/daw/cedaw/recomm.htm#recom15> [hereinafter CEDAW Committee General Recommendation No. 15].

women with a stake in the country's economic development, and to stop economic desperation from fuelling the HIV/AIDS epidemic.

The proposed legal reforms described in Part V of this Report are supplemented by a Proposed Succession (Amendment) Bill, 2006 ("Proposed Bill" or the "Bill") in Appendix A, which is summarized in Appendix B. The reforms contemplated by this Bill can be divided into three categories: Substantive Changes to the Law, Enforcement Initiatives, and Educational Initiatives. First, the new law should repeal the gender-discriminatory provisions of the existing Succession Act⁹ and grant widows and daughters of the deceased the same inheritance rights as widowers and sons. Secondly, the new law should reform judicial and administrative processes to allow greater access to courts and uniformity in the administration of justice. Thirdly, in order to achieve the effective operation of the succession law, Parliament should provide for training, education, and reporting programs for police, magistrates, judges and other government officials, as well as initiatives to sensitize the public to women's constitutional rights in inheritance.¹⁰

II. EXPLOITATIVE PRACTICES DOMINATE INHERITANCE MATTERS IN UGANDA, STRIPPING WOMEN OF THEIR PROPERTY, THEIR FAMILY, AND THEIR DIGNITY

Although Uganda's succession laws, in theory, apply to all persons living in Uganda¹¹ and all deaths must be reported to the offices of the Registrar and Administrator General,¹² these laws are often overlooked. Heirs of the deceased frequently do not know about their rights under the uniform succession law, and therefore turn to customary and religious leaders whose rules, though not legally binding, are accepted as such. Many Ugandans do not even write wills because they believe that writing a will is a precursor to death.¹³ This superstitious fear of writing a will coupled with under-enforcement of the official law means that, in most cases, the distribution of estates is not governed by any official law or instrument. In such cases, the task of distributing an intestate's estate is left to clan elders, religious leaders or relatives.

9. Uganda Succession Act, Cap. 162, Laws of Uganda, Revised Ed. § 26(1), sched. 2 (2000) [hereinafter Succession Act 2000]. Many Ugandan legal professionals refer to Succession Act, Cap. 139, Laws of Uganda, Revised Ed. (1965), as amended by The Succession (Amendment) Decree, Decree 22/72 (1972). When necessary, this report refers solely to the unamended provisions of The Succession Act, Cap. 139, Laws of Uganda, Revised Ed. (1965) [hereinafter Succession Act 1965] and the separate provisions in The Succession (Amendment) Decree, Decree 22/72 (1972) [hereinafter 1972 Decree].

10. See *infra* Part V for a full discussion of remedies, and *infra* Appendix A for the text of the Proposed Bill.

11. Succession Act 2000, *supra* note 9, § 2.

12. Administrator General's Act, Cap. 157, Laws of Uganda, Revised Ed. §4 (2000) [hereinafter Administrator General's Act].

13. LRC REPORT, *supra* note 1, at 271. One Ugandan attorney explained to us that fear of death from will-writing is quite common. She recounted that a villager recently told her, "We cannot sign this will because then we will know we are dying." Interview with Regina Lule Mutyaba, LAW-UGANDA Member & former Assistant Administrator General, in Kampala, Uganda (Mar. 7, 2004).

Most of the time, a widow does not have a voice in the property distribution process. One widow reported, “Family members decide through the clan leader. Sometimes they don’t include you [the widow] unless he [the decedent] has left a statement, a will.”¹⁴ Within Muslim families, the family often seeks the advice of the local religious leader, usually an imam, to distribute the property according to the Koran.¹⁵ In most cases, either a customary or religious leader advises the family on how to distribute the estate, and this person’s decisions are not protested.

Usually, these customary or religious leaders do not follow the official succession laws. As an Honorable Member of Parliament lamented, “People prefer their customs and beliefs over law. They always plead custom over justice in regard to the rights of women.”¹⁶ An official at the Ministry of Land agreed, stating, “The law is very clear. [Ugandans] just don’t follow it.”¹⁷ In fact, many cultural and religious leaders who handle inheritance matters are unaware that a law governing succession exists, and most are unfamiliar with its provisions. Therefore, inheritance matters are often decided on an *ad hoc* basis or in accordance with “customary law,” which is the traditional law of the tribe and calls for property to be passed down from generation to generation through the male line.

A. UNDER A PATRILINEAL SYSTEM, WOMEN HAVE NO VOICE AND NO FREEDOM OF CHOICE

Customary law is rooted in a tradition of patrilinealism, or the idea that property should remain in the male line and be passed from son to son. In a patrilineal society, the father’s family and clan determine a person’s identity and status in the community.¹⁸ A newborn child, whether male or female, belongs to his or her father’s clan. Women are disregarded in matters of property, because the traditional notion is that the men of the community will support the women.¹⁹

When a girl grows into a woman and marries, she then becomes the property of her new husband, and any children she has are also considered to belong to her husband.²⁰ The woman is essentially “purchased” by her husband’s clan through the payment of “brideprice” or “bridewealth,” as it is also known. This practice, which is prevalent in Uganda, is a practice by which the groom or his father offers wealth (money or other property) in exchange for the approval of the bride’s

14. Interview with Margaret Kagga, Widow, Kyaga District, in Kampala, Uganda (Mar. 8, 2004).

15. Interview with Yusef Mbabali, Muslim sheik for the Kyaga District, in Kampala, Uganda (Mar. 8, 2004).

16. Interview with Honorable Miria Matembe, Member of Parliament and Women’s Rights Activist, in Kampala, Uganda (Mar. 11, 2004).

17. Interview with Naome Kabanda, Ministry of Lands, in Kampala, Uganda (Mar. 10, 2004).

18. See LRC REPORT, *supra* note 1, at 280-81.

19. Tamale & Okumu-Wengi, *supra* note 1, at 28; see also Nonkululeko Letta Bhe v. Magistrate Kayelitsha, 2004, Case Nos. CCT 49/03, CCT 69/03, CCT 50/03 (CC) at 48 (S. Afr.).

20. Tamale & Okumu-Wengi, *supra* note 1, at 16-17; see also LRC REPORT, *supra* note 1, at 281.

father or her clan to take her as a wife. The new husband's clan is then entitled to the bride's lifetime of services, e.g., farming, bearing children, and maintaining the household. The payment of brideprice "gives the husband proprietary rights over his wife, allowing him to treat her more or less like a chattel."²¹ By treating her as an outsider, as property instead of family, the clan can deny her inheritance rights when her husband dies and condition her continued occupancy of the home on her agreement to be "inherited" by a male member of her deceased husband's clan.

Having no property of her own, nowhere to go, and possibly having young children to raise, she will often submit to this practice of "widow inheritance." In this forced remarriage, a widow must fulfill all wifely duties, including sexual intercourse and domestic activities, such as child rearing and agricultural production.²² Women are often compelled to submit to this practice by physical, financial or emotional duress. One clan leader and Honorable Member of Parliament explained, "You are asking me whether she has a choice? I have never heard such a question. I cannot imagine a wife not wanting to remarry . . . because the land is clan land . . . and she wants to stay on it."²³ "Second[ly]," he said, "you want to look after the children, and the widow needs a man for their sustenance."²⁴ Lacking a viable alternative, the widow is passed from one man to another, with no autonomy over her financial, sexual and reproductive life, and often exposed to sexually transmitted diseases such as HIV/AIDS.

Compounding a widow's difficulties is the fact that she may have to share her husband and his estate with other women. Because customary law grants a man the right to the fruits of a wife's labor, the system encourages men to marry multiple women in order to profit from the labor of all of them.²⁵ The practice of polygamy, or marriage to more than one woman, exacerbates inequality in the inheritance process by forcing several widows to share what little they receive from one man. The woman thereby "becomes half, a third or a quarter, etc. of a wife, depending on how many wives the husband takes on."²⁶ Thus, "the wife's entitlement to love, consortium and maintenance will be apportioned accordingly."²⁷ When a polygamous husband dies, the women are likely to fight with each other for a piece of the property. Men, on the other hand, do not have to compete with other men in this way and, in fact, are entitled to inherit all of the

21. Sylvia Tamale, *Law Reform and Women's Rights in Uganda*, 1 E. AFR. J. PEACE & HUM. RIGHTS 164, 170 (1993).

22. Interview with Florence Ochago, former FIDA Attorney, Law Reform Commission, Legal Officer, in Kampala, Uganda (Mar. 11, 2004).

23. Interview with Honorable Dr. Okulu Epak, Member of Parliament and Tribal Leader, in Kampala, Uganda (Mar. 11, 2004).

24. *Id.*

25. Interview with Florence Ochago, *supra* note 22.

26. Tamale & Okumu-Wengi, *supra* note 1, at 28.

27. *Id.*

property from *all* of their wives' estates.²⁸

As much as these practices discriminate against women and deprive them of dignity and individual autonomy, such practices may not have grown out of malicious motives. In analyzing these customary practices, “[i]t is important to examine the context in which the rules of customary law, particularly in relation to succession, operated in the kind of society served by them.”²⁹ Many cultural succession practices, including the practice of inheritance through the male line and “widow inheritance” were originally adopted in the context of a communal society and were based on the idea that the men of that society would care for all of the women and children.³⁰ In succeeding to the assets of an estate, the customary heir also acquired the duties of the deceased to maintain and support the members of the deceased's family.³¹

Factors such as land scarcity, poverty, and the switch to a monetized commercial economy, rather than an agrarian, communal system, however, have eroded the customary protections that existed previously.³² Whereas clan leaders and councils used to provide checks to ensure that a man who inherited a widow provided for her and her children, “the disintegration of social networks has reduced the influence of the clan council over such people, who today can mistreat widows with impunity.”³³ Moreover, the nuclear family has replaced the extended family structure, which means that the customary heir does not necessarily live with other dependants and descendants.³⁴ As a result, customary law has “been distorted in a manner that emphasises its patriarchal features and minimises its communitarian ones.”³⁵ Therefore, while some facets of customary and religious law may have served a benign or beneficial purpose in another time, in a modern-day context, many of these customary and religious practices exploit the subservient status of women and children with dire consequences.

B. EXPLOITATIVE PRACTICES FORCE WOMEN FROM THEIR HOMES AND STRIP THEM OF OTHER PROPERTY

1. Widows in Customary Societies in Uganda Are Forcibly Removed From their Homes and Deprived of Other Property

The rule of primogeniture is central to the customary law of succession in Uganda. Under this rule, the closest male heir is the “customary heir” and is both

28. *Id.*

29. Nonkululeko Letta Bhe v. Magistrate Kayelitsha, 2004, Case Nos. CCT 49/03, CCT 69/03, CCT 50/03 (CC) at 47 (S. Afr.).

30. *Id.* at 48.

31. *See id.*

32. *See id.*

33. *Id.*

34. *Id.* at 49.

35. *Id.* at 54.

administrator and successor to the estate.³⁶ If there are no male descendants, the deceased's father or the father's closest male descendant succeeds him.³⁷ Women do not ordinarily participate in the intestate succession regime, and it is commonly believed that a woman should not own property.³⁸ Consequently, most Ugandan women are landless and depend on others to house them.

Deprived of rights to her husband's estate, a widow frequently endures abuse and "property grabbing" by her deceased husband's relatives. Because all property is deemed to belong to the husband's relatives, these relatives frequently steal the widow's property, all the way down to the bed sheets,³⁹ evict her from her home under the threat of physical beating and even death, and take away her children. Although this is especially frequent in rural families,⁴⁰ all widows, illiterate and educated, rich and poor, are likely to endure the same treatment by their family members, without protection of the law or government.

As a widow is no longer viewed as a member of her husband's family after his death, the husband's relatives often evict her from her home by force. According to an attorney who represents families in inheritance matters, these relatives have such great control over the matrimonial property that, "They just come and say to the widow, 'Today you will not sleep here. You will sleep out there.'"⁴¹ In other instances, the in-laws may accuse a widow of having a relationship with another man and use that as justification for evicting her from her house.⁴² Too fearful to object, unable to return to her own family, and fearing destitution and homelessness, a widow must submit to her husband's relatives' demands, including their demand that she remarry another male relative.

2. Islamic Law and Exploitative Practices Deprive a Woman of her Home and Property

Approximately sixteen percent of Uganda's population are Muslims.⁴³ Islamic women in Uganda often face the same fate as women in customary societies.

36. Interview with David Nsubuga Mamba, Local Council 1 Chairperson, in Kyaga District, Uganda (Mar. 8, 2004); Interview with Honorable Dr. Okulu Epak, *supra* note 23; Interview with Hajat Khadija Kawooya, Muslim Woman Leader, LC 3 Councillor, in Kampala, Uganda (Mar. 8, 2004); *see also* Nonkululeko Letta Bhe v. Magistrate Kayelitsha, 2004, Case Nos. CCT 49/03, CCT 69/03, CCT 50/03 (CC) at 51 (S. Afr.).

37. Interview with David Nsubuga Mamba, *supra* note 36; Interview with Honorable Dr. Okulu Epak, *supra* note 23; Interview with Hajat Khadija Kawooya, *supra* note 36; *see also* Nonkululeko Letta Bhe, Case Nos. CCT 49/03, CCT 69/03, and CCT 50/03, at 51.

38. LRC REPORT, *supra* note 1, at 281.

39. Interview with Rehema Nakyazi, Widow, in Kyaga District, Uganda (Mar. 8, 2004).

40. CEDAW Committee, Initial and Second Periodic Reports of States Parties, Uganda, CEDAW/C/UGA/1-2, para. 350 (July 20, 1992), *available at* http://www.bayefsky.com/reports/uganda_cedaw_c_uga_1_2_1992.pdf [hereinafter CEDAW Reports of State Parties, Uganda].

41. Interview with Francis Atoke, Principal State Attorney, Administrator General's Office, in Kampala, Uganda (March 9, 2004).

42. Interview with Florence Ochago, *supra* note 22.

43. CIA, The World Factbook: Uganda (2005), <http://www.cia.gov/cia/publications/factbook/geos/ug.html> (last updated Jan. 10, 2006) [CIA World Factbook: Uganda].

Islamic law, embodied in the Koran, provides twice the share for a surviving husband as for a surviving wife. A widower inherits one-fourth of his deceased wife's estate if there are children. A similarly situated widow, however, inherits just one-eighth.⁴⁴ Moreover, in a polygamous marriage, each wife shares that one-eighth with all of the other wives.⁴⁵ For example, in a situation where there are two wives and only one child, each wife can claim a right to one-sixteenth of the property. A surviving husband, by contrast, would receive one quarter of each of his two wives' estates.

Islamic law also discriminates against female children in favor of male children. All children inherit from their parents, grandparents, siblings, and other relatives. Boys, however, are entitled to twice the share of girls.⁴⁶ For example, in a family where one wife survives with a son and a daughter, the wife will receive one-eighth (or three-twenty-fourths), the daughter will inherit seven-twenty-fourths, and the son will receive the largest share of fourteen-twenty-fourths, more than half of the estate.

Property grabbing is also common in Muslim communities in Uganda. A Muslim Sheik said that when a man dies, "[t]ribesmen come in and take a lot of things: property, chattels, housewares, etc."⁴⁷ A Muslim woman stated that "in most cases, when the husband dies, the relatives, most likely male, they grab all the things."⁴⁸ Even older children might throw their mother or stepmother out of the house.⁴⁹ A Muslim leader reported that local imams (religious leaders) distribute deceased men's property by "coming to the deceased's home, putting a price on it, and parsing it out, roofs, doors, etc . . ."⁵⁰ leaving nothing for the family that was residing there before the man's death.

Through these customary and religious practices, men dominate the inheritance process, leaving women relatively devoid of property. Unequal entitlements lead women to feel that they have little or no rights. Believing that they cannot turn to the law, to their families, their clans, or their religion to help secure their rights to property, women typically resign themselves to a lifetime of economic dependence.

C. EXPLOITATIVE PRACTICES SEPARATE MOTHERS FROM THEIR CHILDREN

Inheritance practices in Uganda have a profoundly negative impact on children of the deceased. Because children of a deceased man are considered to belong to his clan, members of the clan commonly take the children away from their

44. KORAN 4:12 (N.J. Dawood trans., Penguin Books, 5th ed. 1999) [hereinafter KORAN].

45. *Id.*

46. *Id.* at 4:10-4:11.

47. Interview with Muslim Sheik, Dr. Anasi A. Kaliisa, Director Institute of Research and Training, in Kampala, Uganda (Mar. 8, 2004).

48. Interview with Hajat Khadija Kawooya, *supra* note 36.

49. Interview with Yusef Mbabali, *supra* note 15.

50. *Id.*

mother or move into the home with the children and force the mother out. Such practices are rooted in traditional customary law, under which the male heir not only inherits the deceased's property rights, including the right to own and occupy the home, but also inherits custody of his children.⁵¹ According to a Sabinu leader, when a man dies in his culture, the children typically go to live with their aunts or uncles. One widow explained that she was blamed for the death of her husband and therefore banished from her village and forced to leave her children behind. She said, "The children wrote to me that if I do not come for them, they will get lost."⁵²

Because relatives frequently strip a widow of all her worldly property, a widow, even if she is able to keep her children with her, may be unable to provide them even basic necessities, such as food and school fees. A local council chairman explained how easily a widow can become financially incapable of taking care of her children: "You see a situation where a husband is dead and a wife has no job, just a housewife, and no income to take care of children. And where she does, it is too small. And education is very costly."⁵³ Such a widow may reasonably feel she has no viable alternative but to send her children to live with others.

In such situations, male relatives may insist on sending away a young daughter to be married in order to collect a bridprice payment. A widow in this situation might be forced to take her children out of school and send them to work at an early age. The widow's plight thus exposes the next generation of Ugandan children to great economic and emotional hardship, often forcing them into early marriages and depriving them of the opportunity to pursue an education.

III. THE SUCCESSION ACT DENIES WOMEN EQUALITY IN INHERITANCE.

In several ways, Uganda's Succession Act condones and encourages the perpetual cycle of Ugandan women's subjugation and dependence. The Succession Act of 1965⁵⁴ was last substantively amended by General Idi Amin in 1972 by the Succession (Amendment) Decree ("Decree").⁵⁵ The Decree, among many other things:

- rescinds equal inheritance rights for spouses;⁵⁶

51. Tamale & Okumu-Wengi, *supra* note 1, at 16-17 (referring to the customary traditions of the Buganda tribe in Uganda).

52. Interview with Widow Living With HIV, in Kampala, Uganda (Mar. 12, 2004).

53. Interview with David Nsubuga Mamba, *supra* note 36.

54. Succession Act 1965, *supra* note 9.

55. 1972 Decree, *supra* note 9.

56. *Id.* § 1(q) (repealing equal spousal inheritance rights granted by Section 205 of Succession Act 1965).

- legitimizes devolution of the residential holding to the oldest male descendant;⁵⁷
- limits a widow's right to occupy her home by requiring that she remain chaste for the rest of her life and comply with numerous other requirements;⁵⁸
- allows other relatives to devise their own distribution scheme and thereby ignore the widow's rights;⁵⁹ and
- deprives a widow of her parental rights by authorizing her husband, by will, and the court to choose other relatives as her children's guardians.⁶⁰

In sum, the law fails to protect women and children from exploitative customary and religious practices and, in fact, encourages these practices, because it does not recognize a woman's right to inherit property on equal terms with a man.

A. UGANDA'S SUCCESSION ACT DISCRIMINATES AGAINST WIDOWS

1. The Succession Act Dispossesses the Widow of her House and her Rights in Other Property

Under the Succession Act, a widow, unlike a widower, has no entitlement to the matrimonial home she shared with her husband before his death. Rather, ownership of the home, household chattel, and surrounding land passes to the intestate's "legal heir,"⁶¹ which is the nearest male lineal descendant to the deceased, usually the eldest son.⁶² The widow, on the other hand, is granted only a limited right to occupy the home, subject to the desires of the legal heir.⁶³ The limited right of occupancy provided to widows by the Succession Act does little to provide any substantive, enforceable legal rights.⁶⁴ The legal heir can, for

57. *Id.* § 1(a) (amending Section 3 of Succession Act 1965 to define "legal heir" to preference "a male . . . to a female"); *id.* § 1(e) (amending Section 27(1) of Succession Act 1965 to provide that the personal representative holds residential holding in trust for the "legal heir"); Succession Act 2000, *supra* note 9, §§ 2(n), 26(1).

58. 1972 Decree, *supra* note 9, sched. 2, §§ 7-8 (limiting widows' and daughters' right to occupy the residential holding and terminating the widow's, but not the widower's, occupancy right upon remarriage); Succession Act 2000, *supra* note 9, 2d sched., §§ 7-8.

59. 1972 Decree, *supra* note 9, § 1(e) (amending Section 27 to give relatives the right to make "any other arrangement relating to the distribution or preservation of the property" with the sanction of the court); Succession Act 2000, *supra* note 9, § 27(3).

60. 1972 Decree, *supra* note 9, § 1(g) (giving the court authority to designate the widower's relatives as guardians instead of the children's mother); Succession Act 2000, *supra* note 9, § 44.

61. Succession Act 2000, *supra* note 9, § 26(1).

62. *See id.* § 2(n)(ii) ("legal heir" means the living relative nearest in degree to an intestate . . . where there is equality [of relation], a male shall be preferred to a female.").

63. *See id.* 2d. sched., § 1.

64. *See* Interview with Registrar of Commercial Court, Henrietta Wolayu, in Kampala, Uganda (Mar. 9, 2004).

instance, remove the widow at any time by showing that “suitable alternative accommodation is available,” or by simply declaring that she is not adequately maintaining the premises.⁶⁵

Moreover, the right of occupancy grants the widow only limited control of the property. Unlike a right to own land in “freehold,” the widow’s occupancy may be subject to the land rights of the clan, who may appropriate the land as “customary tenured” land. Under this regime, the widow cannot develop the land through the construction of additional structures.⁶⁶ She cannot mortgage the property, lease it, or control the proceeds from the sale of cash crops. Male clan members or in-laws, therefore, control the major economic decisions of a widow and her household.⁶⁷

The law also terminates a widow’s right to occupy the home if she remarries or is suspected of having a relationship.⁶⁸ Actual remarriage is not required for this provision to operate in practice. In-laws may simply stipulate that she *may* remarry or declare that she is of marriageable age, and use this as a pretext to evict her from her home. One Ugandan attorney observed:

Some clans would leave the widow to stay and say the land is for her, but as soon as she remarried or they suspected a relationship, they would throw . . . [her] out . . . She is in a pseudo prison. She has to be very careful. Some relatives would come maliciously and say she has a relationship with so-and-so because they wanted the land.⁶⁹

Termination of the widow’s occupancy also terminates her right to continue to farm the adjoining land, depriving her and her dependant children of a means of subsistence.⁷⁰

Moreover, the Act terminates the widow’s occupancy right where she has not occupied the residence for six months.⁷¹ This means that, if the other relatives can threaten and intimidate her enough to keep her out of the house for six months, they can evict her permanently. A priest in Kampala, who often counsels his parishioners in inheritance matters, described instances of such intimidation: “[W]hen the husband dies people come in and say, ‘We want the land of our brother.’ . . . [T]hey will continue to intimidate her and threaten to kill her.”⁷² The Succession Act encourages such threats, rewarding in-laws when they are successful in evicting the wife.

65. Succession Act 2000, *supra* note 9, 2d. sched., § 9(1)(b).

66. *Id.*

67. LRC REPORT, *supra* note 1, at 262.

68. Succession Act 2000, *supra* note 9, 2d. sched., § 8, 8(a) (providing that “[t]he occupancy of a residential holding . . . shall be terminated automatically . . . upon remarriage of the occupant where the occupant is a wife.”).

69. Interview with Florence Ochago, *supra* note 22.

70. See Succession Act 2000, *supra* note 9, 2d. sched., § 2.

71. *Id.* § 8(d).

72. Interview with Father Joseph Ssebunya, Parish priest, Christ the King Church, in Kampala, Uganda (Mar. 10, 2004).

The discrimination in the Succession Act reflects customary and religious principles of law based on the assumption that the man of the house has absolute control and ownership over the family property.⁷³ A study conducted by the Ministry of Gender and Community Development found that women, especially married women, do not typically have legal ownership of property.⁷⁴ For instance, one married woman who had purchased several homes and plots and managed her own business said that when her husband died suddenly, “The in-laws decided that my property belongs to my husband.”⁷⁵

In addition to denying a widow the right to own her marital home, the Succession Act strips her of other property she owned with her husband before his death, including cars, businesses, bank accounts, and any other financial assets she might have shared with her husband. For purposes of distributing this other property, the Succession Act divides heirs into four separate classes: the “customary heir,” “wives,” “dependant relatives,” and “lineal descendants.”⁷⁶ Lineal descendants—the children or grandchildren—inherit seventy-five percent of the estate.⁷⁷ The wife or wives are entitled to share in just fifteen percent of the estate. This distribution scheme is based on the idea that, unlike children, wives are not part of the husband’s clan. As such, they are not entitled to share in the property of the household which they have managed and to which they may have devoted a lifetime of contributions.

The Succession Act also allows relatives of the deceased to decide for themselves how the deceased’s property is to be distributed in the absence of a will. The Act states that dependant relatives may make “any other arrangement relating to the distribution or preservation of the property,” as long as the court agrees to it.⁷⁸ In this way, relatives may devise a distribution scheme that leaves the widow out completely. If, for financial or other reasons, she is prevented from coming to court to identify herself and state her claim to a judge, the court will likely approve the relative’s arrangement pursuant to this provision of the Act.⁷⁹

Oddly, the language of the provision of the Succession Act dealing with property other than the matrimonial home refers only to the death of a “male intestate” and to “wives,” as descendants, not “husbands,” leaving unanswered the question of what would happen to this property upon a woman’s death. Such

73. See, e.g., Lynn Khadiagala, *Negotiating Law and Custom: Judicial Doctrine and Women’s Property Rights in Uganda*, J. AFR. L., Apr. 2002, at 1, 6 (“In Uganda, typically property rights to the residence are vested in the man of the house.”); Interview with Florence Ochago, *supra* note 22.

74. See LRC REPORT, *supra* note 1, at 262.

75. Interview with Buganda Widow, in Kampala, Uganda (Mar. 11, 2004).

76. Succession Act 2000, *supra* note 9, § 27.

77. *Id.*

78. 1972 Decree, *supra* note 9, § 1(e) (amending Section 27 to give relatives the right to make “any other arrangement relating to the distribution or preservation of the property” with the sanction of the court); Succession Act 2000, *supra* note 9, § 27(3).

79. Succession Act 2000, *supra* note 9, §27(3).

cases are typically left to customary or religious rules.⁸⁰ Uganda's statutory law allows the High Court to apply "any existing custom, which is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law."⁸¹ This provision is often used to insert customary law into Uganda's courts.⁸² Under customary law, women do not have the right to own property.⁸³ Thus, when a wife dies, her husband never resorts to the formal institutions in place for reporting deaths and administering the estate, and simply takes over her property.⁸⁴ Hence, the Succession Act, by treating men and women differently, perpetuates traditional notions that serve to financially incapacitate women.

2. The Succession Act Separates Mother and Child

Perhaps one of the most devastating blows the Succession Act deals to a widow is taking her children from her custody. The Succession Act provides that, in matters of intestate succession, a deceased man's relatives may obtain custody to the deceased's children over the objection of their mother.⁸⁵ Specifically, the Succession Act provides that, on the death of a father of a child, the deceased father's father, mother, brothers, sisters, aunts and uncles all enjoy a right to obtain custody of a child ahead of the child's own mother.⁸⁶ Moreover, the law permits a father to appoint by will someone other than the children's mother to be their guardian after his death.⁸⁷

By denying a woman custody to her children, the Succession Act hinders the progress represented by the passing of the Constitution and the Children Act, both of which protect the right of parents and children to remain together.⁸⁸ The

80. See LRC REPORT, *supra* note 1, at 302.

81. Judicature Act, Cap. 334, Law of Uganda, Revised Ed. §15 (2000).

82. See Interview with Regina Lule Mutyaba, *supra* note 13; see also Interview with Florence Ochago, *supra* note 22.

83. See LRC REPORT, *supra* note 1, at 261.

84. *Id.* at 260, 262 (reporting that in the three years sampled, 1972, 1986, 1992, only one death of a married woman was reported to the Administrator General's office, and she was European); see also Interview with Miriam Namutebi, Principal State Attorney, Administrator General's Office, in Kampala, Uganda (Mar. 10, 2004).

85. Succession Act 2000, *supra* note 9, § 44(1).

86. *Id.* (stating:

On the death of a father of an infant where no guardian has been appointed by the will of the father of the infant . . . the following persons shall, in the following order of priority, be the guardian or guardians of the infant child of the deceased—(a) the father or mother of the deceased; (b) if the father and mother of the deceased are dead, the brothers and sisters of the deceased; (c) if the brothers and sisters of the deceased are dead, the brothers and sisters of the deceased's father; (d) if the brothers and sisters of the deceased's father are dead, the mother's brothers; or if there are no mother's brothers, the mother's father).

87. *Id.* § 43 (a father, whatever his age, may appoint, by will, a guardian or guardians for his child for the duration of the child's minority).

88. UGANDA CONST. arts. 21(1)-(2), 3, 31(4)-(5), 34(1). "It is the *right and duty of parents* to care for and bring up their *children*." *Id.* art. 31(4) (emphasis added). "Subject to laws enacted in their best

Children Act expressly prefers the child's biological parent in custody matters,⁸⁹ and it permits the passing of parental responsibilities to a relative other than the parents *only* when both "natural parents of a child are deceased," or under a lawful judicial order that such a move is in the best interest of the child.⁹⁰ The current Succession Act, however, takes custody away from the mother and thereby impedes the realization of the rights promised to mothers under the Children Act.

Even if the father appoints the mother as the children's guardian in his will, this may not be enough to ensure that she retains custody if the other discriminatory provisions of the Succession Act, namely the provisions governing the distribution of matrimonial and other property, deprive her of the economic means to support the children. Under the Children Act, child custody determinations are governed by the "Welfare Principle,"⁹¹ which means that a guardian is appointed based on, *inter alia*, his or her ability to provide financially for the child.⁹² Since the Succession Act strips a woman of most financial assets when her husband dies, she may very likely lack the financial means to care for her children; it may become very easy for her in-laws to then claim that she is too impoverished to care for her children, and thereby remove the children from her custody.

Family members often have an incentive to obtain custody of the children of a deceased, as these children stand to inherit a large percentage—seventy-five percent—of their father's estate.⁹³ The eldest son normally succeeds to the man's home,⁹⁴ and, if he has not reached the age of majority, whoever is appointed to be his guardian has the right to occupy that home.⁹⁵ The Succession Act also

interests, children shall have the right to know and be cared for by their parents" *Id.* art 34(1). "Children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law." *Id.* art. 31(5). These provisions are to be read together with Article 21(1), which provides for equal protection, and Article 21(2), which prohibits discrimination on the basis of sex. Children Act, Cap. 59, Laws of Uganda, Revised Ed. §§ 4-6 (2000) (Article 4 of the Children Act gives every child the right to live with his or her parents. Article 5 requires parents to maintain their children. Article 6 states that every parent has parental responsibility, or, if the parents are deceased, relatives of either parent may have parental responsibility over the child) [hereinafter Children Act]; *see also, e.g.*, Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3, *entered into force* Sept. 2, 1990, *ratified by Uganda* Sept. 16, 1990, *available at* http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm [hereinafter CRC]; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), arts. 18-20, *entered into force* Nov. 29, 1999, *ratified by Uganda* Aug. 17, 1994, *available at* <http://www.africa-union.org/home/Welcome.htm> [hereinafter ACRWC].

89. Children Act, *supra* note 88, § 4 (recognizing a child's right to live with his or her biological parents).

90. *Id.* § 6(2).

91. *Id.* 1st sched. § 1.

92. *Id.* 1st sched. § 3.

93. Succession Act 2000, *supra* note 9, § 27.

94. *Id.* § 26(1).

95. *Id.* 2d sched. § 3. The Act does not clarify whose occupancy right prevails when guardianship is granted to someone other than the widow-mother.

provides payments for maintenance of dependants to be distributed from an estate.⁹⁶ Thus, relatives may use the children of the deceased as a pretext to access the wealth he has left behind. A member of the District Land Tribunal confirmed that this is quite common: “When a person dies, when people come in to adopt the children, they will be having the intent to get some of the property of the deceased in the guise of caring for the children.”⁹⁷ A mother’s right to custody over her children, and the children’s right to remain with their mother, may therefore be secure only if her deceased husband had little or no property of interest to his relatives.⁹⁸

B. THE SUCCESSION ACT FAVORS SONS OVER DAUGHTERS IN DISTRIBUTING PROPERTY

The Succession Act reflects and perpetuates the discrimination against daughters that exists in customary and religious laws. First, the law grants ownership of the family home to the “legal heir,” which is defined as the nearest male lineal descendant, usually the eldest son.⁹⁹ Daughters of the deceased, on the other hand, receive merely a limited right to occupy the home until they marry or reach the age of twenty-one, at which point the legal heir can lawfully evict them. The law thus conditions a daughter’s right to maintenance from the estate on her remaining unmarried, while a son’s right to maintenance is not so restricted.¹⁰⁰ This provision reflects the traditional view that a married daughter is no longer part of her father’s family and thus has no right to inherit from his estate.¹⁰¹ These provisions also encourage the legal heir or other relatives of young girls to send them off to be married so that they lose their right to occupy the residence.

One story, in particular, illustrates the effect that these discriminatory provisions can have on the dynamics of a family. An attorney in the Administrator General’s Office, which is the government office that supervises the administration of estates, told of a family where the brother of three older, unmarried sisters was named legal heir to their father’s estate and forced his sisters from the home after they reached the age of 21. “One of the sisters used to buy all the food for him, and still he says, ‘No, the law is very clear. It says the home belongs to the

96. *Id.* § 38.

97. Interview with Zai Ndingwa, Member, District Land Tribunal, in Kampala, Uganda (Mar. 11, 2004).

98. Interview with Betty Lubega, Widow, in Kyaga District, Uganda, Mar. 8, 2004 (stating that “[w]hen [the relatives] have nothing to gain, they just ‘pass the buck’” to someone else).

99. Succession Act 2000, *supra* note 9, § 2(n).

100. *Id.* §§ 38(2)(a)(ii)-(iii).

101. Interestingly, several interviewees voiced the belief that girls may actually be more capable of properly managing the property than some men. An 86-year-old widower in Kyaga stated, “Traditionally boys get drunk and sell the property, and girls are likely to preserve it. So it is best to give more to them [the girls].” Interview with Widower, in Kyaga District, Kampala, Uganda (Mar. 8, 2004). Father Ssebunya similarly suggests that daughters are more responsible heirs. Interview with Father Joseph Ssebunya, *supra* note 72.

legal heir.”¹⁰² Given the law’s clear preference for the legal heir and its limitations on the sisters’ right to occupy the home after the age of 21, the Administrator General’s office was powerless to help the sisters.

C. THE SUCCESSION ACT PREVENTS A WIDOW FROM MANAGING THE DISPOSITION OF HER HUSBAND’S ESTATE AND PERMITS RELATIVES TO DISREGARD A WIDOW’S RIGHTS

Upon the death of an intestate in Uganda, all deaths must be reported to the offices of the Registrar and Administrator General. The Administrator General or another person may then apply to the court for a grant of letters of administration entitling them to administer the estate. The Succession Act provides that all property of the deceased vests in the estate’s administrator, who is free to “dispose of the property of the deceased, either wholly or in part, in such manner as he or she may think fit”; although anyone, including the Administrator General, may apply for letters of administration, according to the Succession Act, this powerful role falls automatically to the person who is “entitled to the greatest proportion of the estate under Section 27.”¹⁰³ As wives are entitled to just fifteen percent of the estate under Section 27, discussed above in Part III(A)(2), while children and other descendants receive seventy-five percent,¹⁰⁴ the law opens the door for the legal heir or another relative to become the estate’s administrator and trample over the widow’s rights. Although the administrator is supposed to see that property is distributed according to the provisions of the Succession Act, once the right to administer is granted, no regulatory mechanisms exist to see that the law is followed or that the widow’s rights are protected.¹⁰⁵ The administrator can draw on his broad powers of administration to sell the family home, appropriate household items, or deny the widow and daughters access to the family’s land for gardening or grazing.

IV. SUCCESSION LAWS AND PRACTICES IN UGANDA VIOLATE UGANDA’S CONSTITUTION AND INTERNATIONAL LAW

Uganda has ratified several international human rights treaties without reservation, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁰⁶ the International Covenant on Civil and Political Rights (ICCPR),¹⁰⁷ the International Covenant on Economic,

102. Interview with Miriam Namutebi, *supra* note 84.

103. Succession Act 2000, *supra* note 9, § 270.

104. *Id.* §§ 27, 202. For a discussion of the intricacies of Section 27 and how the provision deprives widows of other property in the estate see *supra* Part III(A)(2); see also Administrator General’s Act, *supra* note 12, § 4.

105. See LRC REPORT, *supra* note 1, at 252, 255, 265.

106. See generally CEDAW, *supra* note 6.

107. See generally ICCPR, *supra* note 6.

Social and Cultural Rights (ICESCR),¹⁰⁸ the Convention on the Rights of the Child (CRC),¹⁰⁹ and the African Charter on Human and People's Rights (ACHPR).¹¹⁰ As a party to these conventions, Uganda has an affirmative duty to respect and promote the internationally recognized human rights contained therein and to prohibit gender discrimination regarding the enjoyment of these rights.¹¹¹ Because these treaties are binding on Uganda, Uganda's law must be consistent with these requirements.¹¹²

Uganda's Constitution, adopted in 1995, implements these international human rights norms. The Constitution guarantees equal rights for men and women¹¹³ and declares void any law or custom inconsistent with the equality provisions of the Constitution.¹¹⁴ Supreme Court Justice and Chairman of the Constitution's Drafting Committee, Honorable Justice Kanyeihamba affirmed, "We do regard international law as part of Ugandan law under our Constitution." He points out that Article 45 of Uganda's Constitution states, "The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter [devoted to human rights] shall not be regarded as excluding others not specifically mentioned."¹¹⁵ Justice Kanyeihamba concluded: "That is as wide as it can go," meaning that the Constitution fully incorporates the human rights delineated in international agreements.¹¹⁶

The Constitution's provision for gender equality and its prohibition against sex discrimination were particularly influenced by international law. A former member of the Constitutional Assembly stated:

108. *See generally* ICESCR, *supra* note 6.

109. *See generally* CRC, *supra* note 88.

110. African Charter, *supra* note 6.

111. *See, e.g.*, ICCPR, *supra* note 6, arts. 2-3, 23(4), 24, 26; ICESCR, *supra* note 6, arts. 2(1)-(2), 3; CEDAW, *supra* note 6, arts. 2, 15, 16.

112. The principle that a country should apply international human rights norms in interpreting its Constitution and creating or enforcing its laws was clearly described by the 1988 Bangalore Principles for common law jurisdictions and subsequently adopted in various domestic courts. BANGALORE PRINCIPLES, Principle 4; *see also* Attorney General v. Unity Dow, 1994 (6) BCLR 1, (App. Ct. Botswana 1992); Vienna Convention on the Law of Treaties, May 23, 1969, art. 27, 1155 U.N.T.S. 331, *ratified by Uganda* May 23, 1969 [hereinafter Vienna Convention]. The Bangalore Principles were issued after a high-level judicial colloquium on the Domestic Application of Human Rights Norms, held in Bangalore, India, and attended by Justices from India, Zimbabwe, the United States, Pakistan, Papua New Guinea, Australia, Mauritius, Britain, Sri Lanka, and Malaysia.

113. UGANDA CONST. arts. 21, 33-34.

114. *Id.* arts. 2(2), 33(6). "If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void." *Id.* art. 2(2). "Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution." *Id.* art. 33(6).

115. UGANDA CONST. art. 45.

116. Interview with Supreme Court Justice Kanyeihamba, Chairman of the Constitutional Drafting Commission, Professor, Honorary FIDA Member, in Kampala, Uganda (Mar. 10, 2004).

[The women's caucus] asked us [the Assembly] to look at international instruments, CEDAW and the ICCPR. We drew out provisions in those to use, and the African Charter. Their basic argument was [that] Uganda has ratified these conventions so it has an obligation under international law to meet those and the old Constitution contravenes those So we need mainly to incorporate CEDAW, the ICCPR, into the national law.¹¹⁷

She pointed out that one of the main goals of the women's caucus was to eliminate the provision excepting personal law and culture from equality requirements.¹¹⁸ Thus, the Constitution requires Parliament to take "all appropriate measures, including legislation to modify or abolish existing laws . . . customs and practices which constitute discrimination against women."¹¹⁹ The Constitution also prohibits any law or custom that is inconsistent with the Constitution,¹²⁰ or which is "against the dignity, welfare or interest of women or which undermine[s] their status."¹²¹

While the adoption of Uganda's Constitution, with its language of equality, is a praiseworthy accomplishment, it is not enough to satisfy Uganda's international and constitutional obligations, given that the language and operation of its statutory law are inconsistent with those constitutional provisions. Under the principle of *pacta sunt servanda*, every nation has a duty to change its domestic laws in order to honor its international obligations.¹²² Uganda began the process of reforming its domestic law to conform with its international obligations by adopting the 1995 Constitution, which is "the supreme law of Uganda."¹²³ Now Uganda is called upon to enact new statutes that implement the constitutional guarantees of equality and protection of fundamental human rights.

A. UGANDA'S INHERITANCE REGIME DENIES WOMEN AND GIRLS THE FUNDAMENTAL RIGHT TO EQUALITY AND EQUAL PROTECTION OF THE LAWS

The patrilineal system of inheritance and the statutory law reflecting that system marginalize women and accord them inferior status to men, denying them their constitutionally and internationally recognized right to equality. Under Uganda's Constitution, "[a]ll persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law."¹²⁴ The centrality of equality in

117. Interview with the Hon. Irene Ovonji Odida, Honourable Member of the East African Legislative Assembly and former delegate to the Constitutional Assembly, in Kampala, Uganda (Mar. 11, 2004).

118. *Id.*

119. CEDAW, *supra* note 6, art. 2(f).

120. UGANDA CONST. art. 2(2).

121. *Id.* art. 33(6).

122. Vienna Convention, *supra* note 112, art. 27.

123. UGANDA CONST. art. 2(1).

124. *Id.* art. 21(1)

Uganda's Constitution is underscored by references to it in several constitutional provisions.¹²⁵ Chief among the equality protections enumerated in the Constitution is an individual's right to equal protection against discrimination on the basis of his or her sex.¹²⁶ Honorable Member of Parliament Miria Matembe attested to the importance of these provisions in Uganda's constitutional framework. "This is a new Constitution with gender in mind," she said.¹²⁷ "The rights of women and children are guaranteed."¹²⁸

The Constitutional Court of Uganda recognized women's right to equality under the Constitution in a case overturning the discriminatory provisions of the Divorce Act. Honorable Lady Justice A.E.N. Mpagi-Bahigeine explained:

It is well to remember that the rights of women are inalienable, interdependent human rights which are essential in the development of any country and that the paramount purpose of human rights and fundamental freedoms is their enjoyment by all without discrimination The concept of equality in the 1995 Constitution is founded *on the idea* that it is generally wrong and unacceptable to discriminate against people on the basis of personal characteristics such as their race or gender."¹²⁹

Under Article 21(3) of the Constitution, to "discriminate" is "to give different treatment to different persons attributable only or mainly to their respective descriptions by sex"¹³⁰ This definition is virtually identical to the definition of "discrimination" in international human rights instruments.¹³¹ Honorable Supreme Court Justice Kanyeihamba interprets that provision to mean that,

125. *Id.* arts. 21(1)-(2), 31(1), 33(6).

126. *Id.* art. 21(2).

127. Interview with Honorable Miria Matembe, *supra* note 16.

128. *Id.*

129. Uganda Assoc. of Women Lawyers v. Attorney General, Constitutional Petition No. 2 of 2003, Judgment of A.E.N. Mpagi-Bahigeine, JA, at 7 (emphasis in original).

130. UGANDA CONST. art. 21(3).

131. Article 1 of CEDAW defines "discrimination" as:

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, civil or any other field.

CEDAW, *supra* note 6, art. 1; *see also id.*, art. 15(1). Similar equality and non-discrimination principles exist in other treaties to which Uganda is a party. *See, e.g.* ICCPR, *supra* note 6, art. 26 ("All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex"); ICESCR, *supra* note 6, art. 2(2) (requiring that the rights in the ICESCR be guaranteed "without discrimination of any kind as to . . . sex"); UDHR, *supra* note 6, art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . sex"); African Charter, *supra* note 6, arts. 2, 3, 18(3) ("[States] shall ensure the elimination of every discrimination against women").

“[a]nything that smacks of discrimination between males and females is unconstitutional all the way down the line.”¹³² Certainly, the patrilineal system of inheritance and property ownership is a system based upon gender distinctions and one which results in disparate and adverse treatment of Ugandan women. Therefore the laws supporting this system should be struck down in accordance with the Constitution.

Likewise, laws and practices that discriminate against female descendants violate international and constitutional norms, and Uganda has a duty to protect all children from discriminatory laws and practices.¹³³ Constitutional and international law are clear that a state may not accord different protections to children’s rights on the basis of a child’s sex.¹³⁴ Specifically, the CEDAW Committee recommends “that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession.”¹³⁵ Uganda’s Constitution makes no distinctions between the rights of adults and those of children when it comes to the right to equal protection and equal treatment under law.¹³⁶ Thus, by allowing inheritance practices that discriminate against women and girls to persist, the government of Uganda is shirking its duties under these instruments.

B. UGANDA’S INHERITANCE REGIME DENIES WOMEN THE FUNDAMENTAL RIGHT TO EQUALITY IN MARRIAGE AND AT ITS DISSOLUTION

Both Uganda’s Constitution and the human rights instruments adopted by the country specifically guarantee men and women the right to equality in their marriages and at the dissolution of marriage, through divorce or the death of a spouse.¹³⁷ This grant of equal rights at the dissolution of marriage must guarantee

132. Interview with Supreme Court Justice Kanyeihamba, *supra* note 116.

133. UGANDA CONST. arts. 21(1)-(3), 34(7), 37(7).

134. *Id.* arts. 21(1)-(3); CRC, *supra* note 88, art. 2(1); ICCPR, *supra* note 6, art. 24 (“Every child shall have, without any discrimination as to . . . sex . . . the right to such measures of protection as are required by his [or her] status as a minor, on the part of his [or her] family, society, and the State.”); ACRWC, *supra* note 88, arts. 1, 3.

135. CEDAW Committee General Recommendation No. 15, *supra* note 8; *see also* Protocol to the African Charter on Human’s and People’s Rights on the Rights of Women in Africa, 2nd Ordinary Sess., Assembly of the Union, *adopted* July 11, 2003, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), art. 21(2), *entered into force* Nov. 25, 2005, *signed by Uganda* Dec. 18, 2003, *available at* http://www.achpr.org/english/_info/women_en.html [hereinafter Protocol to African Charter].

136. *See, e.g.*, UGANDA CONST. arts. 20-21.

137. *Compare* UGANDA CONST. art. 31(1) (“Men and women . . . are entitled to equal rights in marriage, during marriage and at its dissolution.”), *with* ICCPR, *supra* note 6, arts. 23(4) (“States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”), *and* UDHR, *supra* note 6, art. 16(1) (“Men and women . . . are entitled to equal rights as to marriage, during marriage and at its dissolution.”), *and* CEDAW, *supra* note 6, art. 16(1)(a)-(c) (“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women . . . [t]he same rights and responsibilities during marriage and at its dissolution.”).

men and women equal rights in matters of inheritance.¹³⁸ In fact, immediately following the Constitution's grant of equality in marriage and at its dissolution in Article 31(1), Uganda's Constitution, in Article 31(2), requires Parliament to "make laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses."¹³⁹ Honorable Justice Kanyeihamba explained that Article 31(1)'s provision of equality in marriage and at its dissolution, governs the requirement in Article 31(2).¹⁴⁰ According to Kanyeihamba, "[a]ll the subsequent clauses [to Article 31(1)] are either amplification or strengthening of the first clause. There is none that derogates from the main premise of equality."¹⁴¹ Therefore, Article 31(2) of the Constitution requires Parliament to pass a law granting widows and widowers *equal* rights in inheritance.¹⁴²

A former delegate to the Constitutional Assembly confirmed that providing equal inheritance rights for women was an important goal in the drafting of the Constitution: "One of the main intentions of women in the Constitutional Assembly was to put in inheritance rights. That was one of the main areas where women's rights had been violated."¹⁴³ Though the women of Uganda were successful in securing constitutional protection for their right to equality in inheritance, Parliament has thus far failed to fulfill the constitutional promise of equality embodied in Article 31(2) by failing to enact reformed succession laws.¹⁴⁴ Recognizing the sex discrimination inherent in the existing Succession Act, Honorable Justice Kanyeihamba declared, "It seems to me that there is so much in [the Succession Act] that should be struck down."¹⁴⁵

The international community has likewise recognized the problem of inequality in Uganda's inheritance regime.¹⁴⁶ International human rights norms establish the equal right of men and women "in the same degree of relationship to a deceased" to "equal shares in the estate and equal rank in order of succession."¹⁴⁷ In its compliance report to Uganda, the CEDAW Committee "notes with concern the continued existence of legislation, customary laws and practices on inheritance . . . that discriminate against women and conflict with the Constitution and the Conven-

138. Human Rights Committee, General Comment No. 28, Equality of Rights Between Men and Women (art. 3), para. 5, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), available at <http://www.unhchr.ch/tbs/doc.nsf> [hereinafter HRC General Comment No. 28].

139. UGANDA CONST. art. 31(2).

140. Interview with Supreme Court Justice Kanyeihamba, *supra* note 116.

141. *Id.*

142. UGANDA CONST. art. 31(2).

143. Interview with the Hon. Irene Ovonji Odida, *supra* note 117.

144. UGANDA CONST. art. 31(2).

145. Interview with Supreme Court Justice Kanyeihamba, *supra* note 116.

146. *See, e.g.*, Protocol to African Charter, *supra* note 135, art. 21(1).

147. CEDAW Committee, General Recommendation No. 21, Comment on Article 16(1)(h), para. 34, (13th Sess., 1994), available at <http://www1.umn.edu/humanrts/gencomm/generl21.htm> [hereinafter CEDAW General Recommendation No. 21].

tion.”¹⁴⁸ The Committee urged Uganda “to eliminate all forms of discrimination with respect to the ownership, co-sharing and inheritance of land.”¹⁴⁹ It also advocated for “the introduction of measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of the right to property by women.”¹⁵⁰

An objective evaluation of a particular cultural practice or tradition requires an honest look at the traditional ideas upon which that practice is based. Many of the discriminatory features of Uganda’s succession law and cultural practices, which deny women property rights during marriage and at its dissolution, are based on the traditional notion that men contribute more to the household financially, while women’s duties are primarily domestic in nature. These assumptions, however, do not accurately depict the situation of many women in the country, who contribute both financially and non-financially to their households. African women are responsible for approximately eighty-five percent of the continent’s agricultural production, yet women in Uganda own only seven percent of the land there.¹⁵¹ Furthermore, stereotypes about women cannot justify systemic discrimination against them in the country’s succession laws and accepted practices. The CEDAW Committee explains:

Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honorably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman’s practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.¹⁵²

Discriminatory inheritance laws and practices in Uganda, which entitle husbands to a greater share of marital and other property than that which is granted to women, are based on outdated stereotypes about men and women and fail to recognize women’s contributions to their families and communities. These laws and customs deny women the right to enjoy the fruits of their labors and

148. CEDAW Reports of State Parties, Uganda, *supra* note 40, para. 151; *see also* CEDAW Committee, Third Periodic Report of States Parties, Uganda, U.N. GAOR, 21st Sess., U.N. Doc. A/50/38, paras. 278-344 (May 31, 1995), *available at* <http://www.unhcr.ch/tbs/doc.nsf> [hereinafter CEDAW Third Periodic Report, Uganda].

149. *Id.* para. 152.

150. *Id.*

151. Jennifer Okumu-Wengi, *WEEDING THE MILLET FIELD: WOMEN’S LAW AND GRASSROOTS JUSTICE IN UGANDA* 42 (Kampala: Uganda Law Watch Center, ed., 1997).

152. CEDAW General Recommendation No. 21, *supra* note 147.

deprive them of economic autonomy, security and personal dignity.¹⁵³ Uganda is therefore obligated to eradicate these harmful laws and practices and ensure women the right to own and inherit property on an equal basis with their spouses.

C. UGANDA'S INHERITANCE REGIME DENIES WOMEN THE FUNDAMENTAL RIGHT TO BE SECURE IN THEIR HOMES

Under the Ugandan Constitution and Uganda's international obligations, women are entitled to equal treatment with respect to the right to own property,¹⁵⁴ live in adequate housing,¹⁵⁵ and choose a place of residence.¹⁵⁶ The ICESCR defines the right to adequate housing as the "right to live somewhere in security, peace and dignity" and includes legal security of tenure.¹⁵⁷ Forced evictions "are *prima facie* incompatible with the requirements" of international law.¹⁵⁸ Given statutory and other forms of discrimination against them, women especially are vulnerable to forced evictions, and are particularly vulnerable to violence and sexual abuse when they are rendered homeless.¹⁵⁹ By allowing widows to be evicted from their homes, Uganda subjects its most vulnerable citizens to abuse and insecurity and neglects its internationally and constitutionally mandated duties to promote a woman's freedom and security in her home.¹⁶⁰

Clearly, the limited occupancy rights provided to wives in Uganda's Succession Act, together with unchecked customary practices of property-grabbing and eviction, subject widows to substantial insecurity in their homes. Because a similarly-situated husband would have full ownership in the home and be entitled to remain after remarriage, the denial of the same rights to widows constitutes sex-based discrimination. By permitting such discrimination to continue unabated, Uganda denies women the equal protection of the law in contravention of its commitments under international human rights covenants and its Constitu-

153. International law demands equality in dignity and integrity for all people and declares that all human beings are "born free and equal in dignity and rights." UDHR, *supra* note 6, art. 1; *see also* African Charter, *supra* note 6, art. 5; ICCPR, *supra* note 6, pmb. (recognizing "the inherent dignity . . . of all members of the human family" and that "[equal and inalienable] rights derive from the inherent dignity of the human person.").

154. UGANDA CONST. arts. 26(1)-(2).

155. *See* ICESCR, *supra* note 6, art. 11(1) (read with articles 2(2) and 3).

156. *See* ICCPR, *supra* note 6, art. 12(1) (read with articles 2(1), 3, 23(4), and 26).

157. General Comment 4, Committee on Economic, Social and Cultural Rights, Right to Adequate Housing, 6th Sess., U.N. Doc. E/1992/23, annex III, para. 7 (1991), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6, at 18 (2003), *available at* <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm>.

158. *Id.* para.18.

159. General Comment 7, Committee on Economic, Social and Cultural Rights, Forced Evictions and the Right to Adequate Housing, 16th Sess., U.N. Doc. E/1998/22, annex IV, para. 11 (1997), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6, at 45 (2003), *available at* <http://www1.umn.edu/humanrts/gencomm/escgencom7.htm>.

160. *See* ICCPR, *supra* note 6, arts. 2(1), 3, 17, 23(4), 26; UDHR, *supra* note 6, arts. 2, 12.

tion.¹⁶¹ International and constitutional norms demand that Uganda remedy this inequality and ensure women the right to be secure in their homes.

D. UGANDA'S INHERITANCE REGIME DENIES WOMEN THE RIGHT TO PROTECTION OF THE FAMILY AND CUSTODY OF THEIR CHILDREN

International law and Uganda's Constitution entitle every person in Uganda to governmental protection of their families and provides that parents and children have the right to remain together.¹⁶² Specifically, Uganda's Constitution provides, "It is the right and duty of parents to care for and bring up their children,"¹⁶³ and the Women's Protocol to the African Charter states that "a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children."¹⁶⁴ Far from protecting mothers and children, however, Uganda's succession law condones, and indeed encourages, the forced separation of mothers from their children by granting the husband's relatives a superior custody right in matters of intestate succession and permitting fathers to appoint someone other than the mother as the children's guardian.

A father's right to remain with his children, on the other hand, is not similarly threatened upon the death of the children's mother. When a mother dies, customary and civil laws generally ensure that a man has the right to keep his children with him in his household. Because the government permits a woman to lose her children while a similarly-situated man is permitted to remain with his children, the government fails to protect a woman's right to her family to the same degree that it protects a man's right to his family. This disparate treatment of men's and women's parental rights violates constitutional and international guarantees of gender equality.¹⁶⁵

161. ICCPR, *supra* note 6, arts. 2(1), 23(4), 26; ICESCR, *supra* note 6, arts. 2(1)-(2), 3, 11(1); CEDAW *supra* note 6, arts. 1, 2, 15, 16; African Charter, *supra* note 6, arts. 2, 3, 18(3); UDHR, *supra* note 6, arts. 1, 2, 7.

162. UGANDA CONST. arts. 21(1)-(2), 3, 31(4)-(5), 34(1); *see also* ICCPR, *supra* note 6, arts. 2(1), 3, 17, 23(1).

163. UGANDA CONST. article 31(4); *see also id.* arts. 3, 21(1)-(2), 31(5), 34(1). Article 31(5) states that "[c]hildren may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law." *Id.* art. 31(5). These provisions are to be read together with article 21(1), which provides for equal protection, and article 21(2), which prohibits discrimination on the basis of sex. *Id.* arts. 21(1)-(2).

164. Protocol to African Charter, *supra* note 135, art. 20(b).

165. UGANDA CONST. art. 21(2); CEDAW, *supra* note 6, arts. 1, 16(1)(d), (f) (guaranteeing men and women "[t]he same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children" and "[t]he same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation."); ICCPR, *supra* note 6, art. 2(1) (prohibiting "distinction of any kind, such as . . . sex . . ."); ICESCR, *supra* note 6, art. 2(2) (requiring that the rights in the ICESCR be guaranteed "without discrimination of any kind as to . . . sex . . ."); UDHR, *supra* note 6, art. 2; African Charter, *supra* note 6, art. 18(3).

E. CONSTITUTIONAL AND INTERNATIONAL LAW REQUIRE UGANDA TO ENSURE
EQUAL RIGHTS IN INHERITANCE FOR MEN AND WOMEN DESPITE CULTURAL AND
RELIGIOUS OBJECTIONS

1. Cultural or Religious Norms May Not Be Used to Justify Women's Subordination

Some religious and cultural leaders object to a universal intestate succession law that would grant equal rights to widows and widowers, and to daughters and sons, on the grounds that the law should not impact their right to freely practice their culture or religion.¹⁶⁶ Uganda's Constitution, however, specifically *requires* the Ugandan Parliament to amend the current unequal law and enact a non-discriminatory and universal law.¹⁶⁷ The Constitution is "the supreme law of Uganda"¹⁶⁸ and declares that any law or custom that is inconsistent with its provisions, including its provisions for gender equality, is void to the extent of the inconsistency.¹⁶⁹ In fact, it expressly prohibits cultural or religious practices that discriminate against women in particular, providing that "[l]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution."¹⁷⁰ Thus, the Constitution specifically prohibits cultural or religious practices that deny women the right to equal treatment with men.

Moreover, under Uganda's Constitution and international human rights instruments to which Uganda is a party, a person's freedom of religion is subject to certain restrictions. The Constitution, in fact, precludes the invocation of one's freedom of culture or religion to justify a violation of another's human rights.¹⁷¹ International law likewise commands that the invocation of one human right, such as the freedom of religion, cannot excuse the violation of another right, such as the right to equal protection of the law.¹⁷² The freedom to practice one's

166. Uganda's Succession Act already applies universally to all persons domiciled in Uganda, as it has since 1972, regardless of religion, tribe, or ethnicity. The original Succession Act exempted Muslims from its application. Succession Act of 1906, Ordinance 1 of 1906, § 50(2) (Feb. 15, 1906). In 1966, an ordinance repealed subsidiary legislation that had formerly exempted the application of the law to Africans. *See* LRC REPORT, *supra* note 1, at 248. And, in 1972, the Succession Decree repealed section 50(2) of the Succession Act, which previously had allowed Muslims and non-Muslims to write "any will . . . according to the provisions of Mohammedan law or customary law . . ." The amended Succession Act is to apply to all cases of intestate or testamentary succession in Uganda. 1972 Decree, *supra* note 9, § 1(j); Succession Act 2000, *supra* note 9, § 2. So for more than thirty years, Uganda *has* provided a *uniform* intestate and testate succession law, although, as this report demonstrates, this universal law falls far short of the democratic ideals enshrined in Uganda's Constitution and in international law.

167. UGANDA CONST. arts. 31(1)-(2).

168. *Id.* art. 2(1).

169. *Id.* art. 2(2).

170. *Id.* art. 33(6).

171. *Id.* arts. 21, 31(1)-(2), 33(6).

172. *See* ICCPR, *supra* note 6, arts. 2(1), 3, 5, 23(4), 26; CEDAW, *supra* note 6, arts. 2(e), 5(a), 16.

religion must occur “in a manner *consistent with this Constitution*”¹⁷³ and is subject to “the fundamental rights and freedoms of others.”¹⁷⁴ This means that conduct protected under the right to freedom of religion cannot violate the constitutional and international right to equality.¹⁷⁵

Furthermore, international law makes a distinction between the freedom of thought, conscience, religion or belief on the one hand and the freedom to *manifest* religion or belief on the other.¹⁷⁶ While international law prohibits any limitations on “freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice,”¹⁷⁷ the freedom to *manifest* one’s religion or belief¹⁷⁸ through observance or practice may be limited to protect “the fundamental rights and freedoms of others,”¹⁷⁹ and it does *not* include the freedom to choose one’s own system of law.¹⁸⁰ Hence, the right to practice a religion or culture may be limited if such practice, for example, violates women’s fundamental right to be treated equally with men and to be granted equal protection of the law. International norms provide that countries “should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all rights.”¹⁸¹ Therefore, notwithstanding a group’s right to hold certain beliefs, no cultural or religious group may subject women or girls to discrimination with respect to the fundamental rights described above on the grounds that their culture or religion entitles them to do so.

2. Uganda Should Follow the Example of Other African States That Have Adopted and Implemented Universal Laws Despite Resistant Cultural or Religious Groups

Uniform application of the law is necessary to eliminate the pervasive discrimination and hardship imposed on women and girls by traditional customary and religious practices.¹⁸² By applying official law equally to all persons in Uganda regardless of cultural or religious status, Uganda would join

173. UGANDA CONST. art. 29(1)(c) (emphasis added).

174. ICCPR, *supra* note 6, art. 18(3).

175. UGANDA CONST. arts. 21, 33.

176. Human Rights Committee, General Comment No. 22, The Right to Freedom of Thought, Conscience and Religion, 48th Sess. (1993), paras. 3-4, U.N. Co. HRI/GEN/1/Rev.1, at 26 (1994), available at <http://www.ohchr.org/english/bodies/hrc/comments.htm> (click on “Article 18”) [hereinafter HRC General Comment No. 22].

177. *Id.* para. 3.

178. *Id.* para. 4 (the right to manifest one’s religion or belief means the freedom to engage in ritual acts, have religious symbols, choose one’s place of worship and religious leader, and the like).

179. ICCPR, *supra* note 6, art. 18(3).

180. HRC General Comment No. 22, *supra* note 176, para. 4.

181. HRC General Comment No. 28, *supra* note 138, para. 5.

182. LRC REPORT, *supra* note 1, at 304-05.

many other countries with large Muslim populations and minority groups.¹⁸³ For instance, Somalia, Mauritius and Ghana have rejected discriminatory features of traditional Islamic inheritance law.¹⁸⁴ In addition, Ethiopia,¹⁸⁵ Ghana,¹⁸⁶ Zimbabwe,¹⁸⁷ Kenya,¹⁸⁸ Cameroon,¹⁸⁹ the Seychelles,¹⁹⁰ Mozambique,¹⁹¹

183. James Denker, *England*, in EUROPEAN SUCCESSION LAW 202 (David Hayton, ed., 2002) (England); Marie L. Revillard, *France*, in EUROPEAN SUCCESSION LAW 218 (David Hayton, ed., 2002) (France); A.K. P. KLUDZE, MODERN LAW OF SUCCESSION IN GHANA 161 (Foris Publications, 1988) (Ghana); Family Code 1975 (no. 23/75), art. 158 (Somalia, testate succession is limited to one-third of estate, unless consent of heirs is obtained. Article 158 of the Somali Code states, "In conformity with the principles of the 1st and 2nd Charter of the Revolution, females and males shall have equal rights of inheritance." A widow or widower is entitled to half of estate if there are no children or grandchildren, or one-fourth if there are; sons and daughters to receive equal shares, and same applies to grandchildren; shares of other heirs are also specified in Code, as are grounds for inclusion or exclusion of heirs and reduction of shares.); *Bhewa v. Gov't of Mauritius*, 1991 LRC (Const.) 298 (Mauritius S. Ct. 1990) (Mauritius); INTERNATIONAL SUCCESSION 612-14, 624-26, 638-40 (Louis Garb, ed., 2004) (Turkey and United States (New York and Pennsylvania)).

184. KLUDZE, *supra* note 183, at 161 (citing P.N.D.C. Law 111, Intestate Succession Law (1985) (Ghana)); Family Code 1975 (no. 23/75), art. 158 (Somalia); *Bhewa*, 1991 LRC (Const.) 298.

185. See Ctr. for Reprod. Law and Policy, *Women of the World: Laws and Policies Affecting Their Reproductive Lives: Anglophone Africa* 24 (2001) [hereinafter *Women of the World 2001*] (stating that Ethiopia's Revised Family Code "proclaims the need for 'a legal basis [to guarantee] the equality of the spouses during the conclusion, duration and dissolution of marriage.'")

186. See generally Intestate Succession Law, P.N.D.C.L. 111 (1985) (Ghana), *discussed in* KLUDZE, *supra* note 183, at 161.

187. WOMEN OF THE WORLD 2001, *supra* note 185, at 141 (stating, "In 1997, [Zimbabwe's] Administration of Estates Amendment Act repealed section 68 of the prior Act which delegated distribution of intestate property in accordance with 'the customs and usage of the tribe or people to which [the intestate deceased] belonged.'")

188. See Ctr. for Reprod. Law and Policy, *Women of the World: Laws and Policies Affecting Their Reproductive Lives: Anglophone Africa* 67 (1997) (stating:

[Kenya's] Succession Act, which took effect in 1981, sought to provide uniformity to an area of the law [inheritance law] that had been governed according to four legal regimes Two elements of the statute—an exemption for Muslims and a provision stating that the inheritance of livestock and agricultural lands continue to be governed by the law—have undermined the attempt to achieve uniformity [Yet the statute also] grants men and women equal rights to inherit from a parent or sibling.)

[hereinafter *WOMEN OF THE WORLD 1997*].

189. CTR. FOR REPROD. LAW AND POLICY, *WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES: FRANCOPHONE AFRICA* 80 (2000) (stating "Cameroonian women are granted equal rights to men; they can inherit property, and use it as they please . . ." However, "[d]iscrimination lies in customs that prohibit a woman from inheriting from her father or mother because it is considered a woman's vocation to get married.") [hereinafter *WOMEN OF THE WORLD: FRANCOPHONE AFRICA*]. "[T]he Supreme Court has sanctioned the primacy of contemporary law over traditional law. Citing constitutional grounds, it has struck down customary laws that deprive women of their inheritance rights . . ." *Id.* at 70.

190. See U.S. Dep't of State, *Country Reports on Human Rights Practices, 2000: Seychelles* § 5 (2001), available at <http://www.state.gov/g/drl/rfs/hrrpt/2002/18224.htm> (stating that the country's "inheritance laws do not discriminate against women").

191. See WOMEN IN LAW IN SOUTHERN AFRICA RESEARCH PROJECT, *WIDOWHOOD, INHERITANCE LAWS, CUSTOMS AND PRACTICES IN SOUTHERN AFRICA* 89, 94, 101 (1995) (stating that the law contained in the Mozambican code is based on the Roman-Dutch common law, in which children inherit property in equal shares regardless of their sex, and this law supersedes customary law).

Zambia,¹⁹² Cape Verde,¹⁹³ Comoros,¹⁹⁴ and Cote d'Ivoire¹⁹⁵ each have statutes that supersede customary law and treat men and women and sons and daughters equally.

In 1990, the Mauritius Supreme Court rejected the argument of religious exceptionalism in *Bhewa v. Government of Mauritius*.¹⁹⁶ In that case, the plaintiffs, unmarried Muslims, brought suit, claiming that their freedom of religion entitled them to be married under Islamic law rather than under Mauritius' secular marriage laws.¹⁹⁷ The plaintiffs asserted that the freedom of religion guaranteed them the right to be governed solely by Islamic family law concerning "marriage, divorce, and devolution of property."¹⁹⁸ The Mauritius Supreme Court rejected this argument, holding that it was "based on an insufficient understanding of the duality of religion and state in a secular system."¹⁹⁹ The Supreme Court found that,

[t]o the extent that it is sought to give to religious principles and commandments the force and character of law, religion steps out of its own sphere and encroaches on that of law-making in the sense that it is made to coerce the state into enacting religious principles and commandments into law.²⁰⁰

Hence, the Court ruled that, matters of personal law such as inheritance are also reserved for the state rather than religious authorities.²⁰¹

Uganda, like Mauritius, is a secular state that has undertaken international obligations, reflected in detail in its Constitution, to adopt and implement a non-discriminatory inheritance law that applies universally. As in Mauritius, the

192. See WOMEN IN LAW IN SOUTHERN AFRICA RESEARCH PROJECT, INHERITANCE LAW IN ZAMBIA: LAW AND PRACTICE 81, 82 (1993) (stating that fifty percent of the deceased's estate goes to his or her children to be shared equally, without regard to sex, and that the inheritance applies to all persons resident in Zambia to whom "customary law would have applied had the Intestate Succession Act not been passed" and that the Act does not apply to land held under customary law or family property).

193. See U.S. Dep't of State, Country Report on Human Rights Practices, 2000: Cape Verde, § 5 (2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18173.htm> (stating, "[t]he Constitution prohibits discrimination against women in inheritance, family, and custody matters," although some women alleged that there was discriminatory treatment in inheritance matters, despite laws that called for equal rights).

194. See U.S. Dep't of State, Country Report on Human Rights Practices, 2000: Comoros, § 5 (2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18176.htm> (stating that "in general inheritance and property rights do not disfavor women.").

195. See WOMEN OF THE WORLD: FRANCOPHONE AFRICA, *supra* note 189, at 125 (stating that, in Cote d'Ivoire, "children and their descendants can inherit from parents, grandparents, or other relatives regardless of gender or primogeniture.").

196. *Bhewa v. Gov't of Mauritius*, 1991 LRC (Const.) 298 (Mauritius S. Ct. 1990).

197. *See id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *See id.*

Ugandan Parliament has the sole authority to legislate in the realm of personal law and must ensure that personal laws on inheritance do not violate women's fundamental rights.

V. UGANDA MUST ADOPT INHERITANCE REFORMS TO REMEDY VIOLATIONS OF WOMEN'S RIGHTS

The Ugandan people and the international community are calling upon the government of Uganda to adopt reforms that would transform human rights in the country from rhetoric to reality. International conventions to which Uganda is a party obligate the Ugandan government to provide women whose right to equality is violated with an "effective remedy."²⁰² The Constitution of Uganda also promises the women of Uganda effective enforcement by courts of the remedies granted to them by the Constitution.²⁰³ Specifically, Parliament must provide for the following legal reforms and educational and enforcement initiatives:

Substantive Changes to the Law:

- Granting the surviving spouse full ownership of "matrimonial property;"²⁰⁴
- Increasing the surviving spouse's share in the rest of the estate, other than matrimonial property, from fifteen percent to fifty percent, in order to bring the Succession Act into conformity with parents' obligations under the Children Act²⁰⁵ and the Constitution;²⁰⁶
- Setting different distribution schemes for polygamous marriages to protect widows' and children's rights, where the distribution of matrimonial property depends on the number of wives and the duration of each wife's marriage to the deceased;²⁰⁷
- Granting the surviving spouse the automatic right to administer the estate;²⁰⁸ and

202. ICCPR, *supra* note 6, art. 2(3)(a) (requiring states "[t]o ensure that any person whose rights or freedoms . . . are violated shall have an effective remedy . . ."); *see also* CEDAW, *supra* note 6, arts. 2 (a)–(f), 15, 16(1)(c), (h).

203. UGANDA CONST. art. 50 (stating that "Parliament shall make laws for the enforcement of the rights and freedoms").

204. *See infra* Appendix A: Proposed Succession (Amendment) Bill 2006, §§ 4, 14 (amending Succession Act 2000, *supra* note 9, §§ 3, 27(1)).

205. Children Act, *supra* note 88, §§ 4-6.

206. *See infra* Appendix A: Proposed Succession (Amendment) Bill 2006, § 14 (amending Succession Act 2000, *supra* note 9, § 27(2)).

207. *See id.* (amending Succession Act 2000, *supra* note 9, §§ 27(1)(b), 27(2)).

208. *See id.* §§ 30, 34 (amending Succession Act 2000, *supra* note 9, §§ 190, 202(1)). Under the Proposed Bill, wives in polygamous marriages would be entitled to administer the estate jointly. *See id.* § 36 (amending Succession Act 2000, *supra* note 9, § 204). Additionally, the surviving spouse's right to administer the deceased spouse's estate may be revoked by a court only upon petition by another

- Granting the surviving spouse automatic custody and guardianship of any children of the marriage.²⁰⁹

Enforcement Initiatives:

- Promulgating and implementing new administrative rules and practices, including the further decentralization of the Administrator General's Office, in order to produce greater accessibility and enforcement;²¹⁰
- Amending jurisdictional requirements in the court system to make the courts more accessible;²¹¹
- Establishing and operating judicial, administrative, and law enforcement agencies competent and equipped to provide an effective remedy for injustices suffered by Ugandan women in succession;²¹² and
- Criminalizing the practice of widow inheritance and the unlawful eviction of widows and providing for the investigation and punishment of offenses that harm widows and their children.²¹³

Educational Initiatives:

- Training police and local leaders on the new succession law;²¹⁴ and
- Sensitizing the public regarding people's rights under the Constitution and the new succession law.²¹⁵

A. PARLIAMENT MUST ENACT REFORMED SUCCESSION LAWS TO REMEDY DISCRIMINATION AGAINST WOMEN

In the early 1990s, the women of Uganda requested that the Constitutional Drafting Commission require Parliament to "repeal all discriminatory legislation and adopt laws that do not discriminate against women."²¹⁶ They identified the inheritance laws as laws "under which the majority of women have continued to

beneficiary showing that the surviving spouse has not been caring for minor children she had with the deceased or is found to be legally insane and incapable of administering the estate. *See id.* §§ 30, 35 (amending Succession Act 2000, *supra* note 9, §§ 190, 203(2)).

209. *See id.* §§ 25, 26 (amending Succession Act 2000, *supra* note 9, §§ 43(3), 44(1)).

210. *See id.* §§ 53, 54 (amending Succession Act 2000, *supra* note 9, §§ 2, 3).

211. *See id.* § 40 (amending Succession Act 2000, *supra* note 9, § 240).

212. *See id.* § 15 (amending Succession Act 2000, *supra* note 9, § 27).

213. *See id.* §§ 15, 58 (amending Succession Act 2000, *supra* note 9, § 27 (adding Section 27A) and amending Administrator General's Act, *supra* note 12, § 11(2)).

214. *See id.* § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding Section 27A(5))).

215. *Id.*

216. WOMEN'S RECOMMENDATIONS, *supra* note 5, at 14.

suffer injustices because of the discriminatory provisions.”²¹⁷ The drafters of the Constitution adopted the women’s recommendations and required Parliament to reform the succession laws.²¹⁸ Women are still waiting, however, for Parliament to fulfill its constitutional obligation to bring succession laws into conformity with the Constitution.²¹⁹

Echoing the pleas of the women of Uganda, several government agencies have recognized the need for a new, gender-neutral law. The Administrator General’s Office has been advocating an amendment to the Succession Act for over nine years.²²⁰ According to the Principal State Attorney at the Administrator General’s office, “[t]hese laws [the Succession Act] were made in the 60’s—now there are economic changes These are the issues that Parliament should change.”²²¹ The Uganda Human Rights Commission has also been calling upon Parliament to amend the Succession Act since as early as 2001.²²² Additionally, Uganda’s Law Reform Commission (LRC), which is a statutorily created commission dedicated to reviewing and reporting on Ugandan laws in need of reform, reports that it is time to bring the succession laws into conformity with Uganda’s progressive Constitution and other laws.²²³ The LRC’s proposals include granting a surviving wife ownership of the marital home and giving her the right to administer the estate.²²⁴

Both Ugandan women and the international community urge Parliament to pass equal inheritance legislation and end the sex discrimination in the colonial Succession Act and the 1972 Decree imposed by Idi Amin.²²⁵ The Clinic’s recommended reforms are presented in Appendix A in the form of a statutory bill proposal, which is summarized in Appendix B. By eliminating the distinction between widows and widowers in intestate succession, the reforms proposed in the bill would bring Uganda’s law into conformity with the laws of virtually all states with developed legal systems,²²⁶ including many African states.²²⁷ These

217. *Id.*

218. UGANDA CONST. art. 31(2).

219. *Id.* arts. 31(2), 79. Article 31(2) states that “Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.” *Id.* art. 31(2). Article 79 charges Parliament with the protection of the Constitution and gives Parliament the exclusive power to make laws on any matter. *Id.* art. 79.

220. Interview with Francis Atoke, *supra* note 41.

221. *Id.*

222. UGANDA HUMAN RIGHTS COMMISSION, ANNUAL REPORT 82-83 (2000-2001) (citing the Succession Act as a law in need of reform); Interview with Marriam Wangadya, Human Rights Commissioner, Uganda Human Rights Commission, in Kampala, Uganda (Mar. 10, 2004).

223. LRC REPORT, *supra* note 1, at 247.

224. *Id.* at 270 (calling for the law to give the surviving spouse the right to administer the estate and the right of ownership of the matrimonial home).

225. *See generally* Succession Act 1965, *supra* note 9; 1972 Decree, *supra* note 9.

226. CTR. FOR REPROD. LAW AND POLICY, WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES: EAST CENTRAL EUROPE 23 (2000) (Albania) [hereinafter WOMEN OF THE WORLD: EASTERN EUROPE], Andreas Lintel, *Austria*, in *European Succession Law*, *supra* note, 183, at 25-27 (Austria); *International Succession*, *supra* note 183, at 22-24 (Argentina); Alain Verbeke, *Belgium*,

reforms are straight-forward in that they entitle a deceased's widow and daughter to the same inheritance rights as a widower and son. With the exception of provisions dealing with polygamous marriages, which are by definition discriminatory to women but still legal under the laws of Uganda,²²⁸ the reforms entitle widows to the same rights and protections as widowers now receive. The reforms would implement the equality provisions of Uganda's Constitution and international law and conform with the provisions of the Children Act setting forth parental rights and obligations.²²⁹

in European Succession Law, *supra* note 183, at 52-53 (Belgium); International Succession, *supra* note 183, at 68 (Bermuda); CTR. FOR REPROD. LAW AND POLICY, WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES: LATIN AMERICA AND THE CARIBBEAN [hereinafter WOMEN OF THE WORLD: LATIN AMERICA & CARIBBEAN] 80 (Colombia); WOMEN OF THE WORLD: EASTERN EUROPE, *supra* note 226, at 42 (Croatia); J. Qviste, *Denmark*, *in* European Succession Law, *supra* note 183, at 188-89 (Denmark); Denker, *supra* note 183, at 101 (England); Zacharias Sundstroem, *Finland*, *in* European Succession Law, *supra* note 183, at 188-199 (Finland); Revillard, *supra* note 183, at 220-22 (France); Karsten Kuehne, Stephen Dollinger & Dirk Krome, *Germany*, *in* European Succession Law, *supra* note 183, at 247-49 (Germany); KD Magliveras, *Greece*, *in* European Succession Law, *supra* note 183, at 186-88 (Greece); WOMEN OF THE WORLD: LATIN AMERICA & CARIBBEAN, *supra* note 226, at 51 (2001) (Guatemala); WOMEN OF THE WORLD: EASTERN EUROPE, *supra* note 226, at 65 (Hungary); Neil Morris & John Wright, *Isle of Man*, *in* European Succession Law, *supra* note 183, at 165-66 (Isle of Man); International Succession, *supra* note 183, at 342-44 (Israel); DB Macfarlane, *Italy*, *in* European Succession, *supra* note 183, at 179 (Italy); Women of the World: Latin America, *supra* note 226, at 137 (Jamaica); Steven Meiklejohn & Keith Dixon, *Jersey*, *in* European Succession Law, *supra* note 183, at 148 (Jersey, United Kingdom); WOMEN OF THE WORLD: EASTERN EUROPE, *supra* note 226, at 91 (Lithuania); WOMEN OF THE WORLD: LATIN AMERICA & CARIBBEAN, *supra* note 226, at 258 (Mexico); F.A.A. Duynstee & K.M.F.J. Houben, *The Netherlands*, *in* European Succession Law, *supra* note 183, at 392 (Netherlands); International Succession, *supra* note 183, at 446-48 (New Zealand); WOMEN OF THE WORLD: LATIN AMERICA & CARIBBEAN, *supra* note 226, at 175 (Peru); WOMEN OF THE WORLD: EASTERN EUROPE, *supra* note 226, at 113 (Poland); Prof. F.A. Ferreira Piato, *Portugal*, *in* European Succession Law, *supra* note 183, at 418-19 (Portugal); WOMEN OF THE WORLD: EASTERN EUROPE, *supra* note 226, at 139 (Romania); WOMEN OF THE WORLD: EASTERN EUROPE, *supra* note 226, at 164 (Russia); Ross Macdonald, *Scotland*, *in* European Succession Law, *supra* note 183, 129-31 (Scotland); Julio D. Gonzalez Campos & Prof. Dr. Alegría Borrás, *Spain*, *in* European Succession Law, *supra* note 183, at 443-45 (Spain); Lennart Herslow & Per Gellström, *Sweden*, *in* European Succession Law, *supra* note 183, at 469-470 (Sweden); Duri Berther, *Switzerland*, *in* European Succession Law, *supra* note 183, at 486-88 (Switzerland); International Succession, *supra* note 183, at 612-14 (Turkey); International Succession, *supra* note 183, at 624-26 (United States).

227. WOMEN OF THE WORLD: FRANCOPHONE AFRICA, *supra* note 189, at 58 (Burkina Faso); *id.* at 80 (Cameron); *id.* at 102 (Chad); *id.* at 125 (Cote d'Ivoire); *see also* WOMEN OF THE WORLD 1997, *supra* note 188, at 24 (Ethiopia); *id.* at 44 (Ghana); *id.* at 84 (Nigeria); Tolley's International Succession Laws, South Africa, Iss. 2, S5/5 (Oct. 2002) (South Africa).

228. *See* Concluding Observations of the Human Rights Committee: Uganda, U.N. Doc. CCPR/CO/80/UGA (May 4, 2004), at 2, *available at* <http://documents.un.org/> (click on "welcome," then "simple search," then enter the doc. number the "symbol" field) (declaring that the HRC "deplores the fact that polygamy is still recognized by law in Uganda."). A full discussion of the practice of polygamy and how it violates women's rights is beyond the scope of this report. For a more complete discussion of this issue, *see generally* Esther N. Mayambala, *Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda*, E. AFR. J. PEACE & HUM. RIGHTS, Vol. 3, Iss. 2, 1997, at 200-39.

229. Children Act, *supra* note 88, §§ 5-6.

B. UGANDA MUST REFORM ITS ENFORCEMENT AGENCIES TO ENSURE FAIR,
SPEEDY, AND PUBLIC ADJUDICATION OF WIDOWS' RIGHTS

1. Uganda Must Eliminate Discrimination by Preventing, Investigating and
Punishing Violation of Widows' Rights.

Uganda's duty to protect widows and their children extends beyond simply enacting protective legislation. The government has a duty to implement measures to prevent harm to widows and their children by investigating and punishing violations of widows' rights.²³⁰ According to the LRC, the current state of law enforcement in the country is "quite inadequate."²³¹ Widows are routinely victimized by relatives, who control the widows' access to basic necessities of life and routinely threaten or perform acts of physical violence against them while the government stands idly by. According to the Assistant Director of the Public Prosecutor's office, that office does not prosecute offences against family members grabbing property or evicting a widow under duress or taking away her children. The Assistant Director reported: "We know it's a problem. We hear a widow is evicted, but we don't prosecute it."²³² She attributes this policy to "the culture of police not taking such reports, reports on domestic issues, seriously."²³³ Thus, even the minimal protections of the current succession law and Penal Code provisions are not enforced.

Law enforcement authorities frequently refuse to interfere in issues perceived to be domestic affairs. For instance, one woman recounts the story of another woman who was assaulted by her husband in front of police. She said, "[The woman's husband] started assaulting her seriously on the sidewalk of Kampala Road. The guards came. Someone said it is the husband, and the guards left them."²³⁴

Whether acts of violence against widows occur in public or in private, Uganda has a duty "to exercise due diligence to prevent, investigate and . . . punish acts of violence against women whether those acts are perpetrated by the state or by private persons."²³⁵ In a U.N. General Assembly Declaration, the international community specifically recognized "physical, sexual and psychological violence occurring in the family [and] . . . within the general community" as prohibited violence against women.²³⁶ International law also charges Uganda with an obligation "to eliminate discrimination against women by any person, organiza-

230. UGANDA CONST. arts. 31(1)-(2), 50 (stating that "Parliament shall make laws for the enforcement of the rights and freedoms"); ICCPR, *supra* note 6, arts. 2(3), 3.

231. LRC REPORT, *supra* note 1, at 305.

232. Interview with Damalie Lwanga, Assistant Director of Public Prosecutions, Public Prosecutor's Office, in Kampala, Uganda (Mar. 12, 2004).

233. *Id.*

234. *Id.*

235. Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. GAOR, 48th Sess., U.N. Doc.A/RES/48/104, art. 4(c), available at <http://www.ohchr.org/english/law/eliminationva-w.htm> [hereinafter DEVAW].

236. *Id.* arts. 2(a), (b).

tion or enterprise.”²³⁷ By assigning Uganda the task of eliminating discriminatory acts by “any person,” international law holds the government accountable for the discriminatory acts of private citizens, including discrimination by relatives, clan leaders, local council members, and others in the community.

There is also a widespread problem of under-reporting of crimes against widows. One female attorney explained that, “[w]idows would rarely come out to report. Even where they try, where they report a criminal case, they usually withdraw after pressure from both [their] relatives and his relatives.”²³⁸ Again, the problem of under-reporting is attributable to the perception that any important aspect of family or home life belongs in the “private” sphere, and disclosing details of one’s home or family life is taboo.

A woman who reports violence or claims that her rights have been violated by her clan, is likely to face tremendous social disapproval. She risks losing the social support system that she is dependant upon. An Assistant Prosecutor explained: “A woman would not take her in-laws to court There is a problem because she has nowhere to go.”²³⁹ Often if she reports wrongs against her by her relatives, she will endure physical abuse and lose the only family and only means of support available to her. A former FIDA attorney recalled that, “[s]ometimes widows would come so badly beaten [They have] no money for [a] hospital. You look at her and in shock and wonder: ‘how do people still do this?’”²⁴⁰ Fearing reprisal from clan leaders or relatives, many widows choose to suffer the hardship and violence in silence.

The government of Uganda has a duty to help widows combat these pressures and encourage widows and those who witness abuse against widows to report it to authorities. An important part of this effort will be empowering the widows to administer the estate,²⁴¹ criminalizing the worst abuses against widows (forced evictions, theft and widow inheritance) and ensuring that the authorities are willing and able to interfere to investigate, prosecute and convict offenders for those abuses. This requires the implementation and funding of training and sensitization programs for police and other government officials, as well as victim protection programs.²⁴² The government should also direct efforts toward arresting offenders,²⁴³ and it should provide widows a remedy of compensatory damages against offenders to reimburse widows for the property that has been

237. CEDAW, *supra* note 6, art. 2(e) (emphasis added).

238. Interview with Damalie Lwanga, *supra* note 232.

239. *Id.*

240. Interview with Florence Ochago, *supra* note 22.

241. *See infra* Appendix A: Proposed Succession (Amendment) Bill 2006, §§ 30, 34 (amending Succession Act 2000, *supra* note 9, §§ 190, 202(1)).

242. *See id.* § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding Section 27A(5))); *see also* Interview with Damalie Lwanga, *supra* note 232.

243. *See infra* Appendix A: Proposed Succession (Amendment) Bill 2006, § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding Section 27A)); *see also id.* § 58 (amending Administrator General’s Act, *supra* note 12, §11(2)).

taken from them.²⁴⁴ Creating an atmosphere where widows are protected and can feel confident in reporting a crime to authorities will involve a reversal of deeply entrenched perceptions by law enforcement and the communities they serve. Uganda has determinedly undertaken the duty to create and uphold a system of law enforcement that protects the rights of its most vulnerable citizens, namely widows and children.

2. Uganda Must Reform its Court System to Provide Competent and Effective Adjudication of Women's Rights

Both international and constitutional law guarantee widows and children effective adjudication of their rights and a remedy for any violations.²⁴⁵ Uganda's Constitution expressly provides women the right to an adjudication of their rights by a competent court.²⁴⁶ The Ugandan government also must "establish legal protection of the rights of women on an equal basis with men"²⁴⁷ and "ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination."²⁴⁸

Thus far, the government has failed to provide widows access to a fair and timely adjudication of their rights under the Succession Law and Constitution. Local authorities, officers of the Administrator General's office, and low-level courts are often prejudiced by an attitude that women are to be treated as inferior to men. A prominent Ugandan attorney experienced in the matters of succession said, "It's not easy for [women] to penetrate the process, [it is] a long process. The legal system is such that they have no access."²⁴⁹ Another attorney adds that many of the magistrate courts are especially difficult for women to use, explaining that "[t]hey don't listen to women as plaintiffs . . . Their tendency is to disregard women's evidence."²⁵⁰

Because formal courts are scarce and the current jurisdictional rules are burdensome, widows must often travel long distances to get to courts to seek letters of administration or a remedy for unlawful evictions or theft. Often the cost of transportation bars them from accessing the courts. Sometimes clan elders and Local Councils interfere to prevent women from getting to court. Because of

244. *See id.* § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding Section 27A(1)-(2)).

245. UGANDA CONST. arts. 31(1)-(2), 50 (stating that "Parliament shall make laws for the enforcement of the rights and freedoms."); ICCPR, *supra* note 6, art. 2(3), 3; CEDAW, *supra* note 6, art. 2(c); *see also* UGANDA CONST. § 247(b) (requiring Parliament to ensure that the services of the Administrator General are "decentralized and accessible to all persons who may reasonably require those services and that the interests of all beneficiaries are adequately protected.").

246. UGANDA CONST. arts. 28(1), 26(2)(i)-(ii), 42.

247. CEDAW, *supra* note 6, art. 2(c); *see also* ICCPR, *supra* note 6, arts. 2(3)(b), 14(1); UDHR, *supra* note 6, art. 8.

248. CEDAW, *supra* note 6, art. 2(c); *see also* ICCPR, *supra* note 6, arts. 2(3)(b), 14(1); UDHR, *supra* note 6, art. 8.

249. Interview with Sarah Lubega, Attorney, LAW-UGANDA Member, in Kampala, Uganda (Mar. 7, 2004).

250. Interview with Irene Mulyagonja Kokooza, Advocate, in Kampala, Uganda (Mar. 11, 2004).

strict evidentiary requirements, if a woman is unable to personally appear in court, her case will not be prosecuted.²⁵¹ When relatives or local leaders succeed in keeping the widow out of court, the clan or local councils, who are unaccountable and unauthorized to decide such matters, take on the role of the courts.²⁵² The Administrator General's office reportedly "relies more on local councils than on its own agents."²⁵³ Thus, decisions on inheritance are not decided in a fair and uniform manner across the country. Uganda must therefore reform its court system to ensure that all courts recognize women's constitutional rights and adjudicate violations of these rights fairly and uniformly.²⁵⁴

3. Uganda Must Reform the Administrator General's Office to Make It Accessible to Widows

International and constitutional law require the government of Uganda to protect men's and women's rights on an equal basis and provide administrative and judicial remedies for violations of these rights.²⁵⁵ The Administrator General's office, however, which is central to the estate administration process, is unknown, difficult to navigate, and prone to corruption.²⁵⁶ A majority of respondents to a Domestic Relations survey conducted by the LRC do not even know about the office's existence or do not know about its role in handling inheritance matters. Despite the fact that the Administrator General's office receives significant funding from a percentage of each deceased person's estate, the LRC concludes that the general lack of awareness about its existence and functions renders the office essentially "irrelevant."²⁵⁷

For those who do attempt to access the office for the purpose of mediation or to claim their rights to an estate, a trip to the Administrator General's office can be a bureaucratic nightmare, at best. According to one attorney, "[s]ometimes there are people without a lawyer who are seated on the bench for the whole day [Some people] sit on chairs in the hall and wait all day. They can wait forever, and they are often told 'come back tomorrow.'"²⁵⁸ A former Assistant Administrator General said that access to the services of the Administrator General often requires bribing the officials involved: "[Y]ou have to give them money to 'facilitate' them to do their work."²⁵⁹ Thus, the Administrator General's office takes advantage of the very women who are seeking its help.

251. Interview with Damalie Lwanga, *supra* note 232.

252. See LRC REPORT, *supra* note 1, at 264.

253. *Id.*

254. See *infra* Appendix A: Proposed Succession (Amendment) Bill 2006, §§ 15, 40, 41 (amending Succession Act 2000, *supra* note 9, §§ 27, 240, 246).

255. See ICCPR, *supra* note 6, art. 2(3)(b); see also CEDAW, *supra* note 6, art. 2(c); UGANDA CONST. § 247(b).

256. LRC REPORT, *supra* note 1, at 245.

257. *Id.*

258. Interview with Sarah Lubega, *supra* note 249.

259. Interview with Regina Lule Mutyaba, *supra* note 13.

The Administrator General's office plays a central role in distributing the estate of the deceased, and the people of Uganda deserve an Administrator General who is accessible and who will manage an estate's affairs justly and according to law. Our recommended legal reforms, found in Appendix A, therefore, include provisions for making representatives of the Administrator General's office available at the local level²⁶⁰ and holding the office accountable for its decisions.²⁶¹ If an agent at the Administrator's General office mishandles an estate, the consequences can be serious and are essentially irreversible. Although a remedy against the Administrator General's office is technically available under the law,²⁶² this remedy is of little practical significance because the complainant bears all costs of suing the office.²⁶³ Therefore the suggested reforms include a proposal to subject the Administrator General and its agents to liability under the Penal Code.²⁶⁴ Given its centrality to the operation of succession laws in Uganda, the government of Uganda must ensure a transparent, accessible and accountable Administrator General's office.

C. UGANDA MUST INFORM ITS CITIZENS OF CONSTITUTIONAL RIGHTS AND PROCESSES TO CURE THE CURRENT STATE OF UNAWARENESS AND EDUCATE THEM ABOUT THEIR NEW RIGHTS UNDER THE REFORMED SUCCESSION LAWS

Although the 1995 Constitution "is the most liberal document in the area of women's rights [of] any other Constitution South of the Sahara,"²⁶⁵ it remains largely irrelevant in the lives of the majority of Ugandans who do not know its contents. Honorable Justice Kanyeihamba of the Supreme Court comments, "The Constitution [was] supposed to be translated to local languages and distributed everywhere. Judicial services [are supposed to be offered]. Steps were made, but not sufficient. We don't have [human rights pamphlets], because we lacked resources."²⁶⁶ As a result, traditional views about women's subservient status in society prevail, and widows do not know about the rights and protections that are offered to them.

Informing the public and government officials about constitutional equality provisions is a critical component of efforts to achieve women's practical enjoyment of fundamental human rights. As the women of Uganda declared to the Constitutional Commission,

260. See *infra* Appendix A: Proposed Succession (Amendment) Bill 2006, § 53 (amending Administrator General's Act, *supra* note 12, § 2 (adding § 2A)). The LRC has stated that the office of the Administrator General is "over-centralized and recommends establishing a permanent representative at the district level." LRC REPORT, *supra* note 1, at 262, 266.

261. See *infra* Appendix A: Proposed Succession (Amendment) Bill 2006, § 54 (amending Administrator's General Act, *supra* note 12, § 3).

262. Administrator General's Act, *supra* note 12, §22.

263. Interview with Ronald Munyani, FIDA attorney, in Kampala, Uganda (Mar. 10, 2004).

264. See *infra* Appendix A: Proposed Succession (Amendment) Bill 2006, § 54 (amending Administrator's General Act, *supra* note 12, § 3).

265. Uganda Assoc. of Women Lawyers v. Attorney General, Constitutional Petition No. 2 of 2003, Judgment of A.E.N. Mpagi-Bahigeine, JA, at 8.

266. Interview with Supreme Court Justice Kanyeihamba, *supra* note 116.

The Government should make sure that every woman and man in Uganda is aware of her/his constitutional rights, freedoms and responsibilities, and of how one can obtain redress under the Constitution or any other law in case such a right or freedom is infringed by either the Government or an individual.²⁶⁷

The women recognize that, if the victims themselves are unaware of their rights, there is little chance that those who would violate these rights will be brought to justice.

Women, in particular, are severely disadvantaged in Uganda because of their forced domestic role and lower literacy rates. A recent survey reports that the adult female literacy rate for the country is fifty-four percent, compared to seventy-seven percent for men.²⁶⁸ The same survey points out that children who have lost at least one parent are more likely to forego an education.²⁶⁹ Girls are particularly at risk, as almost one out of ten girls drops out of school due to pregnancy.²⁷⁰ This lack of education contributes to women's lack of knowledge about their legal protections.

The government of Uganda has miserably under-funded its efforts to educate the Ugandan public about the equality requirements of the Constitution and ways the public can access these rights. The Gender and Development Directorate, within the Ministry of Gender, is tasked with informing women of their rights under law. Its Director estimates that less than one-quarter of the ministry's funding needs are met by current levels of funding.²⁷¹ The lack of resources devoted to educating the Ugandan public directly reflects the government's failure to give due priority to women's right to equality. Not surprisingly, the Ugandan government was forced to admit to the international community that it "recognizes the lack of awareness as a major hindrance towards the elimination of prejudice and all other practices, which are based on the idea of inferiority [of women]."²⁷² Yet the government continues to perpetuate this lack of awareness by severely under-funding sensitization programs.

Uganda's Constitution proclaims the importance of informing and training the people of Uganda—both as citizens and in their professional capacity as

267. WOMEN'S RECOMMENDATIONS, *supra* note 5, at 14; *see also* UDHR, *supra* note 6, pmb1. (stating that states party to the UDHR must "cause [the Declaration] to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.")

268. Uganda Bureau of Statistics, Uganda National Household Survey 2002/3: Literacy Rates for the Population Ages 18 Years and Above, tbl.3.2.2, at 14 [hereinafter Uganda National Household Survey].

269. *Id.* tbl.3.6.1.

270. *Id.* tbl.3.7.1.

271. Interview with Jane Mpagi, Director, Gender and Community Development, Ministry of Gender, in Kampala, Uganda (Mar. 12, 2004).

272. CEDAW Third Periodic Report, Uganda, *supra* note 148, at 24.

government officials and judges.²⁷³ Now, almost ten years after the enactment of the Constitution, many public officials are still unaware of even the key principles of the Constitution. The idea that women do not own property still dominates Ugandan society, and therefore many people, including those who are trusted to administer justice, are convinced that women do not have rights. Because the government has failed to inform its citizens of the content and the importance of the Constitution and its guarantee of equal rights to women, customary beliefs and practices that are harmful to widows and their children permeate all levels of Uganda's government. The government of Uganda has a responsibility to its people, particularly its women, to direct funding to informing citizens of their constitutional rights and protections, so that these rights may be realized.²⁷⁴

VI. THE PEOPLE OF UGANDA DESERVE INHERITANCE LAWS THAT PROTECT WOMEN AND PROVIDE FOR THEIR EQUALITY WITH MEN

In addition to hindering Uganda's efforts to bring its laws into conformity with the Constitution and to comply with international norms, inequality in inheritance is undermining Uganda's development efforts and perpetuating poverty. In a world where communal land and community support systems are being replaced by greater emphasis on individual rights and responsibilities, the consequences of a legal system that permits the subjugation, exploitation and forced dependence of women are increasingly severe.²⁷⁵ Approximately thirty-five percent of Uganda's population live below the poverty line,²⁷⁶ and Uganda and other African states have recognized that inequitable land entitlements contribute substantially to poverty and underdevelopment.²⁷⁷ Uganda should

273. UGANDA CONST. arts. 4(a), 40. *See generally* CRC, *supra* note 88, arts. 17, 42 (stating that Uganda must take measures, including allocation of adequate funding, to educate both adults and children on the principles and provisions in the CRC with the objective of making those principles and provisions "widely known."); African Charter, *supra* note 6, art. 25 (requiring Uganda "to promote and ensure through teaching, education and publication, the respect of the rights and freedoms" guaranteed by the Charter); DEVAW, *supra* note 235, art. 4(j) (Uganda must "adopt appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices all other practices based on the idea of the inferiority . . . and on stereotyped roles for men and women.").

274. *See infra* Appendix A: Proposed Succession (Amendment) Bill 2006, § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding 27A(5))).

275. *See* Nonkululeko Letta Bhe v. Magistrate Kayelitsha, 2004, Case Nos. CCT 49/03, CCT 69/03, CCT 50/03 (CC) at 51 (S. Afr.) (stating, "[i]t is clear that the application of the customary law rules of succession in circumstances vastly different from their traditional setting causes much hardship.").

276. CIA World Factbook: Uganda, *supra* note 43.

277. CEDAW Reports of State Parties, Uganda, *supra* note 40, para. 76; CEDAW Committee, Initial Report of States Parties, South Africa, CEDAW/C/ZAF/1, para. 95 (Feb. 25, 1998), *available at* http://www.bayefsky.com/reports/southafrica_cedaw_c_zaf_1_1998.pdf (regarding the implementation of Article 14); CEDAW Committee, Third and Fourth Periodic Reports of States Parties, Zambia, CEDAW/C/ZAM/3-4, para. 50 (Aug. 12, 1999), *available at* <http://www.bayefsky.com/docs.php/area/reports/state/192/node/3/treaty/cedaw/opt/0> (regarding compliance with Article 14 on rural women).

combat the economic harm imposed by discriminatory inheritance laws and practices by implementing the inheritance reforms described in this report.

One way that discriminatory inheritance practices hinder development efforts is by creating the wrong incentives. A man who expects his spouse and children to benefit from his life's labor will work harder to have something to convey to them. A man who cannot afford to hire a lawyer to write a will and cannot count on the law to protect his family has less incentive to invest in his family's future. Similarly, a wife whose contributions go unnoticed in the eyes of the law lacks incentive to work. If she cannot own and inherit property in her own right, she has less incentive to work to accumulate property for her family. Instead, she has an incentive to have more children, who will help with the household chores, and hope that her children will support her when her husband is gone.²⁷⁸ The increased birth rate that results from such incentives further undermines development initiatives.²⁷⁹

Lacking financial incentive to work, a woman is not encouraged to contribute to the nation's economy. Without property of her own, a woman cannot obtain credit. This situation essentially incapacitates women economically, preventing them from creating new businesses and hindering the potential productivity of over half of Uganda's population.²⁸⁰

Women are not the only ones whose progress is hindered by discriminatory inheritance laws. Children who remain with a mother who is not only widowed but also left without property, will be at a great disadvantage, often lacking money for basic necessities and school fees. The impact of inheritance practices on Uganda's next generation will be a profound one, as approximately two million children in Uganda have lost one or both parents to death, often due to HIV/AIDS.²⁸¹ The health and educational setbacks these children suffer will affect Uganda's economic development for years to come.

Just as important as the economic impact is the effect that Uganda's current inheritance regime has on the spread of HIV/AIDS in the country.²⁸² Unequal

278. See Paulina Makinwa-Adebusoye, Workshop on Prospects for Fertility Decline in High Fertility Countries: Sociocultural Factors Affecting Fertility in Sub-Saharan Africa, UN/POP/PFD/2001/2 (June 18, 2001), available at <http://www.un.org/esa/population/publications/prospectsdecline/makinwa.pdf> (noting that discriminatory inheritance laws in Africa encourage and reinforce a pronatalist culture.).

279. In its 2006 Congressional Budget Justification for its Uganda programs, the U.S. Agency for International Development noted that "Uganda's 3.4% population growth rate continues to erode economic gains, deepen poverty, and negatively affect other achievements in the social sectors." USAID Budget Summary, Uganda, <http://www.usaid.gov/policy/budget/cbj2006/afr/ug.html>.

280. Uganda National Household Survey, *supra* note 268, Population by Sex, tbl.2.1.1, at 6, (estimating that the population of Uganda is 25.3 million, of which women represent a 51.6% majority with approximately 95 males per 100 females).

281. UGANDA AIDS COMMISSION, THE HIV/AIDS EPIDEMIC: PREVALENCE AND IMPACT 3 (June 2003), available at http://www.aidsuganda.org/pdf/situation_analysis.pdf [hereinafter UGANDA AIDS COMMISSION].

282. At last count, over one million people in Uganda, or about 4.1% of Uganda's adult population, are living with HIV/AIDS, and the epidemic is taking an enormous toll on the country's population and growth. See CIA World Factbook: Uganda, *supra* note 43; United Nations Children's Fund, Country

inheritance rights in the country exacerbate the spread of HIV/AIDS in several ways. First, poverty resulting from a lack of property rights forces many women, both widows and daughters, into prostitution where they will likely become vulnerable to, and a vehicle for HIV/AIDS.²⁸³ Even if they do not become prostitutes, widows and girls are forced to depend on relatives for support and are frequently “inherited” by the deceased husband’s male relatives. If a widow’s deceased husband was HIV positive, the widow is also likely to be HIV positive and will bring the virus into her next marriage. Likewise, if the new husband she is forced to marry is HIV positive, she will likely acquire the virus. In both situations, a woman’s forced dependence on men results in a lack of sexual freedom which perpetuates the spread of the HIV virus.

As HIV/AIDS continues to spread rapidly in the country with devastating consequences, the government of Uganda must act now to reform inheritance laws and practices to give women a choice in their economic futures and advance the fight against HIV/AIDS. Enacting gender neutral succession laws would be the first step in bringing the inheritance laws up-to-date with the modern era and into conformity with Uganda’s constitutional and international obligations. By enacting the laws proposed in this report to protect widows and children and implementing educational and enforcement initiatives to make the law’s protections effective, Uganda will contribute to the health and economic wellbeing of its people and fulfill the ideals of democracy and equality to which its people and its Constitution aspire.

Statistics: Uganda, http://www.unicef.org/infobycountry/uganda_statistics.html#14; UGANDA AIDS COMMISSION, *supra* note 281. Some studies indicate that, despite a decline in the past decade, the prevalence of HIV/AIDS in Uganda is much greater than official statistics would suggest, possibly as high as seventeen percent in 2004. *See, e.g.*, Will Ross, *Uganda’s HIV Success Questioned*, <http://newswww.bbc.net.uk/1/hi/world/africa/3677570.stm>.

283. Cameroon notes that poverty and forced marriage lead to prostitution. CEDAW Committee, Initial Report of States Parties, Cameroon, CEDAW/C/CMR/1, 36 (May 9, 1999) (regarding Cameroon’s compliance with Article 6). Zambia notes that high levels of poverty exacerbate the sexual exploitation of children, often forcing young girls into prostitution. CEDAW Committee, Third and Fourth Periodic Reports of States Parties, Zambia, CEDAW/C/ZAM/3-4, ¶ 50 (Aug. 12, 1999) (regarding compliance with article 6 on rural women), *available at* <http://www.bayefsky.com/docs.php/area/reports/state/192/node/3/treaty/cedaw/opt/0>. Zimbabwe recognizes that poverty is a socioeconomic factor that perpetuates prostitution. CEDAW Committee, Initial Report of States Parties, Zimbabwe, CEDAW/C/ZWE/1, at 23 (July 20, 1996) (regarding compliance with Article 6).

APPENDIX A:

CHAPTER 162
SUCCESSION (AMENDMENT) BILL 2006
AN ACT RELATING TO SUCCESSION

PART I – AMENDMENTS TO THE SUCCESSION ACT.

1. Introduction.

(a) The purpose of this act is to cure gender inequalities in intestate succession and its administration by amending the following statutes:

- i. The Succession Act, Chapter 162.
- ii. The Administrator General’s Act, Chapter 157.

(b) Where indicated, this Act relies on definitions in the following statutes:

- i. The Domestic Relations Bill, 2003, Bill No. 21, available in Bills Supplement No. 9 to the Uganda Gazette No. 60, Volume XCVI, 3rd December 2003, printed by UPPC, Entebbe.
- ii. The Children’s Act, Chapter 59.
- iii. Land Act of 1998.

2. Short title.

This Act may be cited as the Succession (Amendment) Act, 2004 and must be read as one with the Succession Act, Cap 162.

3. Interpretation. The Succession Act, Chapter 162, section 2.

The Succession Act, Chapter 162, section 2 is hereby amended by substituting for it the following:

§ 2. INTERPRETATION.

- (a) “administrator” means a person appointed under law or by a court to administer the estate of a deceased person when there is no executor;
- (b) “adultery” means a voluntary act of sexual intercourse between a married person and a person other than his or her spouse;
- (c) “child,” “children,” “issue,” and “lineal descendant” means the offspring of the deceased regardless of the age

Ords. -
1 or 1906.
5 of 1918.
22 of 1919.
3 of 1923.
24 of 1942.
23 of 1953.
Act 15 of 1965.
L.Ns. -
10 of 1963.
269 of 1963.
S.I. 134 of 1964.
Succession
(Amendment)
Decree of 1972.
Introduction.

Short title.

Interpretation
(Amended.)

- of the offspring and includes children born or adopted within or outside marriage;
- (d) “codicil” means an instrument explaining, altering, or adding to a will and which is considered as being part of the will;
 - (e) “cohabitation” means the fact of an unmarried man and an unmarried woman living together as if they were husband and wife;
 - (f) “cohabitant” means a person cohabiting with the deceased at the time of the deceased’s death;
 - (g) “court” means the High Court or a magistrate’s court other than a magistrate’s court presided over by a magistrate grade II;
 - (h) “desertion” means the intentional abandonment by one spouse of the other without the abandoned spouse’s consent;
 - (i) “executor” means a person appointed in the last will of a deceased person to execute the terms of the will;
 - (j) “first spouse” means the spouse who married the deceased first in time and was still married to the deceased at the time of the deceased’s death;
 - (k) “grandchild” means a child of the deceased’s child;
 - (l) “grandparent” means a parent of the deceased’s parent;
 - (m) “guardian” means a person having parental responsibility for a child;
 - (n) “husband” means a male spouse;
 - (o) “immovable property” includes land, incorporeal tenements and things attached to the earth or permanently fastened to things attached to the earth;
 - (p) “intestate” means a deceased person who did not dispose of all property by a valid testamentary disposition, i.e. a will;
 - (q) “legally insane” refers to a person who has been medically diagnosed as insane or deemed insane by a competent court upon petition by another party;
 - (r) “marriage” means
 - (i) a union between a man and a woman contracted validly according to
 - (A) the laws of Uganda, or
 - (B) the foreign law under which the marriage was celebrated, or
 - (ii) a union between a man and a woman upon 10 years of cohabitation if the parties have the capacity to

- marry each other under the laws of Uganda, and the law shall presume that the parties consented;
- (s) “matrimonial home” means the principal residence or residences of the spouses in which one or both of them has or have a proprietary interest;
 - (t) “matrimonial property” consists of property occupied or used as such by husband and wife and held in common in undivided shares, including
 - (i) the matrimonial home or homes and surrounding residential land,
 - (ii) household property in the matrimonial home or homes or household property providing the basic necessities of life such as automobiles,
 - (iii) any other property either immovable or movable acquired during the subsistence of a marriage, deemed to be matrimonial property by express or implied agreement as construed through the conduct of the spouses, and
 - (iv) immovable property owned by either spouse, which provides the basic income for the family;
 - (u) “minor” means any person who has not attained the age of eighteen years, and “minority” means the status of such person;
 - (v) “monogamous marriage” means a marriage between a man and a woman neither of whom, during the subsistence of the marriage shall be at liberty to enter into or contract any other valid marriage;
 - (w) “movable property” means property of every description except “immovable property”;
 - (x) “parent” means a biological mother or father or an adoptive mother or father;
 - (y) “polygamous marriage” means a marriage in which a man is married to more than one wife at the same time;
 - (z) “probate” means the grant by a court of competent jurisdiction authorizing the executor named in the testator’s last will to administer the testator’s estate;
 - (aa) “second spouse” means the spouse who married the deceased after the first spouse, but before any subsequent spouse or spouses, and the same numbering applies to any other subsequent spouse or spouses, e.g. “third spouse,” “fourth spouse,” and so forth;
 - (bb) “separation” means either
 - (i) by agreement, where the parties consent to suspend

- the marriage in writing and the consent is witnessed by at least one representative of each party, or
- (ii) by judicial separation, where one or both of the parties petition the court asking for a suspension of the marriage on evidence that the parties can no longer live together;
- (cc) “spouse” means a person who, at the time of the deceased’s death, was
- (i) validly married to the deceased according to
- (A) the laws of Uganda, or
- (B) the foreign law under which the marriage was celebrated, or
- (ii) presumed to be validly married after 10 years of cohabitation with the deceased;
- (dd) “widow inheritance” means a custom by which a relative of a deceased husband inherits the deceased husband’s widow as his wife without conforming to the essential requirements of marriage set forth in the Domestic Relations Bill, for example the requirement that both parties must consent to the marriage.
- (ee) “wife” means a female spouse.

4. Interests and powers not acquired nor lost by marriage. The Succession Act, Chapter 162, section 3.

The Succession Act, Chapter 162, section 3 is hereby amended by substituting for it the following:

§ 3. Matrimonial property to be owned in common.

Any matrimonial property, as defined by § 2(q) of the Act, shall be owned in common by the spouses.

5. Succession to a deceased person’s immovable and movable property. The Succession Act, Chapter 162, section 4(3)(a).

The Succession Act, Chapter 162, section 4(3)(a) is hereby repealed.

6. Domicile of origin of a person of legitimate birth. The Succession Act, Chapter 162, section 6.

The Succession Act, Chapter 162, section 6 is hereby amended by substituting for it the following:

Interests and powers not acquired nor lost by marriage (Amended.)

Succession to a deceased person’s immovable and movable property. (Repeated.)

Domicile of origin of a person of legitimate birth. (Amended.)

§6. Domicile of origin of a minor.

If any parent or guardian of a minor is domiciled in Uganda, that child is domiciled in Uganda.

7. Domicile of origin of a person of illegitimate birth. The Succession Act, Chapter 162, section 7.

The Succession Act, Chapter 162, section 7 is hereby repealed.

Domicile of origin of a person of illegitimate birth.
(Repealed.)

8. Acquisition of a new domicile. The Succession Act, Chapter 162, section 9.

The Succession Act, Chapter 162, section 9 is hereby amended by substituting for it the following:

Acquisition of a new domicile.
(Amended)

§9. Acquisition of a new domicile

- (1) A person, whether single or married, acquires new domicile by taking up his or her fixed habitation in a country which is not that of his or her domicile of origin; except that a person is not to be considered as having taken up his or her fixed habitation in Uganda merely by reason of residing there in the exercise of any profession or calling;
- (2) The provisions of subsection (1) are subject to section 4.

9. Domicile of a married woman. The Succession Act, Chapter 162, section 14.

The Succession Act, Chapter 162, section 14 is hereby repealed.

Domicile of a married woman.
(Repealed.)

10. Wife's domicile during marriage. The Succession Act, Chapter 162, section 15.

The Succession Act, Chapter 162, section 15 is hereby repealed.

Wife's domicile during marriage
(Repealed.)

11. Succession to movable property in Uganda. The Succession Act, Chapter 162, section 18.

The Succession Act, Chapter 162, section 18 is hereby amended by substituting for it the following:

Succession to movable property in Uganda.
(Amended.)

§18. Succession to movable property in Uganda.

If a person dies leaving movable property in Uganda, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of Uganda.

12. Devolution of property of a deceased dying intestate. The Succession Act, Chapter 162, section 25.

The Succession Act, Chapter 162, section 25 is hereby repealed.

Devolution of property of a deceased dying intestate. (Repealed.)

13. Devolution of residential holdings. The Succession Act, Chapter 162, section 26.

The Succession Act, Chapter 162, section 26 is hereby amended by substituting for it the following:

Devolution of residential holdings. (Amended.)

§ 26. Effect of nuptial agreements.

Nuptial agreements are void for purposes of application of this Act if:

- (1) Parties to the agreement(s) have or adopt children during their marriage, or
- (2) Parties to the agreement did not disclose complete and accurate information to each other about their respective financial position, including all assets and liabilities.

14. Distribution on the death of a male intestate. The Succession Act, Chapter 162, section 27.

The Succession Act, Chapter 162, section 27 is hereby amended by substituting for it the following:

Distribution on the death of a male intestate. (Amended.)

§ 27. Distribution on the death of an intestate.

- (1) Upon the death of an intestate, matrimonial property devolves as follows:
 - (a) In a monogamous marriage, the surviving spouse inherits the intestate's share of the matrimonial property.
 - (b) In a polygamous marriage,
 - (i) If a wife dies, her children inherit her share of the matrimonial property in equal shares.
 - (ii) If a husband dies leaving more than one wife,
 - (A) Subject to section (C), each wife will inherit his share in the matrimonial home that they shared together, and the household property therein, and the surrounding residential land, and
 - (B) Each wife will inherit the rest of the matrimonial property as follows:
 - (1) The first wife inherits the intestate's share of any property that becomes

- matrimonial property prior to the intestate's second marriage.
- (2) After the first wife receives her share under (1), the first and second wives share in proportion to the number of years married, any property that becomes matrimonial property through the second marriage.
- (3) This divisional principle operates in the same manner for all subsequent marriages with a subsequent wife taking no interest in matrimonial property acquired prior to her marriage or matrimonial property acquired through other marriages and a previously married wife sharing in all matrimonial property acquired during her marriage, including the matrimonial property of subsequent marriages.
- (C) In the exceptional circumstances where more than one wife resides in the same home at the time of the intestate's death, each surviving wife in that home shall take an equal share in the matrimonial property;
- (iii) If a husband dies leaving only one wife, that wife inherits the intestate's share of the matrimonial property.
- (2) Upon the death of an intestate, all property owned by the intestate other than matrimonial property devolves as follows:
- (a) Where the intestate is survived by a spouse or spouse(s) and children
- (i) 50% will be shared by all surviving spouse(s) in proportion to the number of years married to the intestate, and
- (ii) 50% will be shared equally by all children;
- (b) Where the intestate is survived by children and no spouse, the children of the deceased inherit the

- intestate's property in equal shares;
- (c) Where the intestate leaves neither a spouse nor children, the intestate's estate shall be shared equally by the following parties in the following order of priority:
- (i) grandchildren of the deceased or if none survive,
 - (ii) great-grandchildren of the deceased, or if none survive,
 - (iii) parents of the deceased, or if none survive,
 - (iv) siblings of the deceased, or if none survive,
 - (v) nieces and nephews of the deceased, or if none survive,
 - (vi) cousins of the deceased, or if none survive,
 - (vii) the State.
- (3) Upon the death of an intestate who was cohabiting, and upon application by the surviving cohabitant, a court or the Administrator General will distribute the intestate's property according to either
- (a) records of registration, which the surviving party is entitled to make during the subsistence of the cohabitation to register the fact of cohabitation and the particulars of any monetary and non-monetary contribution that the surviving party may have made during the cohabitation, and which the surviving party deposited with a Subcounty chief, who shall make returns of the registration and particulars to the District Registrar of Marriages, and who shall transmit such records to the Administrator General upon the death of either cohabitant, or
 - (b) an equitable estimate of the surviving cohabitant's monetary or non-monetary contribution.

15. General punishment for interference with Section 27. The Succession Act, Chapter 162, section 27A.

The following section 27A is inserted after section 27 of the Succession Act, Chapter 162:

General punishment for interference with Section 27. (Added.)

§ 27A. General punishment for interference with property distributed under Section 27

- (1) Attempting to evict, evicting, or otherwise depriving a beneficiary of his or her rightful share in the deceased's estate shall be an offense punishable by:
 - (a) imprisonment not exceeding one year or a fine not exceeding XX million shillings or both; and
 - (b) compensatory damages payable to the beneficiary deprived of his or her rightful share of the deceased's estate by the offender in an amount sufficient to compensate the beneficiary for his or her loss, related costs incurred by the beneficiary, applicable interest, and any emotional distress caused by the offense.
- (2) A conviction under subsection (1) above does not bar conviction and applicable penalties under any section of the Penal Code, including but not limited to sections 72, 73, 76, and 76A.
- (3) A person shall not marry a widow through the custom or practice of widow inheritance. Any person who marries or attempts to marry a widow through the custom or practice of widow inheritance is liable on conviction to imprisonment for a period not exceeding one year or to a fine not exceeding XX million shilling or to both,
- (4) Police officers must arrest persons committing or having committed an offense under this section or any related provision of the Penal Code.
- (5) The government must establish, fund and conduct training, education, and reporting programs for police, magistrates, judges, and all government officials responsible for the operation and enforcement of this Act.

16. Distribution between members of the same class. The Succession Act, Chapter 162, section 29.

The Succession Act, Chapter 162, section 29 is hereby repealed.

Distribution between members of the same class. (Repealed.)

17. Separation of husband and wife. The Succession Act, Chapter 162, section 30.

The Succession Act, Chapter 162, section 30 is hereby amended by substituting for it the following:

Separation of husband and wife.
(Amended.)

§30. Separation of husband and wife.

- (1) A separated spouse has the right to inherit from his or her deceased spouse the same amount due to all widows or widowers.
- (2) A court may, for good cause, exercise its discretion and reduce the amount or percentage of the estate to be inherited by the surviving spouse who was separate from the intestate at the time of the intestate's death. In exercising its discretion under this subsection, the court shall not reduce the amount or percentage where the deceased caused the separation by engaging in any of the following:
 - (a) domestic violence;
 - (b) desertion;
 - (c) adultery; or
 - (d) taking on a new wife or residing with another woman;
- (3) Under no circumstances will a wife or husband of an intestate who, at the death of the intestate was separated from the intestate be entitled to anything less than his or her share in the intestate's estate acquired prior to the separation.

18. Notice to be given by a customary heir. The Succession Act, Chapter 162, section 31.

The Succession Act, Chapter 162, section 31 is hereby repealed.

Notice to be given by a customary heir.
(Repealed.)

19. Settlement of minor's property in contemplation of marriage. The Succession Act, Chapter 162, section 35.

The Succession Act, Chapter 162, section 35 is hereby amended by substituting for it the following:

Settlement of minor's property in contemplation of marriage.
(Amended.)

§35. Settlement of minor's property in contemplation of marriage.

The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the joint approbation of the minor's parents or parent, if one living, or a guardian or, if none are living, with the approbation of High Court.

20. Persons capable of making wills. The Succession Act, Chapter 162, section 36(2).

The Succession Act, Chapter 162, section 36(2) is hereby amended by substituting for it the following:

- (2) A married person may not dispose of matrimonial property by will if he or she leaves a spouse. Nor may he or she bequest other property to anyone other than the surviving spouse(s) or child if such bequest would cause their standard of living to be lowered.

Persons capable of making wills. (Amended.)

21. Provision for property distribution where the deceased has omitted the surviving spouse in the will. The Succession Act, Chapter 162, section 36A.

The following section 36A is inserted after section 36 of The Succession Act, Chapter 162.

- (1) If the surviving spouse married the deceased after the deceased had executed his or her will, the surviving spouse is entitled to receive no less than the share provided to the surviving spouse by section 27 that the surviving spouse would have received if the testator had died intestate.
- (2) If the surviving spouse married the deceased before the deceased had executed his or her will, the surviving spouse is entitled to receive no less than his or her share of the matrimonial property provided to the surviving spouse by section 27(1).

Provision for property distribution where the deceased has omitted the surviving spouse in the will. (Added)

22. Provision for maintenance of dependants to be made in every will. The Succession Act, Chapter 162, section 37.

The Succession Act, Chapter 162, section 37 is hereby amended by substituting for it the following:

§37. Provision for maintenance of spouse(s) and children to be made in every will.

Notwithstanding section 36, where a person, by his or her will, disposes of all his or her property without making reasonable provision for the maintenance of his or her spouse(s) or children, section 38 shall apply.

Provision for maintenance of dependants to be made in every will. (Amended.)

23. Power of the court to order payment out of the estate of deceased for maintenance of dependents. The Succession Act, Chapter 162, section 38.

The Succession Act, Chapter 162, section 38 is hereby

Power of the court to order payment out of the estate of deceased for maintenance of dependents. (Amended.)

amended by substituting for it the following:

§38. Power of court to order payment out of the estate of the deceased for maintenance of a spouse or a child.

- (1) Where a person dies domiciled in Uganda leaving a spouse or a child, if the court, on application by the spouse(s) or on behalf of the child of the deceased, is of the opinion that the disposition of the deceased's estate affected by his or her will is not such as to make reasonable provision for the maintenance of that spouse or child, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's estate for the maintenance of that spouse or child.
- (2) The provision for maintenance to be made by an order under subsection (1) shall –
 - (a) subject to subsection (3), be, where the deceased's estate produces an income, by way of periodical payments; and the order shall provide for their termination not later than –
 - (i) in the case of a spouse, his or her remarriage;
 - (ii) in the case of a child who is, by reason of some mental or physical disability, incapable of maintaining himself or herself; his or her attaining the age of eighteen; or the cessation of his disability, whichever is later;
 - (iii) in the case of a spouse or child, his or her death, or
 - (b) where the deceased's estate does not produce any income or sufficient income, authorize the spouse or child to receive such share as the spouse or child would be entitled to in the distribution of the estate of an intestate under section 27(2)(a)(ii) of this Act.
- (3) The court may, if it sees fit, make an order providing for maintenance, in whole or in part, by way of a lump sum payment.
- (4) In determining whether, and in what way, and as from what date provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's estate and shall not order any provision to be made as would necessitate a realization that would be improvident having regard to the interests of the deceased's spouse or child and of

persons who, apart from the order, would be entitled to that property.

- (5) The court shall, on any application made under this section –
- (a) have regard –
 - (i) to any past, present or future capital or income from any source of the spouse(s) or child of the deceased to whom the application relates;
 - (ii) to the relationship of that spouse(s) or child to the deceased and otherwise; and
 - (iii) to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that spouse(s) or child, to persons interested in the estate of the deceased, or otherwise;
 - (b) have regard to the deceased's reasons, so far as ascertainable
 - (i) for making the dispositions made by his or her will, if any,
 - (ii) for refraining from disposing by will of his or her estate, or
 - (iii) for not making any provision, or any further provision, as the case may be, for a spouse or child.
 - (c) use its discretion to accept such evidence of those reasons as it considers sufficient, including any statement in writing signed by the deceased and dated; in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

24. Variation of orders. The Succession Act, Chapter 162, section 41.

The Succession Act, Chapter 162, section 41 is hereby amended by substituting for it the following:

Variation of orders.
(Amended.)

§41. Variation of orders.

- (1) On an application made at a date after the expiration of the period specified in section 39(1), the court may make an order as provided in this subsection, but only as respects property the income of which is at the date

applicable for the maintenance of a spouse or a child of the deceased, that is to say –

- (a) an order for varying the previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the spouse or a child or of a person beneficially interested in the property under the will; or
 - (b) an order for making provision for the maintenance of another spouse or child of the deceased;
- (2) An application to the court for an order under subsection (1)(a) may be made by a spouse or on behalf of a child of the deceased or by the trustees of the property or by or on behalf of a person beneficially interested in the property under the will.

25. Testamentary guardian. The Succession Act, Chapter 162, section 43.

Testamentary guardian.
(Amended.)

The Succession Act, Chapter 162, section 43 is hereby amended by substituting for it the following:

§43. Testamentary guardian.

- (1) The last living parent or a court-appointed legal guardian of a child may by will appoint a guardian or guardians for his or her children during minority.
- (2) A competent court will consider the best interests of the child pursuant to the Children’s Act in approbation of the appointment of testamentary guardian or guardians.
- (3) One parent may not by will deprive another parent of parental rights.

26. Statutory guardians. The Succession Act, Chapter 162, section 44.

Statutory guardians.
(Amended.)

The Succession Act, Chapter 162, section 44 is hereby amended by substituting for it the following:

§44. Statutory guardians.

- (1) Upon the death of one parent, the right of guardianship and custody of a child automatically vests in the last living parent.
- (2) On the death of the last living parent or court-appointed guardian of a child where no guardian has been ap-

pointed by the will of the last living parent or court-appointed guardian or if the guardian appointed by will of the last living parent or court-appointed guardian is dead or refuses to act, a competent court shall appoint a guardian or guardians according to the best interests of the child pursuant to the Children's Act.

27. Power of the court to remove a guardian. The Succession Act, Chapter 162, section 45(c).

The Succession Act, Chapter 162, section 45(c) is hereby repealed.

Power of the court to remove a guardian (Repealed.)

28. Powers of guardians. The Succession Act, Chapter 162, section 46(2).

The Succession Act, Chapter 162, is hereby repealed.

Powers of guardians. (Repealed.)

29. Construction of terms. The Succession Act, Chapter 162, section 86(1)(a).

The Succession Act, Chapter 162, section 86(1)(a) is hereby amended by substituting for it the following:

- (a) children applies to biological or adopted children.

Construction of terms. (Amended.)

30. To whom administration may not be granted. The Succession Act, Chapter 162, section 190.

The Succession Act, Chapter 162, section 190 is hereby amended by substituting for it the following:

§190. To whom administration may not be granted.

Letters of administration shall not be granted to any person other than the surviving spouse of the deceased if the deceased is survived by a spouse or to any person who is a minor or is of unsound mind.

To whom administration may not be granted. (Amended.)

31. Right to intestate's property, when established. The Succession Act, Chapter 162, section 191.

The Succession Act, Chapter 162, section 191 is hereby amended by substituting for it the following:

Except as hereafter provided, but subject to section 202 of this Act or section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction in accordance with this Act.

Right to intestate's property, when established. (Amended.)

32. Effect of letters of administration. The Succession Act, Chapter 162, section 192.

Effects of
letters of
administration
(Amended.)

The Succession Act, Chapter 162, section 192 is hereby amended by substituting for it the following:

§192. Effect of the surviving spouse's right to administer or letters of administration.

The surviving spouse's right to administer the intestate's estate or letters of administration entitles the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his or her death subject to the provisions of this Act.

33. Acts not validated by administration. The Succession Act, Chapter 162, section 193.

Acts not
validated by
administration
(Amended.)

The Succession Act, Chapter 162, section 193 is hereby amended by substituting for it the following:

Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage or wrongful disposition of the intestate's estate. Such actions by the administrator are subject to penalties provided by this Act, the Administrator General's Act, the Penal Code and any other applicable instruments.

34. Entitlement to administration. The Succession Act, Chapter 162, section 202.

Entitlement to
administration
(Amended.)

The Succession Act, Chapter 162, section 202 is hereby amended by substituting for it the following:

§202. Entitlement to administration.

- (1) The right to administer the intestate's estate automatically vests in the intestate's spouse or spouses by operation of law without the need to apply for letters of administration;
- (2) If the deceased is survived by more than one spouse, each surviving spouse's automatic right to administer the intestate's estate vests as follows:
 - (i) each spouse has the right to administer the separate matrimonial home, household property therein, and the surrounding residential land that she shared with the deceased; and
 - (ii) all surviving spouses have the right to administer

- jointly all property of the deceased other property referred to in the above subsection (i) or to agree to delegate administration to a selected administrator. In either cases, administration must conform to section 27(2)(a)(i) of this Act.
- (iii) If the surviving spouses are unable to agree on administration pursuant to the above subsection (ii), they may petition the court to partition the property other than property referred to in the above subsection (i) according to section 27(2)(a)(i).
- (3) The automatic right of the spouse to administer the deceased spouse's estate may only be revoked upon petition by another beneficiary in the deceased's estate pursuant to the procedure of section 203(2).
- (4) If the intestate leaves no surviving spouse, subject to section 4 of the Administrator General's Act the right to administer the intestate's estate will be granted to the person entitled to the greatest proportion of the estate under section 27, unless equitable principles require otherwise.

**35. Citation of person entitled in priority to administer.
The Succession Act, Chapter 162, section 203.**

The Succession Act, Chapter 162, section 203 is hereby amended by substituting for it the following:

Citation of persons entitled in priority to administer. (Amended.)

§203. Priority in entitlement to administer.

- (1) If the deceased is not survived by a spouse, administration shall not be granted to any relative if there is some other relative entitled to a greater
- (2) Where the deceased is survived by a spouse, a court may only grant letters of administration to a person other than the spouse where such person petitions the court and demonstrates to the court in the presence of the surviving spouse that for a period of one year before the death of the deceased, the surviving spouse has not been providing care to the minor children belonging to both the deceased and the surviving spouse if such minor children survive or, where no such minor children exist, that the surviving spouse is legally insane and incapable of administering the estate before a final determination is made by the court, the surviving spouse shall have the opportunity to come before the court and refute such claims.

36. Entitlement between members of the same class. The Succession Act, Chapter 162, section 204.

Entitlement of members of the same class. (Amended.)

The Succession Act, Chapter 162, section 204 is hereby amended by substituting for it the following:

§204. Entitlement between members of the same class.

If there are two or more person who are entitled to the same proportion of the estate, those person are equally entitled to administration, and a grant may be made to any one or some of them jointly.

37. Citations or notice by persons or entities applying to administer. The Succession Act, Chapter 162, section 204A.

Citation of notice by persons applying to administer. (Added.)

The Succession Act, Chapter 162, section 204A is hereby added as follows:

§204A. Citations or notice by persons or entities applying to administer.

- (1) Subject to section 6(3) of the Administrator General's Act, any person or entity applying for letters of administration must give definite hand-delivered notice in writing in presence of a witness to all surviving spouse(s) of the deceased of the person's intention to apply for letters of administration at least 30 days prior to applying for letters of administration.
- (2) If providing such hand-delivered notice under the terms of subsection (1) is impossible, the applicant may satisfy the terms of subsection (1) by issuing or publishing such notice clearly and conspicuously in a publication likely to be seen by the surviving spouse(s) for a period of at least 14 consecutive days ending at least 14 days prior to applying for letters of administration.

38. Administration during minority of sole executor or residuary legatee. The Succession Act, Chapter 162, section 215.

Administration during minority of sole executor or residuary legatee. (Amended.)

The Succession Act, Chapter 162, section 215 is hereby amended by substituting for it the following:

§215. Administration during minority of sole executor or residuary legatee.

When a minor is sole executor or sole residuary legatee, letters

of administration with the will annexed may be granted to the legal guardian of the minor or to such person as the court shall think fit, until the minor shall have reached the age of eighteen or a later age specified in the will, whichever is later, at which period, and not before, probate of the will shall be granted to him or her.

39. Administration during minority. The Succession Act, Chapter 162, section 216.

The Succession Act, Chapter 162, section 216 is hereby amended by substituting for it the following:

§216. Administration during minority.

When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has reached the age of eighteen or a later age specified in the will, whichever is later.

Administration during minority. (Amended.)

40. When probate or administration may be granted by district delegate. The Succession Act, Chapter 162, section 240.

The Succession Act, Chapter 162, section 240 is hereby amended by substituting for it the following:

§240. When probate or administration may be granted by district delegate.

Probate of the will or letters of administration to the estate of a deceased person may be granted by the district delegate under the seal of his or her court, if it appears by a petition, verified as hereafter provided, of the person applying for the probate or letters of administration, that:

- (a) the testator or intestate, as the case may be, at the time of his or her death, had a fixed place of abode, or any property, movable or immovable; or
- (b) the spouse(s) of the deceased resides within the jurisdiction of the delegate.

When probate or administration may be granted by district delegate. (Amended.)

41. Petition for letters of administration. The Succession Act, Chapter 162, section 246.

The Succession Act, Chapter 162, section 246 is hereby amended by substituting for it the following:

Petition for letters of administration (Amended.)

§246. Petition for letters of administration.

Person entitled to the letters of administration under section 202 may apply for letters of administration by a petition distinctly written in the English language and stating –

- (a) the time and place of the deceased's death;
- (b) the family or other relatives of the deceased, and their respective residences;
- (c) the right in which the petition claims;
- (d) that the surviving spouse or some property resides within the jurisdiction or the High Court or district delegate to whom the application is made; and
- (e) the amount of assets which are likely to come to the petitioner's hands.

And, when the application is to a district delegate, the petition shall further state whether the deceased, at the time of his or her death, resided within the jurisdiction of the delegate.

42. Punishment for false averment in petition or declaration. The Succession Act, Chapter 162, section 249.

The Succession Act, Chapter 162, section 249 is hereby amended by substituting for it the following:

Punishment for false averment in petition or declaration. (Amended.)

§249. Punishment for false averment in petition or declaration.

If any petition or declaration which is required to be verified contains any averment which the person making the averment or the verification knows or believes to be false, that person or persons shall be subject to punishment for fabricating evidence under section 93 of the Penal Code Act.

43. Administrator General not precluded from grant. The Succession Act, Chapter 162, section 251.

The Succession Act, Chapter 162, section 251 is hereby amended by substituting for it the following:

Administrator General not precluded from grant. (Amended.)

§251. Administrator General not precluded from grant.

For avoidance of doubt, and subject to section 202, nothing in this part of the Act shall be deemed to preclude –

- (a) the Administrator General from applying to the court for letters of administration;
- (b) the court from granting letters of administration to the Administrator General,

in any case where the court is empowered under this or any other Part of this Act to grant letters of administration to any

person other than an executor appointed under the will of the testator.

44. Disposal of property. The Succession Act, Chapter 162, section 270.

Disposal of property
(Amended.)

The Succession Act, Chapter 162, section 270 is hereby amended by substituting for it the following:

An executor or administrator has the power to dispose of the deceased's property, either wholly or in part, in a manner prescribed by this Act.

45. Married or Single Executors or Administrators. The Succession Act, Chapter 162, section 276.

Married
Executrix or
Administrator.
(Amended.)

The Succession Act, Chapter 162, section 276 is hereby amended by substituting for it the following:

§276. Married Executrix, Executor or Administrator.

For avoidance of doubt, when probate or letters of administration have been granted to any married man or woman, such person has all the powers of an ordinary executor or administrator.

46. Inventory and account. The Succession Act, Chapter 162, section 278.

Inventory and
account.
(Amended.)

The Succession Act, Chapter 162, section 278 is hereby amended by adding the following:

- (6) Failure to comply with the requirements of this section shall be deemed to be an offense of a misdemeanor punishable with imprisonment for two years and any damages to compensate the rightful beneficiaries under this act.

47. Property of the deceased. The Succession Act, Chapter 162, section 279.

Property of
deceased.
(Amended.)

The Succession Act, Chapter 162, section 279 is hereby amended by substituting for it the following:

§279. Property of the deceased.

- (a) An executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him or her at the time of his or her death.

- (b) An executor or administrator shall have the right to acquire certificates of ownership for the customary land holdings of the deceased in the names of the beneficiaries of the deceased's estate as prescribed by section 27 of this Act. Accordingly, an executor or administrator shall convert these customary land holdings of the deceased into freehold land ownership for purposes of administration and distribution of the deceased's estate.
- (c) Debts incurred by the deceased against the matrimonial home without the written consent of the spouse who, prior to the deceased's death shared that matrimonial home with the deceased, shall be void and excluded from payment from the deceased's estate.

48. All other debts to be paid equally and rateably. The Succession Act, Chapter 162, section 283.

The Succession Act, Chapter 162, section 283 is hereby amended by substituting for it the following:

All other debts to be paid equally and rateably. (Amended.)

§283. All other debts to be paid equally and rateably.

Except as provided in sections 279, 280, 281 and 282, no creditor is to have a right of priority over another by reason that his or her debt is secured by an instrument under seal, or on any other account; but the executor or administrator shall pay all such debts as he or she knows of including his or her own, equally and rateably, as far as the assets of the deceased will extend.

49. Power of Minister to exempt any class of persons from operation of Act, Chapter 162, section 334.

Repealed.

50. Table of consanguinity. The Succession Act, Chapter 162, First Schedule.

[The new Table of consanguinity must be gender-neutral.]

Table of consanguinity. (Amended.)

51. Rules relating to the occupation of residential holdings. The Succession Act, Chapter 162, Second Schedule.

Repealed.

Rules relating to the occupation of residential holdings. (Repealed.)

52. Forms. The Succession Act, Chapter 162, Third Schedule.
Repealed.

Forms
(Repealed.)

PART II – AMENDMENTS TO THE ADMINISTRATOR GENERAL’S
ACT

53. Administrator General. The Administrator General’s Act, Chapter 157, section 2.

Administrator
General.
(Amended.)

The Administrator General’s Act, Chapter 157, section 2 is amended by inserting immediately after section 2 the following new section—

§ 2A. Appointment of a district administrator general.

Appointment
of a district
administrator
general.
(Amended.)

- (1) There shall be assigned at every district a district administrator general who shall be the representative of the administrator general at the district.
- (2) The district administrator general shall exercise all the powers and obligations conferred on the Administrator General by this Act at the district except that in the exercise of his or her powers and duties, the district administrator general shall be answerable to the Administrator General.

54. Limitation on liability of Administrator General and agents for acts done in performance of duties. The Administrator General’s Act, Chapter 157, section 3.

Limitation on
liability of
Administrator
General and
agents for acts
done in
performance
of duties.
(Amended.)

The Administrator General’s Act, Chapter 157, section 3 is hereby amended by substituting for it the following:

- (3)
 - (a) Except as provided in Chapter X of the Penal Code, the Administrator General or any of his or her agents shall not be personally liable to any person in respect of goods or chattels in possession at the time of his or her death of any person whose estate is administered by the Administrator General or any of his agents which are sold by the Administrator General or the agents unless the Administrator General or agent knows or has actual notice before the sale that the goods or chattels were not in fact the property of the person whose estate he or she is administering;
 - (b) Except as provided in Chapter X of the Penal Code, generally, neither the Administrator General nor any agent shall be liable for any act he or she does *bona*

fide in the supposed and the intended performance of his or her duties unless it is shown that the act was done not only illegally but willfully or with gross negligence.

55. Death to be reported to Administrator General, who may apply for grant of letters of administration. The Administrator General's Act, Chapter 157, section 4.

The Administrator General's Act, Chapter 157, section 4(1) is hereby amended by substituting for it the following:

- (1) When a person dies in Uganda, the surviving spouse or a child of the deceased or, if the deceased does not leave a spouse or a child, a close relative of the deceased shall report the death to the Administrator General or district Administrator General within forty-five days from the date when the death occurred.

The Administrator General's Act, Chapter 157, section (4)(3)(b) is hereby amended by substituting for it the following:

- (b) that the deceased, having made a will devising or bequeathing his or her estate or any part of it, does not leave a spouse and has omitted to appoint an executor;

The Administrator General's Act, Chapter 157, section 4(3)(e) is hereby amended by substituting for it the following:

- (e) that the person died intestate and did not leave a spouse,

56. Notice of application for letters of administration to be given to Administrator General. The Administrator General's Act, Chapter 157, section 5(1).

The Administrator General's Act, Chapter 157, section 5(1) is hereby amended by substituting for it the following:

- (1) No grant shall be made to any person, except the widow or widower, or his or her attorney duly authorized in writing, authorizing that person to administer the estate of a deceased person, or, an executor appointed by the will of the deceased, until the applicant has produced to the court proof that the Administrator General or his or her agent has declined to administer the estate or proof of having given to the Administrator General or his or her agent has declined to administer the estate or proof of having given to the Administrator General fourteen clear days' definite notice in writing of his or her intention to apply for the grant.

Death to be reported to Administrator General, who may apply for grant of letters of administration.
(Amended.)

Notice of application for letters of administration to be given to Administrator General.
(Amended.)

57. Notice of application for letters of administration to be given by Administrator General. The Administrator General's Act, Chapter 157, section 6(1).

The Administrator General's Act, Chapter 157, section 6(1) is hereby amended by substituting for it the following:

§6 Notice of application for letters of administration to be given by Administrator General.

- (1) The Administrator General shall cause notice of his or her intention to apply for letters of administration:
 - (a) by informing all spouses of the deceased in accordance with section 204A of the Succession Act; or
 - (b) if deceased left no spouse, by publishing clearly and conspicuously in a publication, likely to be seen by the persons entitled to a beneficial share of the estate, for a period of at least 14 consecutive days ending at least 14 days prior to applying for letters of administration.

The cost of the publication shall in every case be deemed a testamentary expense and be payable from the estate of the deceased.

58. Intermeddling with property of the deceased. The Administrator General's Act, Chapter 157, section 11(2).

The Administrator General's Act, Chapter 157, section 11(2) is hereby amended by substituting for it the following:

- (2) Any person who commits an offense under this section is liable on conviction to imprisonment for a period not exceeding one year or to a fine not exceeding XX million shilling or to both, but without prejudice to any criminal or civil liabilities which he or she may have incurred.

Notice of application for letters of administration to be given by Administrator General.
(Amended.)

Intermeddling with property of the deceased.
(Amended.)

APPENDIX B:
SUMMARY OF PROPOSED SUCCESSION (AMENDMENT)
BILL 2006

The Proposed Succession (Amendment) Bill, 2006 (“Proposed Bill” or “Bill”) addresses the multitude of injustices suffered by Ugandan women as a result of discriminatory succession laws and practices. First, the Bill repeals the gender-discriminatory provisions of the existing Succession Act (“the Act”) and grants widows and daughters of the deceased the same inheritance rights as widowers and sons. This reform would put Uganda much closer to implementing the constitutional mandate to equalize protections for the rights of widows and widowers.²⁸⁴ Secondly, the Bill provides for certain measures to boost women’s access to justice. For example, the Bill calls for the reform of judicial and administrative processes to allow greater access to courts and uniformity in the administration of justice; it also criminalizes the practice of widow inheritance, increases criminal penalties for wrongfully interfering in the administration of an estate, criminalizes the mishandling of an estate by the administrator, and provides widows a remedy of compensatory damages for property that is wrongfully taken from them. Thirdly, in order to achieve the effective operation and enforcement of the succession laws, the Bill provides for training, education, and reporting programs for police, magistrates, judges, and other government officials, as well as initiatives to sensitize the public to the constitutional rights of women and widows.

I. THE INTESTATE SUCCESSION LAW MUST PRESERVE THE RIGHTS OF SURVIVING SPOUSES

A. THE SURVIVING SPOUSE SHOULD INHERIT THE MATRIMONIAL HOME AND OTHER MATRIMONIAL PROPERTY

The first step in reforming the Succession Act is to ensure that a widow, like a widower, has full control of her home upon the death of her husband. The Proposed Bill conveys ownership in matrimonial property to each spouse; this would include the matrimonial home, as tenants in common.²⁸⁵ Therefore, each spouse or spouses owns absolutely his or her one-half share of the matrimonial home, household chattels, residential land and property providing the “basic income” for the marriage. This interest is alienable during his or her lifetime, and is transmissible by will or under the rules of intestacy. When one spouse in a

284. UGANDA CONST. art. 31(2) (stating that “Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.” This provision immediately follows UGANDA CONST. art. 31(1), which guarantees men and women equal rights in marriage and at its dissolution).

285. See *supra* Appendix A, Proposed Succession (Amendment) Bill, 2006, § 4 (amending Succession Act 2000, *supra* note 9) [hereinafter Proposed Bill].

monogamous marriage dies, full ownership of the home is vested in the surviving spouse.

Vesting full ownership of the home in the widow prevents other heirs from selling the property without her consent. This protection is consistent with Uganda's existing Land Act of 1998 and laws currently before Parliament. Specifically, Section 39 of the Land Act and Section 72 of the Domestic Relations Bill (DRB) convey an undivided one-half share of the matrimonial property to each spouse and prohibit any transaction in matrimonial property without the other spouse's written consent.²⁸⁶ This approach is also consistent with the law of a majority of developed countries, which grant the surviving spouse the right to own fully the matrimonial home or to enjoy usufruct over the home for life.²⁸⁷ In the majority of countries surveyed, ownership rights in household chattels and movable goods also pass directly to the surviving spouse.²⁸⁸

The primary purpose of this reform is to protect widows against property grabbing and forced evictions. This distribution scheme also compensates a surviving spouse for his or her services to the deceased spouse and recognizes that a spouse is more likely to look after the children on the death of the other partner than anyone else is. Granting the surviving spouse rights to the matrimonial home and other property permits the surviving spouse and children to remain in the house where they had lived before the death and, as far as possible, to continue to live as they were accustomed. The following chart details the distribution of matrimonial and other property of an intestate's estate under the Proposed Bill.

1. Distribution of Matrimonial Property

When a Monogamously Married Person Dies, the Surviving Spouse Inherits the Deceased's Share of Matrimonial Property.

- As explained above, Section 4 of the Proposed Bill grants spouses ownership of matrimonial property as tenants in common while they are alive.²⁸⁹ The Proposed Bill provides that, when one of the spouses in a monogamous marriage dies without a will, the other spouse succeeds to the rest of the matrimonial property.²⁹⁰ There-

286. Land Act, 1998, § 39 (Uganda), *as amended by* Land (Amendment) Act, 2003 § 19 (Uganda) [hereinafter Land Act]; Domestic Relations Bill, Bill No. 21, § 72, Uganda Gazette No. 60 Vol. XCVI (Dec. 3, 2003) (Uganda) [hereinafter DRB].

287. *See supra* notes 226-27.

288. *See id.*

289. Proposed Bill, *supra* Appendix A, § 4 (amending The Succession Act 2000, *supra* note 9, § 3).

290. *Id.* § 14 (establishing rules for distributing matrimonial property and amending Succession Act, *supra* note 9, § 27).

fore, the surviving spouse becomes owner of one hundred percent of the matrimonial property.²⁹¹

When a Polygamously Married Husband Dies, the Surviving Wives Inherit the Matrimonial Home and the Basic Necessities They Shared with the Deceased.²⁹²

- The Domestic Relations Bill (DRB) would require a polygamously married man to provide each wife a separate home.²⁹³ At a minimum, any wife in a polygamous marriage should be entitled to control her matrimonial home, household items, and the residential land surrounding her home upon the death of her husband. The Proposed Bill grants wives in a polygamous marriage the right to inherit their husband's one-half share in the matrimonial home, household items and the residential land each wife shared with the deceased husband.²⁹⁴ This inheritance right, combined with each wife's ownership of the other half of this property as a tenant in common, results in each wife owning the said property in full.

When a Polygamously Married Man Dies, Each Wife Inherits His Share in the Basic Income Matrimonial Property (*Other Than* the Matrimonial Home, Surrounding Residential Land and Basic Necessities).

- In recognition of each wife's contributions to the estate over time, matrimonial property *other than* the home, basic necessities and surrounding residential land²⁹⁵ (i.e. the "basic income matrimonial property") is to be distributed according to the duration of each wife's marriage to the deceased.²⁹⁶ The Bill grants the first wife an interest in the basic income matrimonial property acquired before the second marriage. It also gives the prior wife a share in the basic

291. *Id.* §§ 4, 14(a) (amending Succession Act 2000, *supra* note 9, §§ 3, 27(1)(a)).

292. The practice of polygamy is an inherently discriminatory practice. *See* Concluding Observations of the Human Rights Committee: Uganda, CCPR/CO/80/UGA (April 5, 2004), available at <http://www.unhchr.ch/tbs/doc.nsf> (click on "CCPR Human Rights Committee," then "Concluding Observations/Comments," then "Uganda") (declaring that the HRC "deplores the fact that polygamy is still recognized by law in Uganda."). A full discussion of the practice of polygamy and how it violates women's rights is beyond the scope of this report. For a more complete discussion of this issue, see Esther N. Mayambala, *Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda*, 3:2 EAST AFR. J. PEACE & HUM. RIGHTS 200-239 (1997); Susan Deller Ross, *Polygyny as a Violation of Women's Rights to Equality in Marriage: An Historical, Comparative and International Human Rights Overview*, 24 DELHI L. REV. 22 (2002).

293. DRB, *supra* note 286, § 31(1)(b).

294. Proposed Bill, *supra* Appendix A, § 14 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27(1)(b)(ii)(A))).

295. The matrimonial home, basic necessities and surrounding residential land would be distributed per the terms of Section 14 of the Proposed Bill. *Id.* § 14 (amending Succession Act 2000, *supra* note 9, § 27(1)).

296. *Id.*

income matrimonial property of her husband's second marriage in proportion to the number of years each was married to the deceased.²⁹⁷ A subsequent wife, however, takes no interest in property acquired prior to her marriage, nor in the matrimonial property acquired through the marriages of wives who were married to the deceased first.

When a *Woman* Married to a Polygamous Man Dies, Her Children Inherit Her Share in the Matrimonial Property.

- Under the Proposed Bill, when a woman married to a polygamous man dies, the man continues to own a one-half share in his deceased wives' matrimonial property, and the deceased wife's one-half share in the matrimonial property devolves to her children.²⁹⁸ The reason for the different treatment of men and women in polygamous marriages recognizes the fact that, while each woman in a polygamous marriage has only one husband, a husband in a polygamous marriage may inherit from two or more wives. Also, children of polygamous marriages need added protection when their mother dies, because their one surviving parent is bound to support another family or families. Therefore, upon the death of a wife in a polygamous marriage, her children inherit equal shares of her one-half interest in the matrimonial property she shared with her husband.²⁹⁹ Her husband retains a one-half interest in the same property. This distribution formula discourages polygamy by forcing a polygamous man to forfeit half of the matrimonial property to children of the marriage upon his wife's death. In this way, it is consistent with similar provisions of the DRB.³⁰⁰

2. Distribution of Non-Matrimonial Property

The Surviving Spouses Should Inherit a Larger Share of Non-Matrimonial Property.

- The reforms increase a widow's or widows' share in property other than matrimonial property from 15% to 50%.³⁰¹ In polygamous

297. *Id.*

298. *Id.* Note that, upon her husband's death, a woman in a polygynous marriage succeeds to the matrimonial home and other residential property she shared with her husband in accordance with Sections 4 and 14 of the Proposed Bill, described above.

299. *Id.*

300. See Ministry of Women in Development, *Recommendations Made by the Women of Uganda to the Constitutional Commission*, 15 (1991) [hereinafter WOMEN'S RECOMMENDATIONS]; DRB, *supra* note 286, §§ 31, 70(1) (Section 31 sets forth preconditions for contracting subsequent marriages and Section 70(1) gives the first wife interest in second wife's property and so forth).

301. Proposed Bill, *supra* Appendix A, § 14 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27(2)(a))).

marriages, 50% of the deceased's property other than matrimonial property is distributed to the wives in proportion to the number of years each wife was married to the deceased.³⁰² The descendants of the intestate, both legitimate and illegitimate, would split the other half of the non-matrimonial property in equal shares.³⁰³ The Proposed Bill would also repeal the provision of the Succession Act permitting relatives of the deceased to devise their own distribution scheme and thereby ignore the widow's rights.³⁰⁴

B. SUCCESSION LAWS MUST PROTECT WIDOWS' PARENTAL RIGHTS

The Proposed Bill would repeal the provisions of the Succession Act that deprive a widow of her parental rights if a husband so designates by will or if relatives of the deceased seek to terminate them.³⁰⁵ The reforms provide that, upon the death of one parent, custodial rights and guardianship automatically vest in the surviving parent.³⁰⁶ One spouse is not permitted to deprive the other of his or her custody or guardianship rights by will.³⁰⁷ A guardian other than the child's parent may only be appointed upon the death of the last living parent in consideration of the best interests of the child.³⁰⁸ These provisions conform to the protections provided in the Children Act and international treaties on the rights of the child.

C. ADMINISTRATION LAWS MUST PROTECT WIDOWS' ENTITLEMENTS

The Proposed Bill provides that the surviving spouse of either sex becomes, by operation of law, the automatic administrator of the deceased's estate.³⁰⁹ This is consistent with recommendations by the Law Reform Commission (LRC) and the responses of seventy-five percent of those surveyed in a study by the Ministry of Gender and Community Development.³¹⁰ As the Kenya High Court observes,

302. *Id.* For example, if a man who dies intestate was married to a first wife for 15 years, to a second wife for 10 years, and to a third wife for 5 years, the first wife is entitled to 1/2 (15/30) of the wives' 50% share in the other property; the second wife is entitled to 1/3 (10/30) of the wives' 50% share, and the third wife will inherit 1/6 (5/30) of the 50% share. The first wife would therefore receive 25% (1/2 of 50%) of the property other than matrimonial property in the estate; the second wife would receive approximately 16.66% (1/3 of 50%) of this property; and the third wife is entitled to approximately 8.33% (1/6 of 50%).

303. *Id.*

304. *Id.*

305. *Id.* §§ 25, 26 (amending Succession Act 2000, *supra* note 9, §§ 43(3), 44(1)).

306. *Id.* § 26 (amending Succession Act 2000, *supra* note 9, § 44(1)).

307. *Id.* § 25 (amending Succession Act 2000, *supra* note 9, § 43(3)).

308. *Id.* § 26 (amending Succession Act 2000, *supra* note 9, § 44(2)); *see also* Children Act, Cap. 59, Laws of Uganda, Revised Ed. §§ 4(2), 6(2) (2000) [hereinafter Children Act].

309. Proposed Bill, *supra* Appendix A, § 34 (amending Succession Act 2000, *supra* note 9, § 202(1)). Wives in polygynous marriage would be entitled to administer the estate jointly. *Id.* § 36 (amending Succession Act 2000, *supra* note 9, § 204).

310. LRC REPORT, *supra* note 1, at 284, 291.

A widow is the most suitable person to obtain representation to her deceased husband's estate. In the normal course of events she is the person who would rightfully, properly and honestly safeguard the assets of the estate for herself and her children. It would be going back to a mediaeval conception to cling to a tribal custom by refusing her a grant which is obviously unsuited to the progressive society of Kenya in this year of grace [1972]."³¹¹

The reforms further strengthen the spousal administration rights by precluding the grant of letters of administration to any person other than the surviving spouse.³¹² The surviving spouse's right to administer the deceased spouse's estate may be revoked by a court only upon petition by another beneficiary.³¹³ The only grounds for such revocation is if the surviving spouse has not been caring for minor children she had with the deceased or is found to be legally insane and incapable of administering the estate.³¹⁴ Before such determination is made, the surviving spouse must have an opportunity to appear in court to refute this assertion.³¹⁵

The Proposed Bill would further protect the surviving spouse's right to administer the estate by tightening the notice requirements if someone other than the spouse seeks to obtain letters of administration.³¹⁶ The new Section 204A of the Succession Act would require any applicant other than the surviving spouse to hand-deliver written notice, in the presence of a witness, to all surviving spouses.³¹⁷ In the event that delivery of such notice is "impossible," only then may the applicant fulfill the notice requirement by publishing the notice "clearly and conspicuously" for at least two weeks where it is likely to be seen by the surviving spouse or spouses.³¹⁸

The reforms would also impose standards and penalties applicable to an administrator's acts in supervising and distributing an estate. The Proposed Bill would require administrators to distribute property in conformity with the distribution terms of the Succession Act and imposes criminal penalties and compensatory remedies against administrators if they fail to do so.³¹⁹ Furthermore, the Proposed Bill would require administrators to comply with reporting requirements in order to ensure effective and lawful administration.³²⁰

311. *Re Kibiago*, Probate Cause 15 of 1972, High Court of Kenya (6 March 1972).

312. Proposed Bill, *supra* Appendix A, § 30 (amending Succession Act 2000, *supra* note 9, § 190 (specifying "[t]o whom administration may not be granted.")).

313. *Id.* § 35 (amending Succession Act 2000, *supra* note 9, § 203(2)).

314. *Id.*

315. *Id.*

316. *Id.* § 37 (amending Succession Act 2000, *supra* note 9, § 204 (adding § 204A)).

317. *Id.* (adding § 204A(1)).

318. *Id.* (adding § 204A(2)).

319. *Id.* § 33 (amending Succession Act 2000, *supra* note 9, § 193).

320. *Id.* § 46 (amending Succession Act 2000, *supra* note 9, § 278 (adding § 278(6))).

D. CUSTOMARY LAND TENURE MUST NOT DEPRIVE WIDOWS OF THEIR RIGHT TO OWN AND INHERIT PROPERTY

Uganda's Constitution provides that a person may register his customary land holdings and thereby convert the property into freehold land.³²¹ If a person dies leaving customary land unregistered, the surviving spouse, man or woman, as administrator of the estate, should likewise have the right to register the land as freehold land. Customary and traditional notions that assume that a woman may not deal in customary land holdings must not affect a widow's ability to inherit land held by her deceased spouse. Therefore, the Proposed Bill includes customary land holdings in the property to be distributed upon the death of an intestate person.³²² Upon inheriting this land, the surviving spouse may register this land as freehold land.

E. SEPARATION SHOULD NOT AFFECT SPOUSAL INHERITANCE RIGHTS

The current Succession Act requires the surviving spouse to apply to the court within six months of the death in order to preserve any rights in the estate,³²³ without regard for possible extenuating circumstances, e.g. the surviving spouse may have been fleeing mental or physical abuse or possible HIV/AIDS infection.³²⁴ In contrast, the Proposed Bill would preserve a spouse's rights where he or she was separated from the deceased at the time of death.³²⁵ This is in keeping with the LRC's recommendations to the same effect.³²⁶ The Bill creates a presumption that a separated surviving spouse has the same inheritance rights as a spouse who was residing with the deceased would have, but permits a court to exercise discretion to modify the amount to which a separated spouse is entitled.³²⁷ In making its determination, the court can consider the circumstances of the separation, duration of the marriage, the duration of the separation and when the property was acquired.³²⁸ Furthermore, each spouse is guaranteed, at a minimum, to inherit his or her respective share of property acquired prior to the separation.³²⁹

321. UGANDA CONST. art. 237(4); *see also* Uganda National Household Survey, *supra* note 268, tbl 5.1.4, at 33. The study states that in Kampala and Central region, the land is primarily free-hold land, with 62% free-hold in Kampala and 70% in Central region. In these areas, customary tenure accounts for only 5% and 12% respectively. Customary land tenure dominates in other regions: 73% in Eastern, 85% in Northern, and 50% in Western regions. *Id.*

322. Proposed Bill, *supra* Appendix A, § 14 (amending Succession Act (2000), *supra* note 9, § 27).

323. Succession Act 2000, *supra* note 9, § 30.

324. *See* LRC REPORT, *supra* note 1, at 296-97.

325. Proposed Bill, *supra* Appendix A, § 17 (amending Succession Act 2000, *supra* note 9, § 30).

326. LRC REPORT, *supra* note 1, at 297.

327. Proposed Bill, *supra* Appendix A, § 17 (amending Succession Act 2000, *supra* note 9, § 30(2)).

328. *Id.*; *see also* LRC REPORT, *supra* note 1, at 297.

329. Proposed Bill, *supra* Appendix A, § 17 (amending Succession Act 2000, *supra* note 9, § 30(3)).

F. THE INHERITANCE LAW MUST PROTECT THE PROPERTY INTERESTS OF
COHABITANTS

In recognition of the social reality of cohabitation without benefit of marriage in Uganda, the Proposed Bill would permit cohabitants to register their contributions to the estate during the period of cohabitation. This enables men and women to protect their entitlements and permits courts or the Administrator General to consider a surviving cohabitant's contributions to the estate of an intestate in distributing the estate.³³⁰ This reform would implement the LRC's recommendation that the law should "expressly protect the separate property of cohabiting partners."³³¹

G. SUCCESSION LAWS MUST LIMIT TESTAMENTARY BEQUESTS THAT DISINHERIT A
SURVIVING SPOUSE

A study conducted in 2000 found that only 10% of Ugandan husbands with wills left any property to their wives.³³² The other 90% left it to their children with the stipulation that the children should care for the surviving spouse.³³³ The same study reports that, in practice, widows are often dispossessed of their farmland and other assets.³³⁴ The Proposed Bill would prevent a spouse from bequeathing matrimonial property to someone other than his or her spouse.³³⁵ Furthermore, under the Proposed Bill, a married person may not bequeath other property (other than matrimonial property) to a relative other than his spouse or children if doing so would lower the surviving spouse's or children's standard of living.³³⁶

The Proposed Bill also voids any debts incurred against the matrimonial home without the consent of the surviving spouse.³³⁷ Under these reforms, the debts so voided cannot be satisfied from the estate of the deceased.³³⁸ These reforms conform to protections provided by the Land Act and DRB.³³⁹ The Bill also authorizes a court to order payments from the deceased's estate contrary to a person's will in order to provide for maintenance of the surviving spouse and children.³⁴⁰ These provisions are aimed at protecting the rights of widows and children. The reforms recognize a widow's rights in the property to which she has contributed and ensure children the support to which they are entitled under the Children Act.

330. *Id.* § 14 (amending Succession Act 2000, *supra* note 9, § 27(3)).

331. LRC REPORT, *supra* note 1, at 296.

332. International Fund for Agricultural Development, <http://www.ifad.org/pub/gender/genpfe.pdf>.

333. *Id.*

334. *Id.*

335. Proposed Bill, *supra* Appendix A, § 20 (amending Succession Act 2000, *supra* note 9, § 36(2)).

336. *Id.* § 20 (amending Succession Act 2000, *supra* note 9, § 36(2)).

337. *Id.* § 47 (amending Succession Act 2000, *supra* note 9, § 279 (adding § 279(c))).

338. *Id.* (amending Succession Act 2000, *supra* note 9, § 279 (adding § 279(c))).

339. Land Act, *supra* note 286, § 39; DRB, *supra* note 286, § 72.

340. Proposed Bill, *supra* Appendix A, §§ 22, 23 (amending Succession Act 2000, *supra* note 9, §§ 37, 38).

II. REFORMS MUST ELIMINATE SEX DISCRIMINATION AMONG CHILDREN OF THE DECEASED

A. PARLIAMENT MUST ELIMINATE GENDER-BASED DISTINCTIONS AFFECTING CHILDREN'S RIGHT TO INHERIT

The Proposed Bill would eliminate all provisions of the Succession Act that discriminate against children on the basis of sex. Specifically, the reforms strike down the concept of legal heir³⁴¹ and grant sons and daughters of an intestate parent an equal right to remain in the home, regardless of age or marital status.³⁴² By enacting laws that preserve gender equality in children's inheritance rights, Uganda would join a majority of states in the developed world, which grant persons of either sex who are in the same degree of relation to the deceased, such as sons and daughters, the right to inherit their late parent's property in equal shares.³⁴³ This means that sons and daughters inherit in equal shares, as do brothers and sisters, mothers and fathers, and so on.

B. THE INSTITUTION OF CUSTOMARY HEIR MUST BE ABOLISHED

The existing Succession Act preserves one percent of the deceased's property for the "customary heir." Under customary law, the customary heir is the closest male relative to the deceased.³⁴⁴ This provision of the Succession Act therefore preserves a gender-based distinction favoring males to females, which is "against the dignity, welfare or interests" of women and which undermines their status.³⁴⁵ Such practices are prohibited in Uganda's Constitution.³⁴⁶ The Proposed Bill would therefore repeal the provisions related to the concept of the customary heir and customary inheritance.³⁴⁷

III. SUCCESSION LAWS MUST DETER ABUSE OF WOMEN AND CHILDREN BY PENALIZING VIOLATORS AND INFORMING WOMEN AND GOVERNMENT OFFICIALS OF WOMEN'S RIGHTS

The Proposed Bill would amend the Succession Act and Administrator General's Act to provide both criminal penalties and civil remedies against anyone who interferes with a widow's rights to her home and other property by

341. *Id.* §§ 3, 13 (amending Succession Act 2000, *supra* note 9, §§ 2, 26 (repealing § 2(n) and § 26, which provide that, where there is equality of relation, a male shall be preferred to a female in deciding who is the legal heir and details the entitlements of the legal heir)).

342. *Id.* § 13 (amending Succession Act 2000, *supra* note 9, § 26 (repealing the old § 26 detailing the entitlements of the legal heir)).

343. *See supra* note 226.

344. *See supra* note 36.

345. UGANDA CONST. art. 33(6).

346. *Id.*

347. Proposed Bill, *supra* Appendix A, §§ 3, 14, 18 (amending Succession Act 2000, *supra* note 9, §§ 2(c), 27, 31 (repealing definition of "customary heir," eliminating customary heir's property interest in intestate's estate, and repealing requirement to notify customary heir of death)).

eviction, theft, or physical violence.³⁴⁸ In keeping with the LRC's recommendations to increase criminal penalties for interfering in the administration of an estate, the offense of intermeddling would be punishable by a one-year imprisonment and/or a fine.³⁴⁹ The Bill also requires police to arrest anyone who commits the offense of intermeddling.³⁵⁰

The Proposed Bill would also criminalize the practice of widow inheritance, in terms consistent with the DRB.³⁵¹ "Widow Inheritance" is defined as a "custom by which a relative of a deceased husband inherits the deceased husband's widow as his wife without conforming to the essential requirements of marriage set forth in the Domestic Relations Bill, for example the requirement that both parties must consent to the marriage."³⁵² Furthermore, the Bill requires police to arrest anyone who marries or attempts to marry a widow through the practice of widow inheritance.³⁵³ The Bill also provides for training, education, and reporting programs for police, magistrates, judges, and all government officials responsible for the operation and enforcement of the Succession Act.³⁵⁴

To simplify an evicted widow's access to justice, the reforms would expand the jurisdiction of courts to hear cases brought by the displaced spouse of the deceased³⁵⁵ and decentralize the Administrator General's office for greater access.³⁵⁶ The reforms also would hold the Administrator General's office accountable for its actions and bolster transparency in its operations by subjecting it to the provisions of Chapter X of the Penal Code entitled, "Corruption and the Abuse of Office."³⁵⁷ This provision limits the Administrator General's ability to waste the deceased persons' estates and deprive beneficiaries of their rightful shares.

Making possible the effective adjudication of violations of widows' and children's rights is essential to protecting this extremely vulnerable segment of society. Judges and attorneys point out that certain jurisdictional and evidentiary obstacles stand in the way of widows' access to justice. Research indicates that widows are often too intimidated to come to court to enforce their claims.³⁵⁸

348. *Id.* § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27A)); *Id.* § 58 (amending Administrator General's Act, *supra* note 12, § 11(2)).

349. *Id.* §§ 15, 58 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27A) and amending Administrator General's Act, *supra* note 12, § 11(2)); LRC REPORT, *supra* note 1, at 293.

350. Proposed Bill, *supra* Appendix A, § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27A(4))).

351. Compare *id.* § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27A(3))), with DRB, *supra* note 286, § 16(1).

352. Compare Proposed Bill, *supra* Appendix A, § 3 (amending Succession Act 2000, *supra* note 9, § 2 (adding § 2(dd))), with DRB, *supra* note 286, § 3.

353. Proposed Bill, *supra* Appendix A, § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27A(4))).

354. *Id.* (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27A(5))).

355. *Id.* § 40 (amending Succession Act 2000, *supra* note 9, § 240).

356. *Id.* § 53 (amending Administrator's General Act, *supra* note 12, § 2 (adding § 2A)).

357. *Id.* § 54 (amending Administrator's General Act, *supra* note 12, § 3).

358. Interview with Damalie Lwanga, *supra* note 232; Interview with Jane Mpagi, *supra* note 271.

Therefore, Parliament should consider creating exceptions to the “Hearsay Rule” of Evidence so that widows must not always appear in court in order to enforce their inheritance rights and punish violators.³⁵⁹ The government must also undertake initiatives to inform lower courts of women’s constitutional rights and their rights under the new Succession Act, as well as the duty of the courts to adjudicate violations of these rights fairly and uniformly.³⁶⁰ Both citizens and government officials must be adequately informed of the Act’s provisions and protections, and judicial, administrative, and law enforcement agencies should stand ready and willing to provide an effective remedy for injustices suffered by Ugandan women in succession matters.

IV. EQUAL SUCCESSION LAWS MUST APPLY UNIFORMLY

The Proposed Bill would continue the uniform application of the succession law to all people in Uganda, regardless of culture or religion, and repeal a provision of the Succession Act authorizing the passage of a statutory order to exempt certain classes from the operation of the Act.³⁶¹ By applying official law equally to all persons in Uganda, regardless of cultural or religious status, Uganda joins a host of other countries, including many with large Muslim populations and minority groups.³⁶² Like these states, Uganda must balance freedom of religion with women’s fundamental right to equality with men and equal protection of the law.³⁶³

359. Interview with Damalie Lwanga, *supra* note 232.

360. *See* Proposed Bill, *supra* Appendix A, § 15 (amending Succession Act 2000, *supra* note 9, § 27 (adding § 27A(5))).

361. *Id.* § 49 (amending Succession Act 2000, *supra* note 9, § 334 (repealing § 334(1)-(2))).

362. *See supra* Part IV(E)(2).

363. *See* UGANDA CONST. arts. 21, 31(1)-(2), 33(6); *see also* ICCPR, *supra* note 6, arts. 2(1), 3, 5, 18(3), 23(4), 26; CEDAW, *supra* note 6, arts. 2(e) 5(a), 16.