

Access to Justice: Widows and the Institutions Regulating Succession to Property in Uganda

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The 1995 Constitution of the Republic of Uganda in terms of article 31(2) thereof, establishes rights under which widows and widowers can inherit property from their spouses and enjoy parental rights over their children. A duty is placed on the government to make appropriate laws to this end. More important though, the state has a duty to facilitate the administration of estates in general by making, through decentralization, the institutional and legal framework on succession more accessible to ordinary people. An issue that deserves fresh consideration is whether this obligation to make the legal and institutional framework on succession accessible to ordinary people and especially widows, ten years after the Constitution was promulgated has been realized, and if so, whether it has advanced the property rights of these surviving female spouses in the estates of their deceased spouses.

This article considers the barriers widows encounter when accessing the institutions that regulate property rights at succession in Uganda. Some suggestions for the better are advanced. The concern for widows derives from the perception that they experience more hardships on the death of their husbands than widowers on the death of their wives. Moreover, custom and tradition have relegated wives to duties of housekeeping, raising and caring of children, and assisting the husband in various endeavors. Conventionally, when a woman assists the husband in accumulating property, she does not acquire proprietary interests in such property automatically. (Uganda's formal family and succession laws espouse a separate property regime.)

The other concern for focusing on widows is that whenever widows are empowered, the children of the deceased are likely to be better maintained and the reverse is true. One way of realizing this empowerment is by making the institutional framework regulating succession to property easily accessible to widows.

Whereas the legal and institutional framework regulating succession to property in Uganda sets out enforceable rights, these are fraught with cumbersome procedures for women in general and widows in particular to follow before they can inherit property. These procedures are neither in compliance with the country's Constitution nor the international human rights commitments it ascribes to. There is an explanation for this unsatisfactory state of affairs; the institutions regulating property rights were adopted from the English and became operational many years before the country became independent, and subsequently promulgated a constitu-

tion that promotes justice without undue regard to legal technicalities. As institutions that were in force before the country undertook to make the law accessible to ordinary people, the time has now come to revisit the procedures followed by the courts and related institutions with a view to either overhaul, repeal, or radically amend them, if the country is to comply with its avowed constitutional commitments. It is troublesome that the institutional framework that regulates property rights at succession is largely inaccessible to the majority of widows in Uganda.

The way forward is to adopt radical institutional reforms promoting easy financial and geographical access to these dispute resolution fora. For example, a local language--not English--should be adopted as the language of the courts of law. At the very least, the relevant institutional procedures relevant to regulation of succession to property should be reviewed and revised periodically to cope with the contemporary needs of widows.

Why Radically Reform the Institutions Regulating Succession to Property in Uganda?

The country is in the process of adhering to a number of international human rights instruments that are universal. Some international human rights instruments, such as the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), actually relate to property rights of women under the municipal laws of succession.^J As long as the procedures followed by the relevant institutions regulating succession to property are alien and cumbersome as is presently the case, the purposes of the international human rights instruments will be difficult to realize.

Whenever a convention is ratified by Uganda, it has, as a signatory, an obligation to ensure that its municipal laws do not contradict its treaty obligations. To that extent, it can be argued that the state municipal institutional framework regulating succession to property by widows must comply with and be opened to international scrutiny. The universal nature of international conventions Uganda ratifies promotes this development. As Eekelaar and Nhlapo² explain, universalism means that everywhere where people live, however much their practices and their ways may vary, there exist certain commonalities and similar ways of seeing and doing things. In the case of Uganda, this similar way of doing things should translate in court and related institutions being relevant and responsive to those who utilize them even when they are not represented by counsel. In other words, what is desired is a court system that is cheap to access, is expeditious, and dispenses justice to all with little regard to technicalities. These are attributes still lacking in Uganda's state courts despite constitutional provisions to the contrary.

Uganda became accountable to its citizens, to other state parties, and to the international community by ratifying international instruments without reservations. In other words, Uganda has already committed itself to respect and ensure the rights and freedoms found in the international instruments. Moreover, many of these con-

ventions provide for committees as monitoring institutions, obliging states as contracting parties to report regularly on the steps they have taken to guarantee the realization of the given rights. By accepting conventions such as CEDAW, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including to incorporate the principle of equality of men and women in their legal system, to abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women, and last but not least to establish tribunals and other public institutions to ensure the effective protection of women against discrimination. As stressed, these ideals are difficult to realize when the institutions regulating succession to property are not easily accessible as is presently the case in Uganda.

Equality and non-discrimination are international law imperatives found in the CEDAW and other human rights conventions, such as the African Charter on Human and Peoples Rights (ACHPR) that Uganda has ratified. Complying with these obligations requires that the state adopts dispute resolution fora that are accessible to women and which therefore can be relied upon to enforce their rights with ease.

In their present trend, all reforms in Uganda purporting to promote the human rights of women are cosmetic and not fundamental. When all is said and done, Ugandans continue to act primarily in the interest of self-preservation as a patriarchal society. Men are, both in the public and private spheres, still firmly in charge of the substantive reins of power and authority. Under conditions of patriarchy, women must be consistent in demanding fundamental changes. Having radical reforms in the institutional framework regulating succession to property by providing for more accessibility can only be the starting point.

The inspiration to make the law and institutions regulating property rights at succession among others accessible to ordinary folks appears to have been boosted by recent regional and Pan African developments. For example, the desire for regional integration is bound to precipitate reform of Uganda's legal and institutional framework generally. The East African Community (EAC) is the regional inter-governmental organization of the Republic of Kenya, Uganda, and the Republic of Tanzania. The EAC was revived on 30 November 1999, when the treaty for its re-establishment was signed. The East African Court of Justice, one of the organs of the East African Community, established under Article 9 of the Treaty for the establishment of the EAC, has *inter alia* jurisdiction to hear and determine disputes on the interpretation of the EAC Treaty. The jurisdiction of the Court is to be extended, however, to appellate and human rights issues at a suitable date to be determined by the Council of Ministers. The EAC Council of Foreign Ministers, where Uganda is represented, shall make policy decisions for the efficient and harmonious development of the Community. It is probable that at the appropriate time, if Uganda does not reform its legal and institutional framework regulating property rights at succession appropriately, it could face the East African Court of Justice on allegations of human rights violations under its laws of succession)

Related to the above development is the Pan African Parliament that was inaugurated on 18 March 2004 in Addis Ababa, Ethiopia, with five representatives from Uganda. This constitutes a further step towards the integration of the African peoples, with a bearing on the human rights of women in Uganda. The Parliament, established under Article 5 Constitutive Act of the African Union, is one of the organs of the union. Besides, one of the objectives of the union in terms of Article 3(h) Constitutive Act of the African Union is to promote and protect human and people's rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments? Clearly the winds of change to promote human rights are blowing strongly. It would be a matter of regret if Uganda did not start adjusting its institutional framework regulating property rights at succession among others, to make it possible for the majority of her people to benefit from the crave for human rights observance.

The Acquired Immune Deficiency Syndrome (AIDS) epidemic is widespread to Uganda. This epidemic has created a fair share of widows in the country. Although there is optimism that the government shall soon provide antiretroviral treatment, such treatment will not be free? It will be available at a subsidized fee. The implication is that widows must have as much property as possible from their late spouse's estates in order to cope with the AIDS treatment.⁶ Given that it is not uncommon, at least going by media reports, in Uganda for greedy relatives to grab property from widows, it is only prudent that an accessible but speedy court system be established to enable widows litigate with their in-laws easily. These and more are the justifications for overhauling the institutional procedures to enable widows to utilize the law to the maximum.

Weaknesses of the Current Institutions Regulating Property Rights at Succession in Uganda

Despite the aforementioned justification to reform and the quest for a good international image, women's property rights under Uganda's laws of succession are not satisfactory. As stressed, the laws of succession and institutions regulating property rights persist to be largely inaccessible to the majority of widows. Modeled on English values, they are adversarial and therefore alienating to many people accustomed to non-confrontational dispute resolution mechanisms. They do not advance substantive equality between men and women, are discriminatory, and serve as a barrier to the promotion of a modern and just society in Uganda. This is the problem that manifests itself in many ways. First, some of the laws of succession, as discussed hereafter, are archaic,⁷ patriarchal, and discriminatory towards women. Second, multiple laws and institutions regulate succession to property.

There are customary law foras, Islamic *Qhadis'* courts and state institutions, such as the formal law courts and the office of the Administrator General, each with its own procedures that must be strictly followed before a matter is attended to. A

situation of this nature with various laws⁸ and institutions leaves a lot to be desired and is not attractive to women ignorant of the relevant procedural technicalities. The problem is now manifested in the widespread poverty among widows who are among the most poverty-stricken categories of people in the present Ugandan society.

Evidently, the mechanism that regulates people's property rights at succession is not appropriate despite rhetoric to the contrary. Inevitably, the current institutions regulating property rights of women continue to contradict the country's international treaty obligations with impunity. This is because the laws in question are enforced by different state institutions i.e. law courts and the Administrator General's office. The formal law courts, which include Grade 1, 2, and 3 Magistrate courts, the Chief Magistrates Courts, the High Court, Court of Appeal, and finally the Supreme Court, all regulate property rights disputes. It is not uncommon for some of these state institutions to prejudice widows by acting *ultra vires* when exceeding their jurisdictions.

There are other barriers that impede access to these institutions though; first, the official language of all state courts is English. The Constitution of Uganda, other than promoting one local language to official status, provides in Art 6(1) thereof, that the official language of Uganda is English. This means that on account of the language of courts many widows both in urban and rural areas where local languages are widely spoken find the law courts inaccessible. Granted there may be court interpreters, but these are not reliable. Given that Uganda has more illiterate women than men, women are bound to find the state courts more unwelcoming to them than men.

State administrative institutions regulating property rights at succession are not progressive either. The Office of the Administrator General is prominent in this category, one of the oldest departments of government, established in 1933. The office is an administrative institution charged with the responsibility of ensuring that estates of deceased persons are administered in accordance with state laws of succession. The office is centralized in the capital city Kampala, meaning it is not easily accessible to people in the remote parts of the country far from the capital city. It is yet to be decentralized, to ensure fairness to all estate beneficiaries, implying that it does not as yet have the capacity to ensure that all estates in Uganda are administered in accordance with state laws.

The fact that the Administrator General's office is located in Kampala, also involves transport costs, exacerbated by remoteness from the capital city, and other problems such as those associated with courts, means that many people find it expedient to administer informally their estates outside the state laws. They only revert to the formal law if they get problems like claiming death benefits from banks requiring a grant of Letters of Administration. The implications of all this to widows is that in many cases, estate properties are distributed informally in a manner not necessarily promoting equality between the sexes, thereby defeating the purpose of CEDAW that Uganda ascribes to. Moreover, since customary law is not written, it creates more uncertainties for women.

The tragedy for widows in Uganda, as far as accessing justice is concerned, is that neither customary nor state institutions regulating succession to property are very protective of their property rights. Even if it were assumed that the formal laws and institutions were very protective and men were to leave much property behind, many widows, in the absence of a state-backed legal awareness campaign, are ignorant as to what their rights are, where to go to enforce them, what to do, and how. Such is the problem; the question is why do the informal customary and religious institutions largely discriminatory of women thrive in Uganda?

Why the Informal Customary and Religious Institutions Regulating Succession to Property Thrive in Uganda

It is plausible that the informal fora regulating property rights of women at succession thrive because of the many problems associated with the formal institutions and laws of succession. Concerning litigation over succession to property disputes in state magistrate courts, as an example, court processes are expensive as no litigation can commence before court fees and in some cases lawyers are paid. There is, moreover, the complicated court procedure and process of filing, receiving, serving, and responding to court process. All these alienate many women from the state dispute resolution machinery.

It is a hurdle to go on pursuing non-contentious issues under the formal law of succession. For obtaining authority to administer an estate, as an example, the process involves reporting the death of the property owner to the office of the Administrator General situated in the capital city. However, before going to the Administrator General's office, one must obtain a death certificate confirming his/her death or a confirmation from the local council executives in the area, where the deceased used to live or was buried. Thereafter, one travels to Kampala to the office of the Administrator General, for a clearance called a Letter of No Objection. This is necessary before a grant of Letters of Administration is made by court.

However, for pursuing this Letter of No Objection means that a file, which is basically a form and file cover, which is not free, is bought at the Administrator General's office and duly filled in. If filled in properly, the file, indicating among others the particulars of the deceased's properties, creditors, and debtors, etc., is submitted to the approval of the legal officers in the Administrator General's office where the file is opened and registered by the office. Thereafter, depending on the nature of the property and other particulars as indicated on the said forms, a legal officer in the Administrator General's office must convene a family meeting to establish consensus as to who should administer and distribute the deceased's estate properties, among entitled beneficiaries. (In Uganda, no rights over any property arise until an estate administrator has been appointed by court to administer the estate). The said meeting may also be convened to arbitrate in property disputes within the family. There is, however, no time limit within which a meeting must be convened.

If the deceased passes away testate, witnesses to his will must also attend the meeting to confirm that the deceased executed the will in their presence. It is after complying with these preliminaries that the Administrator General issues a Letter of No Objection to whomever the family has chosen to administer the intestates' estate. Letters of no objection are statutory requirements before applying for Letters of Administration from courts in Uganda. They are issued under section 5 of Administrator General's Act Chapter 157 Laws of Uganda.

The grantee of the Letter of No Objection then lodges an application, depending on the value of the estate, with the relevant state court having competent jurisdiction for Letters of Administration. It is the court that finally grants him or her authority to administer the estate by virtue of a Letter of Administration. However, the process of seeking court authority is both expensive and time consuming. It usually entails engaging a lawyer to file the relevant court papers, which are not filed until court fees are paid, for which money must be made readily available. When the relevant papers are properly filed, the court issues a notice in the local newspapers calling upon anyone who has any objection to the grant of authority to the applicant to administer the deceased's estate, to lodge any such objection in court. The notice elapses after 14 days. What follows then is seeking an appointment before a judicial officer, usually the Registrar of the court, to have the applicant for Letters of Administration formally identified. After the identification process, the court may issue the Letters of Administration to the applicant. However, the law does not impose a time limit after identification within which the Letters of Administration must be issued to the applicant. In some cases, several weeks may pass before the letters are issued, probably owing to the busy schedules of the Judges of the High Court, if this is where the application is made.

In unfortunate cases, where there is an objection to the grant of Letters of Administration, such objection--lodged as a caveat to the applicant's papers in court--means litigation must ensue before the court resolves the question. The problem is that litigation in Uganda is too slow and costly. Backlog of cases in the High Court of Uganda is not an uncommon phenomenon. Clearly even if assuming that it were possible for widows to have immediate access to the state courts, the long costly process, the technicalities in the substantive and procedural laws are a setback in the protection of women's property rights at succession in Uganda?

Uganda has no state legal aid scheme for indigent people. Although non-government organizations like the Ugandan chapter of the International Women Lawyers Federation (FIDA) provide legal aid to indigent women, they are yet to comprehensively cater for the entire country. A combination of all the above, and the cumbersome procedural problems associated with state laws and institutions as illustrated above mean access to justice is still an ideal to most widows. This situation, however, renders customary and religious foras, though patriarchal more attractive to widows.

Why Are Widows More Adversely Affected than Men by the Flaws in the Formal Institutions Regulating Succession to Property in Uganda?

The above complications associated with state laws and institutions regulating succession to property impinge on the property rights of widows more than on the rights of widowers. This is not accidental. Widows tend to have fewer resources to waste in legal gymnastics characteristic of the Ugandan state laws of succession. Revocation of a grant of Letters of Administration will suffice as the last example of these costly gymnastics. As if the procedure of obtaining a grant of Letters of Administration were not already sufficiently complicated, the procedure of revocation or annulment of Letters of Administration is even worse. Section 234 of the Succession Act provides such revocation to be based on just cause defined to include grants obtained by fraud, and grants obtained based on untrue allegations. Other grants in this category are those obtained by untrue allegations of fact, essential in law to justify the grant to be revoked.

To initiate the process of revocation, a widow would need to engage a lawyer. Where a widow is indigent and the few non-governmental organizations running free legal aid clinics are unable to pursue her case, she is more likely than not to lose. It is usually after litigation that a state court annuls the grant basing its decision on evidence. Given their limited financial resources, coupled with the complicated yet slow court process, more widows than widowers are bound to find the revocation remedy inaccessible. In any case, even when a widow is successful in asserting her rights, it is most likely that the grantee who could be a disgruntled male in-law or a step or biological son would already have wasted and sold off some of the estate properties.

In Uganda, women constitute more than half the population, and given that all societies are patriarchal, it is more plausible that more widows than widowers are involved in property rights disputes. This is the greater reason why more women than men are adversely affected by ineffective state laws of succession and institutions.

There are other problems with the Ugandan laws and institutions regulating succession to property. The substantive state law of succession, as an example, provides under Section 272 of the Succession Act that in the absence of any direction to the contrary by any of the joint administrators, one of the estate administrators can bind and/or commit the rest and the entire estate.

In families where men sire children outside wedlock, it is common for the widow to administer an estate with other people who cater for her non-biological children's interests. It does not follow, however, that such people must always agree with the widow or work in her interest. The implication is that even where the widow is opposed to a particular transaction, the other estate administrators can exploit this weakness in the law to sell, transfer land, vehicles, and whatever they deem fit to the prejudice of the widows.

There are other peculiar problems widows must contend. The judiciary is male-dominated and not necessarily gender-sensitive. The adversarial procedures of the

general law may also be a problem to some women. Many a widow may wish not to litigate against her in-laws over property in the interest of preserving family harmony for the benefit of the children. Empirical studies on women in Southern Africa, which like Uganda has patriarchal societies, shows that in the absence of social security and the reality that a widow might depend on her extended family to survive once estate properties are exhausted, litigation may be avoided even when it would enable some women to claim all the property of the deceased spouse. ~

Section 11 Administrator General's Act Chapter 157 Laws of Uganda deals with the offense of intermeddling with the property of a deceased person. Intermeddling refers to any act committed by an unauthorized person while dealing with the property of a deceased person. Although on the face of it such a law should protect widows from greedy and, as such, often interfering relatives who waste away or grab property, the provision has not been protective of widows, because, *inter alia*, the sanctions of a fine of two hundred shillings (the equivalent of about seven U.S. cents) or three-month imprisonment or both on conviction are mild. As another problem for Ugandan widows, the above is a plausible explanation why property dispossession from widows thrives leaving widows desperate. The Administrator General's office should be given more powers and the penalties for any offence related to the law of succession, such as intermeddling with the property of a deceased person, ought to be made sufficiently deterrent. These are the reforms that should be effected.

Although in many cases of intermeddling, the office of the Administrator General has attempted to hinder intermeddlers as and when such complaints are filed with the office, widow dispossession has not been eliminated because the office is not greatly concerned with the rights of women to inherit, when implementing the inheritance law. Most of the office's concern is on the correct application of the inheritance law. The law is weak, however, and skewed in favor of the male persons. This is what patriarchy is all about. While it is possible that the office has done much for championing widows' rights, unfortunately, even when the office moves in to assist widows, it too has to rely on other government agencies such as the Police to give effect to its directives. Some of these institutions are slow in responding. Police officers may lack the resources to apprehend offenders immediately. They may also be conditioned by their socialization, with their own biases against women.

The Adverse Implications of Legal Pluralism for Widows' Property Rights in Uganda

The system of law in Uganda consists of customary laws, religious laws such as Muslim law, and the state or general law that is statutory. Whereas customary law is largely unwritten, some aspects of customary law relating to succession and specifically the heir have been codified and incorporated within the written law.¹

In Uganda, the application of a multiplicity of laws in estate administration con-

tributes largely to violation of widow's human rights such as property dispossession from them. In other words, legal pluralism is part of the problem responsible for the currently unsatisfactory state of widow's property rights. Many such laws, whether formally recognized or not, are restatements of patriarchy and are enforced in the communities. Such is the consequence of legal pluralism to widows in particular and to women in general.

The application of customary law is not a matter of the past only traced back to the pre-colonial and colonial era, it prevailed even after Uganda became independent in 1962, as provided for under the Judicature Act as early as 1967. Other than the Judicature Act 11/67, other laws providing for the application of customary laws have also been enacted. The Constitution of Uganda in Article 273(2) also provides for the application of both written and unwritten laws.

The Judicature Acts provide that when recognizing customary law and practices, a condition precedent is that such custom must not be repugnant to any written law, and must not be repugnant and contrary to good conscience and morality. British colonial rule introduced the notion of repugnancy clauses to compensate for a limited knowledge of customary laws, but the truth is that British rule interfered little with the contents and application of customary law." It had no interest in customary law. In any case, the repugnancy clauses were only relevant when a dispute involving customary law went to the formal courts, which rarely happened. Any government initiative to study, record, develop, or even reform customary law was not promoted. The outcome is that many aspects of the currently applicable customary laws are retrogressive. The aspirations of customary law, religious law, and the general law do not always concur. In some cases, customary law, with aspects oppressive to widows, will override statutory laws. Moreover, as the custodians of customary law are males, it is plausible that some of them may have an inherent bias against widows, promoted under the guise of patriarchy. Therefore, in Uganda a situation of legal pluralism--that now ought to be abolished exists with customary laws, statutory general laws, and religious laws all existing side by side in the legal system.

Butler and Kudriavtsev¹² note that in a legal system sanctioned legal norms, legal institutions and legal views inherent in a given society should apply, but in Uganda, customary and religious laws and institutions apply in reality, even if not formally recognized.

That certain aspects of customary law are not promoting widow's property interests is unfortunate, because the situation of kinship groups in Uganda ought to be dynamic. There should be pressure to adjust relationships internally. Some individuals, who work with their wives to accumulate resources, would prefer women's emancipation and individualism in property rights. There are new enterprises that yield profits for the hardworking. Many people are, however, lazy and only wait to reap what others sow. There could be, as an example, a desire for widows to mortgage land.¹³ However, such widows are constrained by a customary law of succession regime that favors males. Many wives are working and contributing to both the

assets and liabilities of their husbands. It is plausible to assume that many, including customary law wives, are beyond the ambit of the customary law institutions. What is sad, however, is that despite all these trends, many people live in communities where traditional devolution of property prevails. This is the outcome of the laxity of state rule to codify customary laws and bring them at par with state laws even after independence. The only viable alternative left now is to eliminate customary and religious laws from the legal system.

Property rights of widows continue to be prejudiced by religious laws and institutions also. Whereas Article 129 (i) (d) of the Constitution of Uganda provides that Parliament may enact a law to provide for the establishment of *Qadhis'* courts to deal with Islamic matters of inheritance and also succession among other disputes, and whereas Parliament has not yet enacted such a law, in practice among Muslims in Uganda the applied law is Islamic law and is enforced in property distribution of Muslim estates. The Uganda Muslim Supreme Council appoints a *Sheikh* for every district in the country for handling property distribution. In everyday practical life, widows therefore continue to stand at the crossroads being impacted, on one side, by customary laws, religious laws, and practices and on the other by statutory laws. There exists also the impact of the clan, with in-laws and the women's families, and finally the widows' own feelings. This is the deplorable reality of life in Uganda today; the problems created by legal pluralism deserve to be radically addressed.

The absence of state social security to revert to when the worst comes to the worst leaves many widows vulnerable to clan/family rules. Uganda has four social security systems: the National Social Security Fund that caters for employees in the private sector; the Civil Service Pension Scheme covering government employees; the Urban and Local Authority Scheme for local authorities; and the Teaching Service Scheme for teachers. Uganda's social security covers however, only 2 percent of the population.¹⁴ Moreover, most retirees who are predominantly male receive benefits, not consistent with the cost of living. All this perpetuates women's poverty and vulnerability.

Invariably, despite the existence of formal laws and institutions and the fact that some widows are aware of their rights, many of them may not insist on enforcing them. This is inevitable to avoid alienation in a patriarchal society. This explains why property rights of widows are fragile. Property dispossession of widows thrives owing to various contributory factors both within and without the formal law and institutions.

The desire by politicians, and invariably by the legislature, to accommodate all views, interests, tribes, religions, and vote-winning issues when enacting laws is one of the reasons perpetuating legal pluralism. This is another problem women face in Uganda. Consequently legal pluralism is not likely to be abolished soon and can remain a factor of political and legislative indeterminacy. This means that radical measures to impose absolute equality and non-discrimination through the enactment of one uniform but radical state succession law may take time to become a reality. There are many examples to support this view. In December 2003, a Do-

mestic Relations Bill was introduced in Parliament for debate. It does not abolish polygyny though it imposes restrictions in the form of seeking permission from district officials before taking another woman. Whether and how such restrictions can be implemented in practice to ensure that men actually do seek approval before taking on other wives is questionable. The proposed law does not outlaw multiple marriages under the *Hindu*, *Bahai*, and *Islamic*, customary or state laws. It maintains the sectarianism hitherto in existence by recognizing all types of marriages.

The Domestic Relations Bill is silent on succession issues. The implications of the Bill are summarized in its preamble. The object of the Bill, according to its memorandum, is to consolidate the laws relating to marriage, separation and divorce; to provide for the types of recognized marriages in Uganda, marital rights and duties, grounds for breakdown of marriage, rights of parties in dissolution of marriage and for other connected purposes. Even in this dilute form, the Muslim community in Uganda has already threatened to reject it because it impinges on the *Quran*. ~5The government has not taken a radical stand to impose this law on the Muslims in Uganda. Instead it is seeking a compromise position with the Muslim leadership. In a related development, while the Land Act 1998 attempts to protect the family interest in the land held by it and from where sustenance is derived, a clause on spousal co-ownership was not considered in the 2003 amendment. All this is testimony to legislative and political indeterminacy. It may be summed up therefore that archaic laws and institutions regulating succession to property continue to make it difficult for widows to access justice in Uganda.

Some Reform Propositions

Given the above unsatisfactory situation, certain measures can be adopted to advance the human rights of Ugandan widows. First, the phenomenon of legal pluralism should be abolished in this field. It is extremely difficult to have meaningful reforms in a multicultural and multireligious country. It is difficult to have reforms in religions and cultures spontaneously. While the various cultures and religions should survive, none of these fora should have authority to regulate property rights at succession. What is needed now is one strong and enforceable secular state law of succession supported by a decentralized institution. Such a law must espouse full equality and non-discrimination, complying with the 1995 Constitution. Deterrent penalties must be imposed for any breach of this law. However, to make such a secular law attractive to every one, the contents and procedures must be simplified. Unnecessary technicalities (pointed out above) must be purged for the sake of simplicity. This may also entail translating state laws into local languages. The law could also encourage parties to settle their disputes without going to court. This can be done by encouraging mediation and counseling. In this way the parties will avoid the usually embarrassing full court trials. As an alternative, the state should fund legal aid. It is only legal aid that will enable many female litigants in general and widows in particular to access the court system.

Secondly, polygyny must be abolished. Full equality demands that any marriage must be strictly between one male and one female adult. Equality in marriage cannot be quadrangular. To impose restrictions on polygynous men is to miss the point. The way forward is to impose deterrent criminal sanctions for any person having more than one wife. The laws of marriage and succession must explicitly prescribe that polygyny under whatever circumstance is illegal in Uganda. Preservation of polygyny has complicated succession to property promoted acrimony and generally proved disruptive of people's lives.

Third, political and legislative indeterminacy must be abandoned. Parliament must make laws that put into practice what the constitution of Uganda stipulates on non-discrimination and equality. The practice of seeking the views of all stakeholders before a law is enacted means radical laws to emancipate women can never be enacted.

Finally, assuming that the office of the Administrator General were to be decentralized with regional offices, there would still be no remedy to the situation of widows deep in the villages. The better view is to have an office opened up for say every 100,000 people. The same principle should be extended to formal law courts.

In conclusion, the formal institutions regulating succession to property in Uganda are fraught with cumbersome procedures thereby making it difficult for widows to utilize the law to their advantage. Furthermore, whereas the laws of succession set out certain enforceable rights for women in general and widows in particular to inherit property, these rights are neither in compliance with the Constitution nor the international human rights commitments Uganda ascribes to. In practice as stressed, they are also shrouded in rigorous procedures such as application to courts or the Administrator General before they can be realized. Neither are these fora easily accessible to widows. The prevalence of legal pluralism in the regulation of the succession to property rights has not advanced the situation of widows. Some measures ought to be taken up urgently to address the situation.

Notes

1. Uganda ratified CEDAW on 21 July 1985; <<http://www.un.org/womenwatch/daw/cedaw/states.htm>> (accessed 8 September 2004).
2. Eekelaar John and Thandabantu Nhlapo. *The Changing Family: International Perspectives on the Family and Family Law*. Oxford: Hart Publishers, 1998, xii.
3. See official website of the East African Community <<http://www.eac.int>> (accessed on 7 September 2004), for other details about the court, its mandate, composition, and jurisdiction, etc.
4. Ouguerouz Fatsah (2003) *The African Charter on Human and Peoples Rights--A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* London: Martinus Nijhoff Publishers, 880-895.
5. See also "Anxious for the free, but not quite free HIV drugs" in *The Monitor Newspaper* of 16 March 2004 <<http://www.monitor.co.ug>> (accessed 16 March 2004).
6. Contrary to the view that Uganda is a success story in the fight against HIV/AIDS, with official prevalence rate put at only six percent, an NGO has reported that the real picture is far worse with prevalence rates as high as 17 percent and bad access to anti-retrovirals. See www.bbc.co.uk/2/hi/africa/3677570 of 21 September 2004.

7. There is the Succession Act (Chapter 162, laws of Uganda), in force since 15 February 1906, the Administrator General's Act (Chapter 157, laws of Uganda) in force since 15 August 1933, the Probate (Resealing) Act, since 30 May 1936, the Public Trustees Act since 15 July 1937, and the Administration of Estates of Persons of Unsound Mind Act (Chapter 155 laws of Uganda) since 13 September 1951.
8. The Administration of Estates (Small Estates)(Special Provisions) Act, (Chapter 156, laws of Uganda), since 16 June 1972; the Estates of Missing Persons (Management)Act, (Chapter 159 laws of Uganda), since 1 October 1973; the Trustees Act, (Chapter 164, laws of Uganda,) since 8 April 1954; the Trust Corporations (Probate and Administration Act, (Chapter 163 laws of Uganda), since 26 March 1959.
9. Tuhaise Percy et al. *Women and law of Succession in Uganda; Women, Inheritance Laws and Practices*. Kampala: Women and Law in East Africa Publication, 2001,4.
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11. Morris & Read. *Indirect Rule and Searchfor Justice* Oxford: Clarendon Press, 1972, 167-168.
12. Butler, W.E. and Kudriavtsev, V.N. *Comparative Law and Legal System: Historical and Socio-legal Perspective*. London: Oceana Publications, 1985, 3.
13. Gluckman. *Ideas and Procedures in African Customary Law* Oxford: Oxford University Oxford, 1969, 48/9.
14. Ramandhani K. Dav "Trends in Social Security in East Africa: Tanzania, Kenya, and Uganda" in *International Social Security Review* 56 (3--4) (2003), 25-37 at 31.
15. See Evelyn Kiapi Matsamura, "Muslim Demand Changes in Bill on Women's rights" at Human Rights House Network site <http://www.humanrightshouse.org/diluis5.asp?id=3130>. (accessed 23 January 2006)

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