

DIVORCE IN GHANA: AN EXAMINATION OF WOMEN'S 'PROPERTY RIGHTS'

**DISSERTATION SUBMITTED IN PARTIAL FULLFILMENT OF THE REQUIREMENTS OF
THE MASTER OF LAWS DEGREE (LLM)
HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA**

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29 OCTOBER 2010

DECLARATION

I, **Marian Christabel Oforiwa Atta - Boahene** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.

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ACKNOWLEDGMENT

I am grateful to God for the chance to be part of this LLM programme and I am humbled by the grace and mercy He continuously showed me to make it to the end.

To the management and staff of the Centre for Human Rights, University of Pretoria, I say thank you for the opportunity to be a part of this unique programme and the great lengths you went to broaden my horizons through interactions with renowned lecturers and practical hands on experience. I also acknowledge your efforts to make my stay in Pretoria as hassle free and homely as possible.

To the team at the University of Mauritius who made my stay there a lovely one, your efforts are most appreciated.

To my supervisor Mrs. Seejore Biltoo, thank you for your time, comments and guidance which helped improve this essay.

Many thanks to the LLM 2010 class for the memories, the debates, the jokes and the lifelong bond formed as we join hands and dreams to make the Continent a better place.

I am extremely grateful to my family, who kept me going during the dark nights when it seemed like morning will never come. To my mum, thank you for passing on to me your love for reading and books, the value of education and the need to persevere no matter how tough things turn out to be. You are my counselor, mentor, friend and confidante and your spiritual guidance especially this year is most appreciated. To my dad, thank you for your sacrifices, and guidance which laid the foundation for me to strive to add value to myself. To my siblings thank you for your support, love and efforts to help me straighten my path in life whenever it got 'crooked'.

Last but not the least, to the friends, and special ones whose support and words of encouragement through text messages, phone calls, emails and more kept me smiling at the storm.

God Bless you all.

'The gem cannot be polished without friction, nor man be perfected without trials' - Danish Proverb

TABLE OF CONTENTS

Preliminaries

Declarations	i
Acknowledgements	ii
Table of Contents	iii
List of abbreviations	v

CHAPTER I: CREATING THE CONTEXT FOR AN EXAMINATION OF WOMEN'S PROPERTY RIGHTS

1 Introduction	1
1.1 Background and justification	1
1.2 Statement of the problem	4
1.3 Research questions	5
1.4 Objectives of the study	5
1.5 Significance of the study	5
1.6 Methodology	6
1.7 Delineations and Limitations	6
1.8 Literature review	6
1.9 Overview of the chapters	7

CHAPTER II: LEGAL AND CONCEPTUAL FRAMEWORK ESTABLISHING WOMEN'S PROPERTY RIGHTS

2 Introduction	8
2.1 International Human Rights Framework	8
2.1.1 Universal Declaration of Human Rights	9
2.1.2 International Covenant on Civil and Political Rights	9
2.1.3 Convention on the Elimination of All Forms of Discrimination Against Women	9

2.2 Regional Framework	11
2.2.1 The African Charter on Human and Peoples' Rights	11
2.2.2 The African Charter on Human and Peoples' Rights on the Rights of Women in Africa	11
2.3 The Conceptual Framework	12
2.3.1 Understanding 'property'	12
2.3.2 The concept of rights	13
2.3.3 Women's right	14
2.3.4 Contextualising Gender	15
2.3.5 Contextualising feminism	16
2.3.6 The concept of marital property rights and marital property regimes	17
2.4 Concluding remarks	19

CHAPTER III: OVERVIEW OF THE EXISTING LEGAL FRAMEWORK REGULATING PROPERTY RIGHTS ON DIVORCE IN GHANA **20**

3 Introduction	20
3.1 Ghana's legal system	20
3.1.1 Marriage	20
3.1.2 Marriage forms in Ghana	21
3.1.3 Property Rights in Ghana	22
3.1.4 Divorce and determination of property interest	23
3.2 The Matrimonial Causes Act and its effect on property rights	25
3.2.1 Case law and principles developed from application	28
3.2.1.1 Property interests of spouses at customary law	28
3.2.1.2 Property interests of spouses under the Marriage Ordinance	29
3.2.1.3 Property interests under the Mohammedans Ordinance	30
3.2.1.4 Current progressive decisions	31
3.3 Identified gaps arising from application of the law	31

3.4 Sociological effect of judicial interpretation and application of the law	32
3.5 The Constitution and extent of protection offered	33
3.6 Concluding remarks	34
CHAPTER IV: THE PROPERTY RIGHTS OF SPOUSES BILL	36
4 Introduction	36
4.1 The Bill	36
4.1.1 Overview of the Bill	37
4.1.2 The Bill and similar property regulating laws	40
4.1.3 Innovative provisions of the Bill	41
4.1.4 Identified issues not addressed by the Bill	43
4.1.5 Prospective challenges to the Bill	45
4.2 Concluding remarks	46
CHAPTER V: CONCLUSION AND RECOMMENDATIONS	47
5.1 Summary of findings	47
5.2 Conclusion	48
5.3 Recommendations	48
Bibliography	50
Annexure 1: The Property Rights of Spouses Bill	57
Annexure 2:	
(a) Email from Barbara Ayesu, of Lawa, Ghana	75
(b) Email from Agnes Quartey-Papafio, Legislative Drafting Section, Ministry of Justice and Attorney-General's Department, Ghana	76

LIST OF ABBREVIATIONS

AWLA	African Women's Lawyers Association
CAP 127	Ordinance Number 14 of 1884 entitled Marriage Ordinance
CAP 129	Ordinance Number 21 of 1907
CEDAW	Convention of the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CPR	Community property regime
DEVAW	Declaration on the Elimination of Violence against Women
DV Act	The Domestic Violence Act of Ghana (2000)
FIDA	Federation of Women Lawyers, Ghana
GTZ	German Development Cooperation
ICCPR	International Covenant on Civil and Political Rights
LAWA (Ghana)	Leadership and Advocacy for Women in Africa
LRC	The Law Reform Commission of Ghana
MCA	Matrimonial Causes Act of 1971 (Act 367).
MPR	Marital property rights
PRS	Property Rights of Spouses
The Bill	Property Rights of Spouses Bill
SPR	Separate property regime
The African Charter	The African Charter on Human and Peoples' Rights
The Constitution	The Constitution of Ghana (1992)
The Oxford Dictionary	The Concise Oxford English Dictionary
The Women's Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
UDHR	Universal Declaration on Human Rights
UN	United Nations
WiLDAF	Women in Law and Development in Africa
WPR	Women's Property Rights

CHAPTER I: CREATING THE CONTEXT FOR AN EXAMINATION OF WOMEN'S PROPERTY RIGHTS

1 INTRODUCTION

1.1 Background and justification

Ghana has ratified international instruments that promote respect for and enjoyment of rights of all persons including women. This includes the right of men and women of full age to marry and found a family and its subsequent entitlement to equal rights as to marriage, during marriage and at its dissolution.¹ Article 23 of the International Covenant on Civil and Political Rights (ICCPR)² goes further as to place a responsibility on states to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. Article 16(c) and (h) of the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW)³ also reiterates this and sets out in clear terms that states must ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. At the regional level, Article 7(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Women's Protocol)⁴ also provides that in case of separation or divorce, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage. Relating the above provisions to women, it is evident that in addition to the right to marry, women have a right to own property during marriage, and a right to access and ownership of such property on separation or divorce and state parties are bound to ensure the protection of this right.

In Ghana, the coming into force of the Constitution,⁵ in addition to affirming the property rights of spouses (PRS) on divorce, has also enhanced the legal, constitutional and statutory obligation of the State to protect women's property rights (WPR) on divorce as well. In addition to protection from discrimination and other relevant and related rights, the Constitution in Article 22(2) provides that Parliament must enact legislation regulating PRS. Article 22(3) adds that:

With a view to achieving the full realisation of the rights in the law to be enacted, spouses shall have equal access to property jointly acquired during marriage; and assets which are jointly

¹ Universal Declaration of Human Rights (Universal Declaration) (1948) Art 16(1).

² ICCPR (1976). Ratified by Ghana in September 2000.

³ CEDAW (1981). Ratified by Ghana in February 1986.

⁴ The Women's Protocol (2005). Ratified by Ghana in 2007.

⁵ The Constitution of Ghana (1992).

acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.

To this end, the Property Rights of Spouses Bill (the Bill)⁶ has been drafted as directed by Article 22(2) with the aim of ensuring the right of spouses (and women more so) to enjoy property rights on divorce.

To understand the concept of 'property rights' one needs to understand what 'property' entails and what 'rights' mean. 'Property may be described as comprising all forms of property movable or immovable, corporeal or incorporeal, other than freehold estates and interests in land.'⁷ This is also linked with the concept of ownership and in this regard ownership of private property. To this end, it has been suggested that 'the position of a private owner is best understood not as a single right to the exclusive use and control of the object in question, but as a bundle of rights, which may vary from case to case.'⁸ A right or rights can be explained as 'the unimpeded freedom to do or to not do something,'⁹ or can refer to 'the interest possessed by law or custom in some intangible thing.'¹⁰ One can thus say that 'property rights' involve the liberty of possessing those bundles of rights in relation to property. Within the context of this essay, property rights will mostly be used to refer to the right of women to own property which has been jointly acquired during marriage.

PRS has usually been regulated by two main regimes. These are community of property regime (CPR) and separate property regime (SPR). CPR creates a legal presumption that all income or every asset acquired by either spouse during the marriage belongs equally to both and therefore subject to division on that basis in the event of divorce.¹¹ SPR on the other hand works on the legal presumption that individual assets, incomes or pensions belong to whichever spouse paid for it, earned it, is on title or to whom the asset was gifted and is not subject to sharing with the other spouse.¹² It is worth noting that spouses may opt out of any regime or

⁶ The Bill (October 2009). See annexure 1.

⁷ The Law Reform Commission of Ghana 'Report on the Law Regulating Property Rights of Spouses' 10. Quoting Halsbury's Laws of England 3(1960) (29) 355.

⁸ Stanford Encyclopaedia of Philosophy 'Property and Ownership' at <http://plato.stanford.edu/entries/property/> (accessed 7 October 2010).

⁹ E Curran 'Hobbes's Theory of Rights: A Modern Interest Theory' (2002) 6 *The Journal of Ethics* 65.

¹⁰ <http://wordnetweb.princeton.edu/perl/webwn?s=rights&sub=Search+WordNet&o2=&o0=1&o7=&o5=&o1=1&o6=&o4=&o3=&h=000000000000> (accessed 8 October 2010).

¹¹ <http://www.duhaime.org/LegalDictionary/Category/FamilyLawDictionary.aspx> (accessed 5 July 2010).

¹² Same as above.

create a hybrid of regimes through special marital contracts or agreements which can be executed before or during the union.

Determining property rights as envisioned by the legal instruments mentioned above can only be done within the context of marriage and divorce. Gaye and Njie quote Bromley in defining marriage, 'as the ceremony by which a man and woman become husband and wife; or the act of marrying and the relationship existing between husband and wife or the state of being married.'¹³ Divorce on the other hand can be referred to as any legal and formal dissolution of marriage.¹⁴

In Ghana, according to Kuenyehia and Aboagye,¹⁵ before 1884, there was only one legally recognised marriage which was marriage under customary law. They add that two other statutory marriage forms were added through two pieces of legislation. These were Ordinance Number 14 of 1884 entitled Marriage Ordinance (CAP 127 as amended) and Ordinance Number 21 of 1907 (now CAP 129) entitled Marriage of Mohammedans Ordinance. There are therefore currently three systems of marriage recognised by law in Ghana.

- Marriage under Customary Law,
- Marriage under Marriage Ordinance,
- Marriage under the Marriage of Mohammedan Ordinance.¹⁶

In practice, marriages under customary law and marriages under the Marriage of Mohammedan Ordinance are potentially polygamous whereas marriages under the Marriage Ordinance are monogamous. These marriages are all governed by requirements which regulate their formal validity in terms of how they must be celebrated, as well as rules on dissolution through divorce.

Despite the many rights that accrue to spouses during marriage, traditional concepts of marital rights did not acknowledge contributions that wives made to the acquisition of family wealth.¹⁷ This position is seen in the decision of *Quartey v. Martey* where the court held that:

¹³ A Gaye & M Njie 'Family Law in Gambia' in Akua Kuenyehia (ed) *Women and Law in West Africa Situational Analysis of Some Key Issues Affecting Women* (2004) 2.

¹⁴ Gaye & Njie (n 13 above) 14.

¹⁵ A Kuenyehia & EO Aboagye 'Family Law in Ghana and its Implications for Women' in Akua Kuenyehia (n 13 above) 23.

¹⁶ Kuenyehia & Aboagye (n 15 above) 25.

¹⁷ Kuenyehia & Aboagye (n 15 above).

By customary law it is the domestic responsibility of a man's wife and children to assist him in carrying – out his station of life, e.g. farming or business. The proceeds of this joint effort of man and wife, and any property which the man acquires with such proceeds are...the individual property of the man.¹⁸

It is evident that this traditional view of women's interest in marital property invariably affected the manner in which such property was distributed if at all on divorce. The practice was usually for women to be compensated than to be given their fair share of property they had helped to acquire. The only change in modern times has been that the courts in making a determination of interest irrespective of the marriage form rely on proof of financial substantial contribution.¹⁹ A situation which has unfortunately worked to the detriment of women's right to enjoy their property rights as enshrined in the relevant human rights instruments.

1.2 Statement of the problem

More women are gaining access to education, employment and money. Women's contributions to the acquisition of marital property have thus increased and now encompass more varied and appreciable forms from purchasing of matrimonial homes and other assets to maintenance of the home through payment of utilities, school fees and food.²⁰ In the case of *Bentsi Enchill*,²¹ the court noted that:

In recent years the wife is often the wage earner and makes contributions towards the common expenses by buying for and running the home. Judicial opinion today shows that the trend is to give credit to the wife for her services in kind as a housekeeper or for the use of her own income or services in such a way as to enable her husband to use his for the purchase of a house.

Determination of PRS on divorce for cases brought to the courts is governed by the Matrimonial Causes Act (MCA).²² It applies to all marriage forms, and gives the courts wide discretionary powers to make awards of property settlement.²³ Also inspite of Article 22, the courts have continued to rely on principles of equity and requirements of substantial financial contribution by

¹⁸ *Quartey v. Martey* [1959] GLR 377.

¹⁹ *Enchill v. Bentsi Enchill* [1976] 2 GLR 303.

²⁰ This is not to say that contributions of women with less or no education to the acquisition of marital property should not be appreciated and protected.

²¹ *Bentsi Enchill* (n 19 above). Despite the court's pronouncement it refused to award beneficial interest of the property to the wife on grounds that there was no proof of substantial financial contribution.

²² Matrimonial Causes Act of 1971 (Act 367).

²³ C Dowuona - Hammond 'Property Rights of Women in Ghana' (2006) 6 *Access to Justice Series* 21.

spouses asserting an interest in property acquired during the marriage. It is in few instances that the Constitutional provision has been mentioned and this has been in High Courts whose decisions are not binding. Thus, it is the existence of misguided judicial activism and the lack of recognition of WPR on divorce which calls for the need to examine the extent of protection offered by the current legal framework, and the extent to which the Bill will meet any gaps identified.

1.3 Research questions

The research questions to be addressed are:

- i. Is there an international human rights or conceptual framework which justifies WPR on divorce?
- ii. What is the existing legal framework in Ghana regulating WPR?
- iii. What is the adequacy of that framework?
- iv. What are the effects of the gaps in protection?
- v. Will the Bill provide a better framework for the protection of WPR?

1.4 Objectives of the study

- a) To provide justification for the recognition of WPR on divorce.
- b) To present an overview of the existing legal framework on WPR.
- c) To examine the adequacy of the framework and its effect on women.
- d) To examine the Bill and determine whether it will provide a better framework for the protection of WPR in Ghana.
- e) To proffer recommendations to ensure a more effective Bill and law when passed.

1.5 Significance of the study

In an attempt to fulfill Article 22(2) which requires that legislation be enacted to regulate PRS, a Bill has been drafted, approved by Cabinet and is currently being considered by two

Committees in Parliament.²⁴ It is this Bill in addition to other reasons already stated which provide the need to undertake research to capture the extent to which the Bill when passed into law will provide a better framework for the protection of WPR. This essay will therefore be of key importance to the process of drafting and passage of the Bill as it stands to add to academic literature available on the subject to be accessed by students, policy makers, women's rights activists and the general populace.

1.6 Methodology

This research will be based on analysis of materials gathered through desktop and library research. These include international and regional human rights instruments, existing legislation, case law, relevant background materials, textbooks, laws, journals and internet sources. In determining the adequacy of the existing legislation, the Constitutional provision and other information gathered from sources relying on relevant women centered socio-legal tools and constructs like feminism, gender, and women's human rights framework will form the basis for any determination made. These will provide the context and basis for analysis and deductions. Any comparative elements of the exercise will feed into recommendations.

1.7 Delineations and Limitations

This essay deals specifically with WPR on divorce as garnered from cases brought to the courts. In discussing the Bill also, the discussion will be limited to the version submitted to and approved by Cabinet. Also envisaged as potential challenges are the timeframe within which this exercise must be conducted and inaccessible information pertaining to the area of focus.

1.8 Literature review

The 'Position paper on Property Rights of Spouses',²⁵ the 'Concept paper on the Property Rights of Women',²⁶ the 'Paper prepared for a Consultation on Article 22(2) of the Constitution',²⁷ all touch on the recognition of equality of rights, the gaps in the protection of

²⁴ Emails from Barbara Ayesu and Agnes Quartey-Papafio on 18 October 2010. See annexure 2a and 2b.

²⁵ Prepared by the Projects Committee of the African Women's Lawyers Association (AWLA).

²⁶ Researched by Nana Oye Lithur for AWLA.

²⁷ A Kuenyehia 'Paper prepared for a Consultation on Article 22(2) of the 1992 Constitution' (1998).

WPR on divorce and the need for a law to be drafted. They all make some recommendations on areas which should be captured in such a law, but are not exhaustive.

The 'Access to Justice Series Number 6 on Property Rights of Women in Ghana'²⁸ provides a discussion on WPR in Ghana, the current legal framework and its attendant issues. Some of its recommendations are captured in the Bill, however it lacks any analysis of the Bill and does not provide any comparison with other property regulating laws on the continent.

'The Recommendations for Legislative Reform: Equal Marital Property Distribution at Divorce'²⁹ also discusses some background information on marital property distribution on divorce. It even goes a step further to propose a draft statute based on a comparative analysis of the property rights regime in the United States and England. Despite the laudable attempt, this draft only goes so far as to touch on four areas which though key are not the only considerations to be looked at.

1.9 Overview of the chapters

Chapter one sets the context for the study and the structure of the essay. **Chapter two** presents the international instruments which recognise WPR and the conceptual framework from which such recognition is derived. **Chapter three** presents an overview of the existing legal framework regulating WPR on divorce, its adequacy and the effect of any gaps. **Chapter four** presents the Bill, the key and innovative provisions, and an analysis of whether it provides a better framework for the protection of WPR on divorce. **Chapter five** presents conclusions of the study and recommendations on how best WPR can be better protected within the framework of the Bill.

²⁸ Dowuona - Hammond (n 23 above).

²⁹ LAWA (Ghana) Alumnae Incorporated in Partnership with International Women's Human Rights Clinic of the Georgetown University Law Centre 'Legislative Project No2 (2000).

CHAPTER II: LEGAL AND CONCEPTUAL FRAMEWORK ESTABLISHING WOMEN'S PROPERTY RIGHTS

2 Introduction

This chapter will examine the legal framework at both the international and regional levels which protect and provide for WPR on divorce. It will also examine the conceptual framework within which this right operates and the content of the right to property. Such an exercise is relevant because as has been pointed out:

Existing theories, compilations, and prioritizations of human rights have been constructed after a male model; and when women's life experiences are taken equally into account, these theories, compilations, and prioritizations change significantly.³⁰

It is thus important for the impact they have had on the development and recognition of women's rights to touch on them albeit briefly.

2.1 International Human Rights Framework

This refers to conventions, declarations, treaties, principles and norms put in place by the international community since the onset of the UN which place obligations on all states 'to respect, protect and fulfill'³¹ the human rights of all persons. Some of the instruments like the Universal Declaration provide for general rights. Others like the ICCPR speak to more specific civil and political rights. Whiles some like CEDAW provide for the enjoyment of the rights of specific categories of persons being women and girls. Irrespective of the focus of any human rights instrument, there is a common thread based on the pillars of human rights which are the inherent nature of human rights, its inalienability, the abhorrence of discrimination and the respect for equality.

³⁰ SM Okin 'Feminism, Women's Human Rights, and Cultural Differences' (1998) 13 *Hypatia* 34, 35.

³¹ M Sepulveda et al *Human Rights Reference Handbook* (2004) 16.

2.1.1 Universal Declaration of Human Rights

The Universal Declaration is the 'earliest comprehensive human rights instrument adopted by the international community.'³² Its norms and principles protect the enjoyment of all rights by all persons and sets out the basis for non-discrimination of persons on various grounds including sex.³³ Article 16 provides for rights specific to the family and marriage. It advocates for the entitlement of 'equal rights by both sexes as regards to the marriage, during marriage and at its dissolution.' In other words whatever rights accrue to a man by virtue of marriage or during the course of the marriage and during its dissolution should equally apply to a woman. Also guaranteed in Article 17, is the right of all persons 'to own property alone as well as in association with others.'

2.1.2 International Covenant on Civil and Political Rights

The ICCPR touches specifically on the issue of the family and marriage in Article 23. Of most importance to the issue of women's rights on dissolution of the marriage is Article 23(4). It reiterates Article 16 of the Universal Declaration and places a responsibility on states 'to take appropriate steps to ensure equality of such rights and responsibilities. It is submitted that appropriate steps as suggested will include administrative, constitutional, legislative, judicial and other legal measures which may seek to repeal discriminatory laws, ensure respect and protection for women's rights and promote societal and attitudinal change in so far as their rights and responsibilities during divorce is concerned.

2.1.3 Convention on the Elimination of All Forms of Discrimination Against Women

CEDAW has been labeled as an important international 'bill of rights' for women. 'The substance of CEDAW is based on three interrelated core principles: equality, non-discrimination and state obligation.'³⁴ CEDAW, places an obligation on states to:

Adopt appropriate measures to abolish existing laws, regulations, customs and practices that are discriminatory against women and to establish legal protection of the rights of women on an equal basis with men.³⁵

³² Sepulveda et al (n 31 above) 20.

³³ Universal Declaration (n 1 above) Art 2.

³⁴ 'What is CEDAW' <http://www.iwraw-ap.org/convention.htm> (accessed 8 October 2010).

It provides an exhaustive definition of the concept of discrimination against women and provides a framework within which public and private acts could be measured against and considered as discriminatory because of the effect such acts may and do have on the rights and fundamental freedoms of women.

CEDAW 'places a strong emphasis on the concept of equality in family matters'³⁶ and specific to the issue of marriage and property rights provides that 'state parties shall take appropriate measures to eliminate discrimination and ensure the same rights and responsibilities during marriage and its dissolution,'³⁷ and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.'³⁸

The CEDAW Committee in shedding more light on the rights captured in Article 16 provides that 'the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people.'³⁹ The Committee specifically refers to how women have faced discrimination and challenges as a result of the sort of systems and regimes governing marriage in states like Ghana which are party to the Convention. In paragraph 17, the Committee provides that:

Countries in their legal systems provide for rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, rather than by complying with the principles contained in the Convention. These variations in law and practice relating to marriage have wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage.

Specific to Ghana, the Committee has expressed its concern about women's unequal status in marriage and family matters owing to customary and traditional attitudes and has urged the State to harmonise its civil, religious and customary law with Article 16 of CEDAW.⁴⁰

³⁵ O Traore *Compendium of Key Instruments for African Women's Human Rights* (2009) 16.

³⁶ AS Fraser 'Becoming Human: The Origins and Development of Women's Human Rights' (1999) 21 *Human Rights Quarterly* 857.

³⁷ CEDAW (n 3 above) Art 16 (c).

³⁸ CEDAW (n 3 above) Art 16 (h).

³⁹ Committee on the Elimination of Discrimination against Women, General Recommendation 21, Equality in marriage and family relations (1992) para 13.

⁴⁰ Concluding comments of the Committee on the Elimination of Discrimination against Women: Ghana (2006) para 35, 36 at <http://www.un.org/womenwatch/daw/cedaw/cedaw36/cc/Ghana/0648072E.pdf> (accessed 27 October 2010).

2.2 Regional Framework

2.2.1 The African Charter on Human and Peoples' Rights

The African Charter (1986) provides a regional framework and standard for the recognition, respect, protection and promotion of human rights in Africa. Though it provides for rights in general, issues specific to the experiences of African women, are captured in Article 18. Article 18(3), provides that the state shall ensure elimination of discrimination against women and also ensure the protection of their rights as stipulated in international declarations and conventions. Specific to the right to property Article 14 provides that the right to property shall be guaranteed.

2.2.2 The African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The Women's Protocol is 'a landmark step in enhancing the promotion and protection of women's rights on the continent through providing a comprehensive legal framework for holding African governments accountable for their violation.'⁴¹ It reaffirms the various instruments which provide for the respect of women's rights, and has been described as 'the first instrument in international law which explicitly enshrines women's sexual and reproductive right to medical abortion in certain instances.'⁴²

Article 6 requires state parties to ensure that women and men are regarded as equal partners in marriage and should enjoy equal rights. Article 7 provides that state parties should ensure the same rights in separation and divorce. To this end, state parties are to ensure that in addition to both parties being granted the same rights to seek separation, divorce or annulment of a marriage; in any of those instances both parties shall have the right to an equitable sharing of the joint property deriving from the marriage.⁴³

⁴¹ AK Njoroge 'The Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights (The Maputo Protocol)' (2005) at <http://www.npwj.org/FGM/Other-Papers-presented-Conference.html> (accessed 8 October 2010).

⁴² R Gaway & RS Mukasa 'The African Women's Protocol: A New Dimension for Women's Rights in Africa (2005) 13 *Gender and Development* 42.

⁴³ The Women's Protocol (n 4 above) Art 7(d).

From the human rights framework captured above, there is no doubt that women's right to property on divorce is guaranteed.

2.3 The Conceptual Framework

2.3.1 Understanding 'property'

John Locke is credited with developing the most interesting theory on property.⁴⁴ He is attributed with having made the assertion that man has property in his own person; and when man takes from the state that which nature has provided and mixes his labour with it, it becomes his property [paraphrased].

In defining what property is, Reed explains that the word 'property' derives from the Latin *proprietas*, or "ownership," which is in turn derived from *proprius*, which means "own" or "proper."⁴⁵ Property has been described as:

That sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.⁴⁶

This definition however fails to take account of collective and joint property regimes which regulate ownership or interests in property involving more than one person. The Law Reform Commission Report (LRC Report) quotes the Dictionary of English Law as defining property as:

Signifying things or rights considered as having money value, especially with reference to transfer or succession, and to their capacity of being injured. Property includes not only ownership, estates and interests in corporeal things but also rights such as trademarks, copyrights, patents and rights in personam capable of transfer or transmission such as debts.⁴⁷

⁴⁴ Stanford Encyclopaedia of Philosophy (n 8 above).

⁴⁵ OL Reed 'What Is "Property"?' (2004) 41 *American Business Law Journal* 468.

⁴⁶ BG Carruthers & L Ariovich 'The Sociology of Property Rights' (2004) 30 *Annual Review of Sociology* 23.

⁴⁷ LRC Report (n 7 above) 10.

American Jurisprudence also adds that such an interest can be transferred to another and 'it extends to every species of right and interest capable of being enjoyed upon which it is practicable to place a money value.'⁴⁸

In sum, property can be said to be anything which a person is capable of owning. Ownership here is deemed to refer to the interest in the bundle of rights. Such rights including the rights to possess, use, manage, generate income, consume or destroy, alienate, and to transmit through devise and bequeath,⁴⁹ can all be exercised over things which are tangible or intangible, movable or immovable or comprising of assets or liabilities.

2.3.2 The concept of rights

'Rights' are defined in the Concise Oxford English Dictionary (The Oxford Dictionary)⁵⁰ as 'a moral or legal entitlement to have or do something'. They can alternatively be described as a liberty of doing or possessing something consistent with the law.⁵¹ The word 'rights' has been associated with the concept of human rights which is 'based on the belief that every human being is entitled to enjoy rights without discrimination.'⁵² Human rights are thus characterised as being:

Inherent in all human beings by virtue of their humanity alone (they do not have, *e.g.*, to be purchased or to be granted); inalienable (within qualified legal boundaries); and equally applicable to all.⁵³

Putting the two concepts together, property rights can thus be described as the freedom or right to deal with property or own property because one can be identified as vested with the interest by law or custom in the bundle of rights associated with the said property. This is inherent in all humans and is an inalienable right which is applicable to all. Therefore as humans, women are entitled to enjoy their property rights. This they can do within any legal qualified boundaries of the extent to which this right can be enjoyed.

⁴⁸ JM Krauskopf 'Marital Property at Marriage Dissolution' (1978) 43 *Missouri Law Review* 160. This cites 63 American Jurisprudence 2d 291 Property section 4. See also the Inter-American Court case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* IACHR, Report No 27/98, which defines property as 'those material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value.'

⁴⁹ OL Reed (n 45 above) 472.

⁵⁰ The Oxford Dictionary (2008).

⁵¹ LRC Report (n 7 above) 11.

⁵² Sepulveda et al (n 31 above) 6.

⁵³ Same as above.

As already stated, the focus on property rights within this essay is on the right of women to an equitable interest in property jointly acquired during marriage at divorce.

2.3.3 Women's right

The idea of a sense of equality of all men has existed for centuries. However, this thought of human equality has been slow in catching on in so far as recognizing women's equality and women's right is concerned.

Fraser quotes Joan Kelly as attributing the establishment of the basic postulates of feminism to Pizan (who wrote *Le Livre de la Cite des Dames* (The Book of the City of Ladies)), thereby followed by other writers like Astell who is credited with defining patriarchy and its attributes by attacking marriage as an institution that served to keep women subordinate.⁵⁴ He continues that by the time the UN was formed, a critical mass of women had been educated and had obtained enough legal and social freedom to participate in public life, even at the international level.⁵⁵ It is the culmination of the efforts of all these happenings which have resulted in the development of specific instruments like the Declaration on the Elimination of Violence against Women (DEVAW).⁵⁶

Despite these efforts, women's experiences and rights were excluded from international debates and statements on human rights. A situation attributed to the fact that human rights were narrowly defined to cover violations of civil and political rights.⁵⁷ Bunch explains that excuses made for the lack of attention to women's issues include:

- (1) Sex discrimination is too trivial, or not as important, or will come after larger issues of survival that require more serious attention;
- (2) Abuse of women, while regrettable, is a cultural, private, or individual issue and not a political matter requiring state action;
- (3) While appropriate for other action, women's rights are not human rights per se.⁵⁸

⁵⁴ Fraser (n 36 above) 855.

⁵⁵ Same as above.

⁵⁶ Fraser (n 36 above) 895.

⁵⁷ DL Hodgson 'Women's Rights as Human Rights: Women in Law and Development in Africa (WILDAF)' (2002) 49 *Africa Today* 5.

⁵⁸ C Bunch 'Women's Rights as Human Rights: Toward a Re-Vision of Human Rights' (1990) 12 *Human Rights Quarterly* 488.

Now in recent times, a new paradigm of 'women's rights as human rights' has emerged as a new transnational approach to demanding women's empowerment.⁵⁹ Bunch identifies these approaches as including:

Taking women's needs into consideration as part of the already identified and existing rights like civil and political rights as well as socio-economic rights, the creation of new legal mechanisms to counter sex discrimination like the advent of CEDAW and a feminist transformation of human rights which involves questioning how the human rights framework can be changed to make it more responsive to the needs of women.⁶⁰

It is this approach of identifying women's rights as human rights which has highlighted demands for the rights of women within existing rights like property rights; and succeeded in the campaign of developing a framework like CEDAW which currently is considered as a transformative framework within which women's rights can be better achieved.

2.3.4 Contextualising Gender

The definition of gender has always been juxtaposed against the definition of sex probably with the aim of better clarifying what gender is. Sex can be described as a biological construct whiles gender can be described as a social construct. Thus, whereas:

Sex is biologically defined, determined by birth, universal and unchanging, gender is a socially constructed, difference within and between cultures, and includes variables identifying differences in roles, responsibilities, opportunities, needs and constraints.⁶¹

Gender is important because it is a:

Useful analytic concept which is both complex and relational in indentifying through various areas the inequalities women face not as a result of their sex, but as a result of the roles the societies they live in place on them and the effect of such on their ability to negotiate for a recognition of their rights and existence as equal partners both in the public and private spheres.⁶²

⁵⁹ Hodgson (n 57 above) 3.

⁶⁰ Bunch (n 58 above) 493-497.

⁶¹ United Nations Development Programme 'Gender Approaches in Conflict and Post-Conflict Situations' (2001) 4 at <http://www.undp.org/women/docs/gendermanualfinalBCPR.pdf> (accessed 25 September 2010).

⁶² AG Mazur *Theorizing Feminist Policy* (2002) 10.

Also associated with the concept of gender is that of patriarchy which refers to male domination and to the power relations by which men dominate women. This has also been described as 'a theoretical tool for explaining women's oppression.'⁶³

It is from the development of gender and related concepts like gender equality, gender discrimination and gender analysis that a better understanding of women's experiences have been gained. Gender therefore creates a relevant context within which additional justification can be sought to protect the rights of women. Indeed to the extent of WPR, this has been described as a gender equity issue since it seeks to extend to women, rights already enjoyed by men.⁶⁴

2.3.5 Contextualising feminism

The jury is still out on providing an unassailable definition of what feminism is or as to whether feminism is synonymous to woman or whether a man can be a feminist. However, there is no denying that feminism can be seen as a movement or efforts to ensure recognition of women's equality in all spheres. Irrespective of the categorisation of feminism or feminists, some core ideas still resonate in their writings and influence their work. These are:

An understanding of women as a group within the context of the social, economic, and cultural diversity of women; the advancement of women's rights, status or condition as a group in both public and private spheres; and the reduction or elimination of gender-based hierarchy or patriarchy that underpins basic inequalities between men and women in the public and the private spheres.⁶⁵

Feminism as a school of thought has brought to the fore the extent to which 'questions not usually addressed within human rights dialogue and questions generated by the experience of women'⁶⁶ should be catered for within the human rights framework. There is no doubt that advances in the recognition and respect for women's rights has been largely influenced by feminist human rights activists. Their activities have expanded the notion of human rights, instigated the questioning of political and social foundations on which the notion of 'rights' rests,

⁶³ F Montgomery & C Collette *The European Women's History Reader* (2002) 45.

⁶⁴ ML Palley 'Women's Rights as Human Rights: An International Perspective' (1991) 515 *Annals of the American Academy of Political and Social Science* 163.

⁶⁵ Mazur (n 62 above) 3.

⁶⁶ G Binion 'Human Rights: A Feminist Perspective' (1995) 17 *Human Rights Quarterly* 509-526.

undermined the distinction between public and private and challenged the social contract that is the basis for such distinctions.⁶⁷ Feminism is accordingly relevant to the extent that it has provided a standpoint from which to critique and change legal structures and the substance of the law.⁶⁸

2.3.6 The concept of marital property rights and marital property regimes

Marital property rights (MPR) covers a vast multitude of rights or interests conferred by law on persons who occupy the status of spouse.⁶⁹ It refers to the interests spouses enjoy in property accumulated for the purpose of marriage or during the marriage. Hence, property acquired even before marriage by a couple for the purposes of enhancing their marriage could be considered as marital property. So also is property acquired during marriage for the use and benefit of the union. MPRs and marital property regimes are of importance during the course of the marriage but most importantly in this context on divorce.

MPRs are of concern now in the discourse on women's rights because there is growing awareness of the need to appreciate women's activities in the house as equivalent to monetary contribution. Also, women are in the position to earn a living and contribute substantially to the acquisition of property and to the welfare of the family. As far back as 1976, Max Rheinstein wrote that 'the old division of labour between the sexes is breaking down, and "housewife" marriage is no longer the general model. Double-earner marriage is beginning to prevail as industrialization proceeds.'⁷⁰ It is submitted that as women have gained the capacity to contribute to the acquisition of property and as more sacrifices made by women in the interest of the marriage have invariably diminished their earning capacity, what they are entitled to at divorce has become more relevant.

The determination of what interest a spouse has is usually regulated by the property regime in operation in a legal system. The two main property regimes in relation to marital property are the community property regime (CPR) and the separate property regime (SPR).⁷¹ According to the Oxford Dictionary,⁷² separate means not 'joined' or 'united with others' and

⁶⁷ S Bahar 'Human Rights Are Women's Right: Amnesty International and the Family' (1996) 11 *Hypatia* 107.

⁶⁸ C Kramarae & D Spender *Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge* (2000) 1194.

⁶⁹ LW Waggoner 'Marital Property Rights in Transition' (1994) 59 *Missouri Law Review* 23.

⁷⁰ M Rheinstein 'Division of Marital Property' (1975-1976) 12 *Williamette Law Journal* 417.

⁷¹ Waggoner (n 68 above) 24.

⁷² The Oxford Dictionary (n 50 above).

community means 'having interests in common' or 'joint ownership or liability.' To further illustrate:

In the SPR, one's marital status does not affect the ownership of property as each spouse owns all that he or she earns. With the CPR however, each spouse acquires an ownership interest in half the property the other spouse earns during marriage regardless of how the property is nominally titled.⁷³

Despite the basic operating rules of the different property regimes, spouses can through mutual consent regulate their rights. Spouses in a CPR legal system can explicitly agree not to be regulated by such while spouses in an SPR legal system can opt for joint ownership rights by operating joint accounts, outright gifts or joint tenancies.⁷⁴

In explaining the benefits or otherwise of the two regimes, Waggoner says that whereas CPR reinforces a married spouse's sense of participation in the marriage and ownership of the marital estate, separate property tends to place the nonpropertied spouse in a subordinate position.⁷⁵ CPR, also seen as an equitable distribution concept has been largely accepted because in a sense it appropriately reflects the partnership aspects of contemporary marriage.⁷⁶

Another regime is the universal community regime where each spouse owns a half interest in all the property of the other spouse regardless of the property's source or time of acquisition.⁷⁷ There are also variations of the CPR like the deferred community regime, community of gains, and limited community of property.

Traditionally, property rights institutions have favoured men over women and property laws, in many countries, treat men as household heads who enjoy complete control of family property.⁷⁸ This situation is no longer tenable and is contrary to the provisions of CEDAW.⁷⁹ The CEDAW Committee states that:

⁷³ Waggoner (n 68 above) 24.

⁷⁴ Waggoner (n 68 above) 27.

⁷⁵ Waggoner (n 68 above) 25.

⁷⁶ JT Oldham 'Is the Concept of Marital Property Outdated?' (1983-1984) 22 *Journal of Family Law* 266.

⁷⁷ Waggoner (n 69 above) 26.

⁷⁸ S Pandey 'Rising Property Ownership among Women in Kathmandu, Nepal: An Exploration of Causes and Consequences' (2010) 19 *International Journal of Social Welfare* 282.

⁷⁹ General Recommendations No 21 (n 39 above) para 17.

Restrictions which prevent women from holding property as the sole owners preclude them from the legal management of their own business or from entering into any other form of contract; and such restrictions seriously limit women's ability to provide for themselves and their dependants.⁸⁰

The importance of women's access to property which they are entitled to can therefore not be underestimated as it is evident that when women have access to property they, their children and society at large are better off. Consequently, knowledge of which property regime gives more advantages to women is necessary to enable legislators make provision for such in countries which decide to regulate PRS on divorce or separation.

2.4 Concluding remarks

Ghana has ratified the relevant instruments which provide for recognition of WPR on divorce. This means that the State has a responsibility to ensure that as provided in Article 5(a) of CEDAW, it takes appropriate measures 'to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Useful lessons can be learnt from the application of gender tools to relevant studies carried out in Ghana with a view to determining the MPR which will offer protection for married women and women in marriage-like situations. Irrespective of the choice, determination of MPR on divorce should seek to empower the female spouse, recognise her contribution to the union whether financial or otherwise and seek to ensure that she lives her life after the divorce with some level of dignity.

⁸⁰ General Recommendations No 21 (n 39 above) para 7.

CHAPTER III: OVERVIEW OF THE EXISTING LEGAL FRAMEWORK REGULATING PROPERTY RIGHTS ON DIVORCE IN GHANA

3 Introduction

This chapter will present an overview of the existing legal framework regulating PRS as well as its adequacy or otherwise. In trying to paint a better picture, an attempt will be made to first explain the complexity of Ghana's legal system before presenting a brief insight into marriage forms in Ghana and issues bordering on formal and essential validity as to celebration of and divorce of such marriages. The essay will then look at property interest determination at customary law, the application of the MCA and extent of protection offered to WPR.

3.1 Ghana's legal system

Ghana enjoys a plural legal system usually referred to as legal pluralism. This has been explained as 'the existence of multiple systems of legal obligation...within the confines of the state,'⁸¹ or 'the situation in which two or more laws interact'⁸² within a society. Evidence of Ghana's plural legal system is seen in the Constitution which provides that the laws of Ghana shall be made up of the Constitution, enacted laws, the existing laws and the common law.⁸³ It is from these laws that the current legal framework regulating PRS is obtained.

3.1.1 Marriage

Marriage ... is the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.⁸⁴

The case of *Hyde v Hyde* also adds that such a union is to the exclusion of all others.⁸⁵ Of course there is no gainsaying that this definition applies only to societies that practice monogamy and not polygamy. Irrespective of the form of marriage, 'the effect of the union is to

⁸¹ J Griffiths 'What is legal Pluralism' (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 9.

⁸² GR Woodman 'Part II. Urban Normative Fields: Concepts, Theories and Critiques Ideological Combat and Social Observation Recent Debate about Legal Pluralism' (1998) 42 *Journal of Legal Pluralism & Unofficial Law* 26.

⁸³ The Constitution (n 5 above) Art 11.

⁸⁴ 'Definition of marriage' at <http://www.heritage.org/issues/family-and-marriage/definition-of-marriage> (accessed on 2 October 2010).

⁸⁵ S Poulter 'The Definition of Marriage in English Law' (1979) 42 *The Modern Law Review* 409.

bestow the status of husband and wife on the parties, with the entire rights and obligations attendant upon that status.⁸⁶ These rights and obligations could be legal, economic and social. There are also expectations as to roles to be performed during the marriage and the extent of a spouse's interest (especially those of a wife) in property acquired during the marriage. Suffice it to say that the extent of recognition given to a wife's property rights during the course of the marriage could affect whatever interest she acquires on divorce.

3.1.2 Marriage forms in Ghana

There are three forms of marriages recognised in Ghana. These are marriage under Customary Law (Customary marriages),⁸⁷ marriage under Marriage Ordinance (Ordinance marriages)⁸⁸ and marriage under the Marriage of Mohammedan Ordinance (Mohammedan marriages).⁸⁹ In addition to these there are couples who though no marriage rites have been performed, cohabit for years and hold themselves out as husband and wife. The law does not recognize such unions as marriage and therefore does not offer any form of protection to the extent of any property rights accruing to them during and after that union.

Although national-level data on types of marriages are not readily available, evidence from small-scale surveys conducted throughout the country indicate that most marriages in Ghana are the traditional type.⁹⁰ This is because they are usually less expensive to contract.⁹¹

The three marriage forms have elements which must be met before a marriage will be considered to be valid. There are also procedures to be followed for divorce to be given the legal and formal recognition it deserves. Generally for all the three marriages 'the law currently indicates that only men and women aged eighteen years and above, who are not closely related by blood or through marriage, can lawfully enter into a marriage provided that other laws in force do not prohibit the relationship.'⁹²

⁸⁶ Kuenyehia & Aboagye (n 15 above) 25.

⁸⁷ S Minka-Premo 'Marriage Forms and Matrimonial Property Rights in Ghana' (2006) 7 *Access to Justice Series 7*. Customary law marriages are celebrated under customary law and are potentially polygamous. However, there is no limit to the number of wives a man can marry under this marriage type.

⁸⁸ Same as above. Ordinance marriage enables a man to marry only one woman and is based on Christian principles of monogamy.

⁸⁹ Same as above. Mohammedan marriages are based on Islamic rules and are potentially polygamous since a Muslim man can marry up to four women at a time.

⁹⁰ 'Ghana - Marital Processes and Types of Marriage' at <http://family.jrank.org/pages/706/Ghana-Marital-Processes-Types-Marriage.html> (accessed 27 October 2010).

⁹¹ Same as above.

⁹² Minka-Premo (n 87 above) 7.

In Ordinance marriages, both parties must at the time of the marriage have the capacity to be married to each other, marriage banns or notices must be published and the person officiating the marriage must be licensed and so should the place of the marriage.⁹³ In the event of a divorce, grounds for the divorce and property sharing arrangements must be in accordance with the MCA.

With Mohammedan marriages, it does not matter if the man is already married since such marriages are potentially polygamous. Such marriages must also be registered when celebrated under the said Ordinance and also on divorce.⁹⁴

In Customary marriages, the parties must agree to live together as man and wife, both families of the parties should consent to the marriage and the marriage must be consummated. Customary marriages are potentially polygamous, meaning the husband can marry other women. However customary marriages can be transformed into Ordinance marriages thereby converting the potentially polygamous marriage into a monogamous one. When it comes to divorce, grounds for the divorce may vary depending on the custom in a particular group. However, there are some which are common to most ethnic groups in Ghana.⁹⁵

3.1.3 Property Rights in Ghana

One can say that the system of property regime in Ghanaian marriages has largely been the SPR.⁹⁶ According to Kuenyehia and Ofei-Aboagye marriage has no effect on property acquired during the union because the notion of community property is unknown to customary law.⁹⁷ Instead each party keeps what is acquired through their own effort.⁹⁸ Dowuona-Hammond⁹⁹ provides that this principle also applies to Ordinance marriages. With Mohammedan marriages the Marriage of Mohammedans law does not make provision for the distribution of property on divorce. However:

⁹³ WE Ofei *Family Law in Ghana* (1998) 88.

⁹⁴ Kuenyehia & Aboagye (n 15 above) 30.

⁹⁵ Minka-Premo (n 87 above) 11.

⁹⁶ The SPR has been discussed under point 2.3.6.

⁹⁷ Indeed in the case of *Abebreseh v Kaah* [1976] 2 GLR 54, the Judge said '*it has been stated that the customary law does not admit of joint ownership by persons who are not related by blood.* But at the same time there is no positive rule of customary law which prohibits the creation of joint interests in property between persons not connected by blood...' (Emphasis mine)

⁹⁸ Kuenyehia & Aboagye (n 15 above) 32.

⁹⁹ Dowuona-Hammond (n 23 above).

Islamic law provides that married women can hold property in their own names or dispose of such independently. They can retain their separate estates, remain mistresses of their dowries and of any goods they may have acquired by inheritance, gift or by the fruit of their own labour and investment.¹⁰⁰

Indeed the dowry '*Malir*' paid to the woman is expected to be used to acquire her own property or to start her own trading activities.¹⁰¹

Dowuona-Hammond further provides that the form of property regime appears to be gender neutral (in the sense that both spouses can own property). However, implementation within the Ghanaian social and marital context, against the background of gender roles and relations within the home, tends to place wives at a greater disadvantage compared to their husbands.¹⁰² Also, despite the recognition of a woman's right to own property in her name, pronouncements from several cases¹⁰³ reiterated by Kuenyehia and Ofei-Abogaye¹⁰⁴ affirm the position that at customary law the wife is a dependent of her husband, she is required to work with or for her husband, and property acquired with such assistance is his individual property.

With the change in economic circumstances, though decisions made in current times to a large extent do not reflect the customary law position, they still fail to protect WPR.

3.1.4 Divorce and determination of property interest

It is the context of divorce which usually gives rise to the determination of property interests and division of property jointly acquired during the marriage. Siegel and Swanson in quoting the UN Statistical Commission's recommended definition of divorce, provide that:

¹⁰⁰ LRC Report (n 7 above) 26.

¹⁰¹ Same as above

¹⁰² Dowuona - Hammond (n 23 above) 8.

¹⁰³ *Adom v. Kwarley* [1962] 1 GLR 133. The court held that 'a wife who assisted her husband in his trade does not become a joint owner with the husband of what he earns or of any property he acquires with his earnings.' Again in *Clerk v Clerk* [1968] GLR 353, the court held similarly and added that 'since the wife's contribution was so indeterminate, it was impossible without speculation to determine whether it was substantial enough to raise an equitable interest in the property in her favour.'

¹⁰⁴ Kuenyehia & Aboagye (n 15 above) 35.

It is the final legal dissolution of a marriage, that is, the separation of husband and wife by a judicial decree which confers on the parties the right to civil and/or religious remarriage, according to the laws of each country.¹⁰⁵

Gaye and Njie,¹⁰⁶ also provide that 'divorce refers to any legal and formal dissolution of marriage.' This definition recognizes non-legal means of divorce as evident in Ghana where customary marriages can be dissolved formally and without any legal intervention.

Under customary law, some of the grounds for divorce include 'willful neglect to maintain wife, impotence, barrenness or sterility, intercourse prohibited under the personal law on account of consanguinity or affinity and persistent false allegations of infidelity by one spouse.'¹⁰⁷ Usually, customary divorce proceedings begin with attempts to adjudicate the problem and reconcile the parties. When such attempts succeed, the parties remain in the marriage and when attempts fail, the marriage is dissolved.¹⁰⁸ In relation to property settlement after divorce:

Under customary law, the spouse must refund the money exchanged for the arrangement of the marriage and settle any other debts they may have between them. Also a man is required to give the woman a "send-off" upon divorce, if she is not at fault; however, the amount of the send-off is wholly discretionary...If she is at fault for the divorce, her lineage could be required to pay all debts incurred on her behalf during the marriage and the bride price.¹⁰⁹

This practice results in the woman being left in a vulnerable position because as already stated she is deemed not to have any interest in property she helps the husband acquire much less what the husband acquires on his own. Therefore irrespective of the number of years one has been married and the extent of assistance given to the husband, the wife just walks away with a 'send-off.'

Divorce of Mohammedan marriages are generally initiated by the husband.

¹⁰⁵ JS Siegel & DS Swanson *The Methods and Materials of Demographics* (2004) 58.

¹⁰⁶ Gaye & Njie (n 13 above) 14.

¹⁰⁷ MCA (n 22 above) sec 41(3). This provides for additional grounds to be considered in the determination of divorce under customary law. However, this list is not exhaustive as different ethnic groups may have added reasons as grounds for divorce. Minka-Premo (n 87 above) 12 provides that among the Kassena Nankana, the following are grounds: if a woman is caught stealing red handed; found to be a witch; is caught or voluntarily confesses to adultery.

¹⁰⁸ Kuenyehia & Aboagye (n 15 above) 38.

¹⁰⁹ J Fenrich & TE Higgins 'Promises Unfulfilled: Law, Culture, and Women's Inheritance Rights in Ghana' (2001) 25 *Fordham International Law Journal* footnote 99

'A woman can only ask her husband to release her from the marriage. Also under Islamic law, divorce is not a condition for the distribution of property between spouses as this is only done at the death of a spouse.¹¹⁰

As such, a wife has no automatic right to property on divorce. She only has 'a right to maintenance for her residence, clothing, food, and general care depending on the type of divorce, as well as a suitable obligatory gift.¹¹¹ It is submitted that the practice of men only, being vested with the right to divorce their wives is a situation which violates Constitutional guarantees of equality between the sexes.¹¹²

Discussions relating to divorce under Ordinance marriages and determination of property interests will be treated in conjunction with discussions on the MCA which is the subject of the following section.

3.2 The Matrimonial Causes Act and its effect on property rights

The MCA replaced the English Divorce Reform and Matrimonial Proceedings law which until then applied to matrimonial proceedings in Ghana.¹¹³ The MCA is an Act which provides for matrimonial causes and other related matters. Its provisions include proceedings relating to divorce, other matrimonial causes like neglect to maintain a spouse or child, financial provision and child custody.

The Act applies to all monogamous marriages and also to marriages other than monogamous ones.¹¹⁴ In practice it applies automatically to all Ordinance marriages; but for polygamous marriages, an application must be made to the court and must be granted before matrimonial causes under such marriages can be heard. The Act also provides that any party to the marriage may present a petition for divorce to the court.¹¹⁵ This means that though a muslim woman cannot ask for divorce in a Mohammedan marriage, she can file a petition in her own capacity to the court. Related to the issue of the right of both spouses to file for divorce, though

¹¹⁰ LRC Report (n 7 above) 26.

¹¹¹ Same as above

¹¹² The Constitution (n 5 above) Art 17 (1).

¹¹³ HF Morris 'Matrimonial Causes Act, 1971' (1972) 16 *Journal of African Law* 71.

¹¹⁴ MCA (n 22 above) sec 41.

¹¹⁵ MCA (n 22 above) sec 1(1).

the proportion of women reporting a divorce or separation is on the rise,¹¹⁶ statistics on the percentage of men as against women initiating divorce is not readily available.

The Act further provides that the sole ground for a divorce to be granted is that the marriage has broken down beyond reconciliation.¹¹⁷ To show proof of this breakdown the petitioner must satisfy the court of one or more of facts relating to adultery, unreasonable behaviour, desertion for two years, non cohabitation for two years plus the consent of the respondent to the divorce, non cohabitation for five years and that the parties have after diligent effort been unable to reconcile their differences.¹¹⁸ Once the court is satisfied that one or more of the facts required has been proven and that the marriage has broken down beyond reconciliation, then the petition for divorce shall be granted.¹¹⁹

In the determination of ancillary matters like financial provision and property determination and settlement, the MCA provides that the court may award maintenance pending suit or financial provision to either party to the marriage after the standard of living of the parties and their circumstances has been considered.¹²⁰ Like the name suggests, maintenance refers to payments from one spouse to the other for the benefit of the spouse who is receiving it.¹²¹ 'It is only awarded if one party (often, but not exclusively, the wife) cannot support themselves without payments from the other.'¹²² Usually the purpose is to support the spouse who is deemed to be in a worse of position financially. Women are usually the ones worse of by divorce and thus tend to be in the majority of persons who receive maintenance. It appears that with a determination for maintenance the purpose is not to make an order for the settlement of property acquired during the marriage but to ensure that the spouse with the paying ability (usually the husband) provides some payment either through a lump sum payment or in installments to meet the needs of the wife.

¹¹⁶ 'Ghana - Marriage, Family Formation, And Childbearing' at <http://family.jrank.org/pages/704/Ghana-Marriage-Family-Formation-Childbearing.html> (accessed 27 October 2010)

¹¹⁷ MCA (n 22 above) sec 1(2).

¹¹⁸ MCA (n 22 above) sec 2(1). Refer to footnote 107 for additional grounds to be considered by the court in event of a marriage other than a monogamous marriage being brought to the court.

¹¹⁹ MCA (n 22 above) sec 2(3).

¹²⁰ MCA (n 22 above) sec 19.

¹²¹ J Atkinson 'The American Bar Association Guide to Family Law' at http://www.abanet.org/publiced/practical/books/family/chapter_10.pdf (accessed 4 October 2010).

¹²² 'Spousal Maintenance' at <http://www.family-lawfirm.co.uk/Finances/Spousal-Maintenance.aspx> (accessed 4 October 2010).

Specific to the issue of property, section 20 provides that 'the court may order either party to the marriage to pay the other money or to convey property as settlement of property rights as the court thinks just and equitable.' This provision seems to infer that some recognition is given to property rights during marriage which have to be determined on divorce. It provides that the determination of the property interest can be in the form of cash or property. To this extent the court may order that money be paid or immovable or movable property be settled as recognition of the property interest.

Section 21 also provides the court with the power to order a transfer or conveyance of the interest in property which rightly belongs to the other on terms that are just and equitable. This means that where proof is shown that property belongs to a party though it may be in the control of the other, the court may order a transfer or conveyance of the interest to the party entitled to it. In *Oparebea v. Mensah* [1993-94] 1 GLR 61, the court in shedding more light on section 21(1) stated that for the court to order a party to convey title:

The party must establish title to part or all the property...or substantial contribution. This means that where a spouse proved substantial contribution towards the acquisition of property or family assets the spouse can lawfully press with optimism a claim to a fair and reasonable share of the family assets or properties pursuant to section 21(1) of Act 367.

Though these two sections are couched in gender neutral language, there is no denying that women are disadvantaged when it comes to their application. The general position as borne out by a long line of cases is that a wife is not entitled to a share in property acquired by the husband during the marriage simply because she served her husband faithfully during the marriage.¹²³

The responsibility placed on the court by the relevant provisions to determine property rights and transfer property do not come with laid down procedures or guidelines as to how to determine such interest. Bearing in mind that some of these Judges are products of a patriarchal society, their decisions have affected women negatively and contributed to the disempowerment of women. Banda quotes a Judge she interviews who sheds more light on some of the factors which influence Judges in similar conditions in Zimbabwe by providing that the whole system is a lottery depending on which Judge you draw and being a cross cultural

¹²³ In *Ribeiro v Ribeiro* [1989-90] 2 GLR 109-144, the court said that 'a spouse could not press with any degree of optimism an interest in the husband's properties by virtue of mere domestic services in the house.'

judiciary, everybody has their own inherent prejudices which in a sense colours their sense of Justice when dividing matrimonial assets. [paraphrased].¹²⁴

Dowuona-Hamond summarises the Ghanaian situation as follows:

Case law indicates that generally, the courts are prepared to recognize the interest of a spouse in property acquired during the marriage only where (i) there is clear evidence of agreement or intention that the claimant spouse would have a beneficial interest in the property or (ii) where there is proof of substantial financial contribution made by the claimant spouse to the acquisition of the property in question. Such contribution is required to be either in money or money's worth made by the claimant. Thus the courts are yet to adopt a position which fully recognizes the wife's performance of her traditional household duties as the basis for establishing a beneficial interest in property acquired during the period of the marriage.¹²⁵

3.2.1 Case law and principles developed from its application

The cases outlined in this section support what has been presented so far in this chapter on how WPR have been determined. Some of the cases though discussed under WPR are actions brought for determination of property interest on the death of the husband. The relevance in setting out such cases is in the extent to which pronouncements made by the courts have a bearing on the property interests of spouses during the marriage which invariably is linked to the extent of the property interest on divorce. Also an attempt has been made to present a wholesome picture which covers a range of issues linked to determination of WPR in the different marital regimes recognized in Ghana. The cases paint a more realistic experience of what Ghanaian women have gone through in seeking to assert their property rights on divorce and how the state through the judiciary has failed to meet its international human rights obligations.

3.2.1.1 Property interests of spouses at customary law

In the case of *Abebreseh v Kaah*,¹²⁶ a widow married under customary law brought an action for a declaration, that a house which she assisted her husband to build for themselves and their

¹²⁴ F Banda 'The Provision of Maintenance for Women and Children in Zimbabwe' in CG Bowman & A Kuenyehia (eds) *Women and Law in Sub-Saharan Africa* (2003) 71.

¹²⁵ Dowuona-Hammond (n 23 above) 7.

¹²⁶ *Abebreseh v Kaah* (n 97 above).

children was the jointly acquired property of both of them. (The relevant statement made by the court has already been reproduced in footnote 97). The court restated the customary law position of the non-recognition of the concept of community of property, but made a declaration in favour of the wife because there was evidence of contribution made in addition to evidence of the husband having made an oral gift *inter vivos* of his share of the property to his wife and children.

3.2.1.2 Property interests of spouses under the Marriage Ordinance

In the *Bentsi-Enchill case*,¹²⁷ the wife married under the Marriage Ordinance brought an application for an order that she should stay in a flat bought by her former husband after they divorced. The court in its judgment said:

Property purchased by one spouse with his own money belongs to that spouse to the exclusion of the other. If the house is purchased out of the husband's earnings the whole beneficial interest vests in him. If the parties set up a home in a house already owned by the husband, the wife will have no interest in it in the absence of express agreement. When the relationship of husband and wife has been terminated by divorce, the wife's right to her husband's consortium and maintenance cease and she has no right, in the absence of express agreement, to remain in the former matrimonial home.

In *Odoteye v Odoteye*,¹²⁸ the wife claimed that an estate house which had been acquired during the subsistence of the marriage be transferred to her and the children. The court said:

It is not inconceivable that a female spouse will contribute to the cost of property being acquired by her husband. The courts have in some cases declared such property to be jointly owned by them. Then again, "the wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property.

The wife's claim was therefore denied on the basis that her evidence of accompanying the husband to choose the house, paying the monthly rental during the time her husband was

¹²⁷ *Bentsi Enchill* (n 19 above).

¹²⁸ *Odoteye* [1984-86] 1 GLR 519-528.

transferred and using her salary to feed and clothe the children as well as pay their fees did not amount to proof of substantial financial contribution towards the acquisition of the house.

In *Achiampong v Achiampong*,¹²⁹ an appeal was brought by the husband against the judgment of the court in which the wife had been granted a half-share in the matrimonial home bought in the name of the husband. The wife was able to establish that though the house had been bought in the husband's name, she later raised a loan which was used to add two more bedrooms and make further renovations to the building. The court said that divorce did not confer on a spouse any interest beneficial or otherwise in the property of the other spouse. It then went further to quote *Wachtel v Wachtel* [1973] 1 All E.R. 829 at 837 which stated that:

Twenty-five years ago, if the matrimonial home stood in the husband's name, it was taken to belong to him entirely, both in law and in equity. The wife did not get a proprietary interest in it simply because she helped him buy it or pay the mortgage installments. Any money that she gave him for these purposes would be regarded as gifts, or not recoverable by her. It has been held by this court that, if a wife contributes directly or indirectly, in money or money's worth, to the initial deposit or to the mortgage installments, she gets an interest proportionate to her contributions. In some cases it is a half-share. In others less.

The court dismissed the husband's appeal on the basis that there was actual agreement between the spouses about the house. Under that agreement, there was clear intention on their part that the wife was to have a beneficial interest. This agreement operated as a clog on the house and created an equity against the husband and in favour of the wife.

3.2.1.3 Property interests under the Mohammedans Ordinance

In *Ramia v. Ramia*,¹³⁰ a husband married under the Mohammedans Ordinance, appealed against the decision of a court which had refused his application to order the wife to convey a house to him. The property in contention 'Ramia House' was held in the name of the wife though she did not contribute to its acquisition. The court found that:

¹²⁹ *Achiampong* [1982-83] GLR 1017-1039.

¹³⁰ *Ramia* [1981] GLR 275-283.

There was a clear intention by the husband's conduct to benefit the wife especially since there was no rebuttal to demonstrate that there was a resulting, implied or constructive trust in favour of the husband.

The court held that in the absence of a trust of any kind being established and based on the intentions of the husband, the conveyance to the wife was intended as a gift.

3.2.1.4 Current progressive decisions

In *Fosu v Duah* (2000),¹³¹ the wife sought a declaration that both she and her husband were joint owners of a house and various automobiles and applied for an order that these items be shared *parri passu*. The court declared that:

Where a husband and a wife pool resources together to acquire property ...with an express or implied intention that that property should become their joint property, a court, on proven evidence, will declare such property to be the joint property of the parties. Where the marriage is dissolved, the spouses will be entitled to share that joint property, *parri passu*; and the court, upon request by both parties, or by one will be perfectly entitled to make an order to that effect...The plaintiff's action is not only legitimate but is in accord with Article 22(3) of the Constitution.

In *Jones v Jones* (2001),¹³² the wife was able to prove that she had made substantial financial contribution to the acquisition of the property. The court accordingly held that the parties had jointly acquired the house in dispute and as such the wife was entitled to an equal share in the property.

3.3 Identified gaps arising from application of the law

Based on the trend of decisions captured above, there is a clear indication that there are gaps in the protection of WPR in Ghana. These stem from the following issues:

- Need for proof of substantial financial contribution by the courts,
- Lack of laid down guidelines to be used in determining the extent of a spouse's

¹³¹BA Duncan & D Kingsley-Nyinah *A Casebook on the Rights of Women in Ghana (1959-2005)* (2006) 117.

¹³²Duncan & Kingsley-Nyinah (n 131 above) 121.

interest,

- Lack of recognition of women's work in the house as contribution to the acquisition of property,
- Lack of judicial activism and reliance on international human rights instruments which protect the right in question,
- Lack of judicial guidance and problem of how to incorporate determination of property rights in polygamous marriages so as to offer better protection since majority of marriages in Ghana fall within this group,
- The virtual absence of any judicial pronouncement of persons who are living as cohabitants (a phenomenon on the rise), and
- The lack of a definite judicial pronouncement on the type of property regime in operation during marriage and on divorce.

3.4 Sociological effect of judicial interpretation and application of the law

There is no denying that women suffer the most from the trend of decisions taken by the courts. More often than not most women end up sacrificing their professions for the benefit of the family. Due to societal expectations of wives, they are usually forced to take on the role of caregivers of the family by default. In so doing, they are unable to maintain a foot on the career ladder. They invariably end up going for low earning jobs or just remain home to take care of the family. Some too because of the interplay of gender inequalities are unable to access education to a level which makes it possible for them to get trained in professions which pay well. They thus end up largely in jobs in the informal sector. After divorce these women have a low income earning capacity, no skills or skills which are obsolete and yet have to compete with younger persons for limited jobs. More often than not, they are kicked out of homes they have been sheltered in for most of their married lives where they may have lacked the capacity to take meaningful decisions concerning their lives and are thrown into the world on their own where they are supposed to find jobs which pay well enough to cater for their needs.

Furthermore, due to the consequence of being denied access to property they have helped to acquire, women's ability to own property which could be used as collateral for loans to promote their businesses in the informal sector are threatened. Thus even though women form the majority of the non-formal sector their involvement does not increase their income level

because of their low socio-economic status,¹³³ thereby perpetuating the vicious cycle of poverty and its attendant complications.

3.5 The Constitution and extent of protection offered

The Constitution is the supreme law of the Country. Consequently, all legislation and customs are to be in conformity with the principles, spirit and the letter of the Constitution or to the extent of such inconsistencies are to be declared null and void. The Constitution contains a bill of rights in chapter five which guarantees the rights and freedoms enshrined in international human rights instruments. It also contains provisions in Chapter 6 on 'Directive Principles of State Policy' which contains guidelines the government must keep in mind when developing laws and policies.¹³⁴

Chapter five of the Constitution reiterates the commitment of the state to respect, protect and promote the rights of all persons irrespective of race, place of origin, political opinion, colour, religion, creed or gender.¹³⁵ It further provides for the state's abhorrence of discrimination by stating that 'persons shall not be discriminated against on grounds of gender, social or economic status'¹³⁶ among others. It also provides for the enforcement of the rights in the chapter by providing in Article 33 that persons whose rights have been violated can apply to the High Court for redress.

On property rights, it is provided that every person has the right to own property either alone or in association with others and no person shall be subjected to the interference of such property.¹³⁷ Article 22 contains the key provisions of the state's obligation in respect of PRS. It provides:

- (1) A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.

¹³³ WiLDAF – Ghana 'Shadow Report to Ghana's 3rd, 4th, and 5th Reports on the Implementation of the CEDAW in Ghana' (2006) 27 at http://www.iwraw-ap.org/resources/pdf/Ghana_SR.pdf (accessed 27 October 2010).

¹³⁴ The relevant provisions in this chapter are Article 36(6) which provides that the State shall take necessary measures to integrate women into the economic development of the Country and 36(7) which captures the State's undertaking to guarantee ownership of property.

¹³⁵ The Constitution (n 5 above) Art 12(2).

¹³⁶ The Constitution (n 5 above) Art 17(2).

¹³⁷ The Constitution (n 5 above) Art 18 (1).

(2) Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.

(3) With a view to achieving the full realization of the rights referred to in clause (2) of this article-

(a) spouses shall have equal access to property jointly acquired during marriage;

(b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage

This provision provides for the protection of PRS on dissolution of marriages either through death or divorce. In relation to Article 22(1), the Wills Act, 1971 (Act 360) and the Intestate Succession Law, 1985 (P.N.D.C.L 111) give effect to its provisions. The problem is with the absence of a law which gives effect to PRS on divorce. Indeed Article 22(2) provides Parliament with the mandate to enact such a law. Unfortunately, 18 years since the Constitution was enacted, there is still no law which seeks to protect PRS on divorce. The current framework made up of the MCA and other formal divorce proceedings for customary marriages are woefully inadequate to do justice to the provision.

Also worrying is the fact that Judges have failed to creatively incorporate and rely on the provisions of Article 22 to ensure the protection of WPR in their determination of PRS. The few courts which have relied on the Article, have been some High Courts whose decisions are not binding on other High Courts and as such cannot be considered as judicial precedents to be adhered to. It is evident that the level of protection offered by the existing legal framework, in the light of the relevant human rights obligations is not adequate. This is seen in the plethora of challenges and problems arising from the current framework as already discussed.

3.6 Concluding remarks

A look at the existing legal framework shows a gradual recognition of the existence of some community of estate between spouses but only on the condition that a spouse is able to show substantial financial contribution or there is evidence of an express agreement in the absence of such contribution. The current legal framework offering protection for PRS is consequently inadequate and fraught with a trend of judicial interpretation which unfortunately discriminates against WPR on divorce. Even though the MCA maybe argued to offer the best protection for PRS so far, even that falls short of the potential captured in Article 22. Indeed despite Article

22, judges have failed to develop guidelines through case law to assist them in outlining determinants for making a finding in favour of a wife even in the event that proof of substantial financial contribution is not made. By their inability to develop guidelines, a vacuum continues to exist which it is humbly submitted can be filled if there was a law which sought to give effect to the provisions of Article 22(2) and (3). It is attempts to develop such a law and the outcome of and the extent of protection this law will offer which is the focus of the next chapter.

CHAPTER IV: THE PROPERTY RIGHTS OF SPOUSES BILL

4 Introduction

This chapter will attempt to set out the provisions of the Bill, and the extent to which they will be able to fill the gaps identified in the existing legal framework. An attempt will also be made to identify issues still not provided for in the Bill and prospective challenges it might face in implementation and enforcement.

The mandate to draft a Bill stems from Article 22 of the Constitution. Flowing from this, organisations and institutions like the Law Faculty of the University of Ghana, the Federation of Women Lawyers (FIDA), Women in Law and Development in Africa (WILDAF), Leadership and Advocacy for Women in Africa (LAWA - Ghana), African Women's Lawyers Association (AWLA) and the Law Reform Commission submitted proposals on areas which could be incorporated into such a Bill to the Legislative Drafting section of the Ministry of Justice.¹³⁸ This culminated in the first draft of a Bill in 2000. The process stalled until 2007 and 2008 when with assistance from the German Development Cooperation (GTZ) various consultations were held with representatives of civil society organizations, members of parliament, legal practitioners, law lecturers, family law experts, judges and traditional authorities.¹³⁹ Legislation from other commonwealth jurisdictions like Jamaica, Tanzania and South Africa were also perused and salient lessons were drawn from them.¹⁴⁰ Through these consultations, the Bill which had 11 clauses before the onset of the GTZ consultations ended up with 31 comprehensive clauses covering a range of critical issues.

4.1 The Bill

The Memorandum (the Memo) accompanying the Bill, states that its purpose is to regulate PRS in accordance with Article 22 particularly clauses (2) and (3).¹⁴¹ The Bill if passed into law will be in the best interest of spouses since the formula for division imposed by the Constitution provides a more equitable solution to determining and ensuring enjoyment of PRS than the

¹³⁸ EM Appiah *Overview of the Property Rights of Spouses Bill* (2007) 9.

¹³⁹ Ministry of Justice and Attorney General's Office 'Lessons Learnt for Interactive and Participatory Policy Development of Legislation: Report from activities to develop a policy for the Property Rights of Spouses Bill' (2007).

¹⁴⁰ Memorandum accompanying the Bill (2009) para 6.

¹⁴¹ The Memo (n 140 above) para 1.

current framework does. The Memo acknowledges that different standards and sets of rules using different principles and concepts have been used so far leading to a lack of a general standard.¹⁴² The Bill therefore establishes rules and workable standards for the courts and spouses for the realization of property rights as enshrined in the Constitution,¹⁴³ thereby ensuring certainty in matters concerned with PRS.¹⁴⁴

4.1.1 Overview of the Bill

The Bill is divided into four main parts with a total of 31 clauses. Part one on ‘relationships’ restates Article 22. It defines who a spouse is, what cohabitation is and the criteria for determining when cohabiting persons can be protected under the Bill. In clause 3(2) it provides that only ‘persons who have cohabited for a period of five years or more shall be deemed to be spouses and have rights of spouses for the purpose of the law.’

Part two on ‘marital property agreements and related matters’ provides the option for spouses who do not wish for their property rights to be determined by the Bill to contract an agreement on their own terms. Such an agreement may cover their ownership of separate property owned before the union, property acquired during the union and how such property should be distributed in the event of a divorce. Other provisions within this part are on modalities involved in executing such a contract like the fact that the agreement may be oral or in writing and must be witnessed.

Part three on ‘property rights’ seems to be the core of the Bill and seeks to capture all the aspects of property right regulation and determination which will give effect to Article 22. Clause 10 on joint property, provides that it is property however titled or acquired by one or both spouses during the marriage and may include the matrimonial home, household property, any property other than what has been identified as separate property and any business for which seed money was provided by the spouse. Protection is offered by the court in instances where one spouse may seek to dispose property identified as joint and may even go as far as to rescind any disposition of such property.

Separate property, in clause 11 is explained as self acquired property, unless a spouse proves that they contributed in cash or in kind to the acquisition or maintenance of that property.

¹⁴² The Memo (n 140 above) para 4.

¹⁴³ The Memo (n 140 above) para 5.

¹⁴⁴ The Memo (n 140 above) para 6.

Property which may be considered as separate property include property acquired before marriage, through inheritance, gift, damages or a right to damages for personal injuries, property the spouses agree to be separate and trust property. In the determination of what is separate property, the Bill places the onus of proving that property is separate on the one who makes the claim. This is in line with the rules of evidence in Ghana which provides that he who asserts must prove.¹⁴⁵

Clause 12 on 'equal access' gives effect to Article 22(3)(a), which provides for spouses to have equal access to property jointly acquired during marriage. Equal access is explained by the Bill to include the right to use, benefit, enter, and to dispose (where there is agreement) of property which both spouses are entitled to possess, or have the same interest in, or have the same title to or have had for the same time.

Clause 13 on 'distribution of property' sets out what the courts must consider in their bid to divide jointly acquired property. According to the Bill, this will generally be in equal shares unless a spouse thinks otherwise. In such a case an application on notice must be made to the court which shall not give more than one-third the value of the joint property. The factors to be considered include length of the marriage; age of the spouse; contribution of each spouse to the acquisition, maintenance or improvement of the property including the contribution of a spouse towards the upkeep or maintenance of the property in cash or kind; contribution of the immediate family or any contribution; economic circumstances of each spouse at the time of the distribution of the property including the desirability to award the matrimonial home to a particular spouse; the right of a spouse who has custody of a child to live in the matrimonial home for a reasonable period of time and whether there is an agreement related to the ownership and distribution of the property in the best interest of a vulnerable spouse among others. The clause takes away the age old requirement for proof of substantial financial contribution of a spouse to determine an interest in the property by providing that 'a monetary contribution shall not be presumed to be of greater value than a non-monetary contribution' and 'further that the non-monetary contribution shall not be proved in monetary terms.'

¹⁴⁵ Evidence Decree, 1975 (NRC 323) sec 14. This provides that 'except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.'

Clause 14 regulates transactions involving a matrimonial home which is joint property. It provides that the consent of both spouses must be sought in such instances, and that even where the matrimonial home is not joint property, the non-owning spouse must be given a minimum of six months notice of the transaction. It also provides for circumstances under which the court may waive consent to such transactions.

Clauses 15 and 16 deal with 'property settlement' and the court's authority to set aside orders respectively. In clause 15, the court has the authority to alter the property interest of a spouse while in clause 16 any order made which was obtained through fraud, duress, giving of false evidence or suppression of evidence can be set aside.

Clause 17 provides that gifts received by a spouse will be deemed to belong to the receiving spouse; clauses 18 and 19 deal with how debts incurred prior to and during the marriage are treated respectively. In this regard, debts acquired for the necessities of life with the spouse's consent will be treated as a joint liability while if acquired without the consent of the other spouse unless an express agreement exists, will be treated as the debt of the spouse who incurred it.

Clause 20 deals with 'polygamous marriages' and the guidelines for the determination of property rights in such marriages. It provides that property acquired during the first marriage and before the second marriage was contracted is owned jointly between the parties; while property acquired after the second marriage is owned by the husband and the co-wives. The same principle applies to subsequent marriages. In this regard a husband and wife or wives are supposed to make a declaration of their respective interests in the joint property.

Clause 21 deals with 'rented property' and gives the court the right to assign rented property to a spouse who may not be party to the tenancy agreement taking into consideration the best interest of the children of the marriage.

Clause 22 deals with 'the spouse's contribution to acquisition of property during marriage' and grants a beneficial interest to a spouse who makes contributions towards the maintenance and improvement of the self acquired property of the other spouse.

Clause 23 deals with ‘presumptions as to property acquired during the marriage.’ These presumptions which are rebuttable are to the effect that property acquired during the marriage in the name of a spouse will be deemed to be joint property and also that spouses will be deemed to have equal beneficial interest in property which bears both names.

Part four, the final part of the Bill, provides for miscellaneous matters. These cover issues of maintenance (which can be awarded by the court in addition to property distribution under clause 13) and guidelines to be used by the courts to determine the amount to be given;¹⁴⁶ jurisdiction of the court which can hear applications relating to the Bill;¹⁴⁷ application of the Legal Aid Scheme Act which requires that a spouse who cannot afford to pay for legal fees can be provided with representation;¹⁴⁸ settlement by alternative dispute resolution;¹⁴⁹ offences;¹⁵⁰ repeal of sections of Act 367;¹⁵¹ regulations and interpretation.¹⁵²

4.1.2 The Bill and similar property regulating laws

A comparison of the Bill to other property regulating laws reveals some similarities and differences.

On similarities, most of such laws deal with issues of substance and procedure in the same document as seen in the Bill. With regards to provisions the following have been noted:

1. Sections 11 and 12 of the Married Women’s Property Law Cap 41:05 of Gambia provides for how the wife’s debts and liabilities and the extent of the husband’s liability for wife’s debt contracted before marriage should be dealt with. This is similar to clauses 18 and 19 of the Bill on debts.
2. Sections 1 and 6 of the Registration of Customary Marriage and Divorce Act, 2007 of Sierra Leone provide that ‘cohabiting persons, means persons who while not married

¹⁴⁶ The Bill (n 6 above) clause 24.

¹⁴⁷ The Bill (n 6 above) clause 25.

¹⁴⁸ The Bill (n 6 above) clause 26.

¹⁴⁹ The Bill (n 6 above) clause 27.

¹⁵⁰ The Bill (n 6 above) clause 28. Some of the offences in the Bill include denial of the right to stay in the matrimonial home or use household property when no determination of interest has been made by a court; denial of use of proceeds from sale of joint property; and destruction of joint property to defeat the purpose of the Bill.

¹⁵¹ The Bill (n 6 above) clause 29.

¹⁵² The Bill (n 6 above) clauses 30, 31.

have lived as married persons for a period of not less than five years.’ A provision similarly captured in clause 3 of the Bill.

3. Section 59 of the Law of Marriage Act, 1971 (5, 1971) of Tanzania and Part II of the Family Law Act 1990 (Chapter F3) of Canada provide similar provisions to clause 14 of the Bill on transactions relating to the matrimonial home.
4. Section 10 of the Family Property (Rights of Spouses) Act 2003 of Jamaica provides for marital agreements in respect of property which is similar to clause 4 of the Bill.
5. Section 70 of the draft Ugandan Domestic Relations Bill (2003) though still not in force provides similarly on how property interests in polygamous marriages should be dealt with as provided in clause 20 of the Bill.

On differences, some of the laws unlike the Bill contain gender biased language. The Tanzanian law mentions in section 56 that a married woman shall have the same right as a man to property. Section 14 of the Matrimonial Property Act of South Africa also provides that a wife in a marriage in community of property has the same powers with regards to issues like disposal and contracting of debts. Some like the Family Law Act of Canada contain provisions covering both property determination on divorce and death of a spouse.

It is submitted that placing the Bill within the context of other similar regulations around the continent and the world, its provisions and specific focus on regulating PRS on divorce, will make it one of the most progressive laws offering protection for PRS and thereby better protection for WPR once passed into law.

4.1.3 Innovative provisions of the Bill

The Bill as a whole is innovative and progressive. However, some provisions need to be recognized and highlighted because of their far reaching impact on the society.

Research suggests that about twenty five percent of agrarian women are not living in marital unions and yet are involved with their partners in the acquisition of property during the

period of the union.¹⁵³ Women in such de facto unions must also enjoy equality of status and be protected by the law.¹⁵⁴ Thus the recognition given to WPR in such unions is a laudable achievement. The preamble of the Bill captures that it provides for the property rights of cohabiting persons and recognises the state of cohabitation as a form of marriage but only to the extent of their property rights.¹⁵⁵

Clause 4 on 'marital property agreements' is also innovative in the sense that they introduce a new trend of documenting property rights as between spouses in Ghana. This provides a leeway for those who are not comfortable with the provisions in the Bill to regulate their rights as they deem fit, so long as the requirements for making such an agreement valid are met.

Attempts made in clauses 10, 11 and 12 to explain what joint and separate property are as well as equal access respectively shows the care taken by the drafters to ensure that better and more predictable guidelines are put in place. This is to ensure that the discretion of judges will no longer be according to their whims but within the ambit of the provisions of the Bill, thereby ensuring predictability and better protection to WPR.

Clause 13 sets out factors which are deemed to be important in determining one's contribution to the acquisition of joint property. It gives recognition to the importance of the wife's role in marriage and sees her activities as being as important as that of the husband. This echoes the statement that:

In the generality of marriages the wife bears and rears children and minds the home. She thereby frees her husband for his economic activities. Since it is her performance of her functions which enables the husband to perform his, she is in justice entitled to share in its fruits.¹⁵⁶

The inclusion of such a provision will go a long way to give recognition to women's role in managing the family and the home.

¹⁵³ BA Duncan *Women in Agriculture* (2004)13.

¹⁵⁴ General Recommendations No. 21 (n 39 above) para 18.

¹⁵⁵ The Bill (n 6 above) clause 3.

¹⁵⁶ LRC Report (n 7 above) 28. Citing with approval (1965) 62 Law Society Gazette45 cited in *Wachtel v Wachtel*.

Clause 14 on the 'matrimonial home' and clause 21 on 'rented property' are innovative since the home where the spouses live is singled out for particular mention. This is in response to the normal occurrence where wives and children are usually thrown out of the matrimonial home and have to contend with the challenge of relocation usually with no assistance from the husband. This inevitably will go a long way to ensure that women continue to live in familiar conditions.

In sum, the Bill is an innovative piece of legislation which will go a long way to ensure better protection than the current framework.

4.1.4 Identified issues not addressed by the Bill

Despite its potential to offer better protection to women if passed into law, the Bill still fails to capture certain provisions which if included could improve on it. The following are some issues which could still be considered in the Bill:

1. The provisions on marital agreements should make it clear that spouses cannot contract below what the Bill provides in clause 13(4) which states that 'the distribution of the property shall generally be in equal shares.' It should also be captured that parties to the agreement have the right to vary the terms of the agreement through mutual consent. However where consent is unreasonable withheld, the spouse can apply to the court for the matter to be resolved.
2. It is suggested that the following could be added to the relevant factors in determining distribution under clause 13(5). The effect of marital responsibility on the earning capacity of either spouse; the degree to which a spouse's future earning capacity was affected by giving up the possibility of paid work to look after the home or care for the family and the conduct of either of the spouses, if it would be unfair, in all the circumstances, to disregard such conduct.¹⁵⁷
3. In addition to the specific treatment of the matrimonial home in clauses 20 and 21, household chattel which usually has as much emotive value as the home, should be dealt with specifically. It might be argued that the issue of who gets the household

¹⁵⁷ A similar provision is captured in section 20(2) of the Irish Divorce Act at <http://indigo.ie/~kwood/1996act.htm> (accessed 13 October 2010).

chattel can be inferred from who is granted the right to live in the matrimonial home. However, considering that parties going through divorce may not necessarily do so amicably it is best to provide for how that should also be dealt with.

4. Again, considering the nature of business ventures, some attention should be devoted to how such interests can still be determined and or distributed without necessarily affecting the viability of such entities.
5. Also glaringly missing is the extent to which the Bill can be relevant to the experiences of the rural Ghanaian woman who may work on her husband's self acquired farmland or family land and live in the family home of her husband. A clause should be included to cater for how her interest will be determined. Whether her interest should be in the land or crops, or whether if her interest in land is determined it should be divided, transformed into cash or be given alternate land as settlement for her interest.
6. Clause 27 on mediation should be made compulsory as a way of determining property interests. When this fails then the matter can be taken up by the courts. It is suggested that a clause be added which makes it mandatory for couples seeking redress from the courts to show the extent to which they have attempted with the use of mediators to resolve their property issues. This hopefully will avoid fragmentation by encouraging trade-offs and empower the capacity of other persons who can assist in property distribution cases like paralegals and officers in existing governmental and non-governmental organisations.
7. Also, the Bill does not seem to focus much on extra-judicial means of determining and resolving property rights. Provision should be made to incorporate traditional authorities, opinion leaders and key community members in the determination of such issues especially in the rural areas so as to ease the challenges of access to justice.
8. Finally, though the Bill is to deal with property rights during the marriage and on divorce or separation of a union, it seems to deal more with property determination on divorce. It is suggested that a clause be included which specifically provides that spouses can

apply to the court during the course of the marriage 'to determine questions arising between them as to the title to or possession of any property.'¹⁵⁸

4.1.5 Prospective challenges to the Bill

Like any other form of legislation which works to standardise and create commonality among different social groups it is likely that people will fight to hold on to the familiar than the new due to a fear of change.

Also, based on socialisation and cultural indoctrination people are used to the notion that men are the ones who can acquire property and that the contributions of women in the home, do not constitute as important enough to create an interest for property for which money has been expended to acquire. Thus most people will find it difficult to buy into the idea of women having an equal interest in such property.

Another challenge to the Bill is that of societal perception. It is viewed by some as a law which promotes divorce and a women's Bill rather than the gender neutral document it is. Coupled with this is the problem of a predominantly male Parliament, who as a microcosm of society is more likely to resist the passage of the Bill. Thus unless proper advocacy and legal education is done, opposition from such factions could stall the passage of the Bill.

There is also the issue of a lack of political will by the government to pass the Bill into law. The Constitution was passed in 1992. It has taken 18 years to get to this point. Lack of political will could keep this Bill on the shelves for some more years and also affect the extent of funds set aside to deal with public consultations, education and awareness creation. Key activities needed to garner support for its passage.

Also, unlike happened with efforts to ensure the passage of the Domestic Violence Act (2007), (the DV Act)¹⁵⁹ there does not seem to be the same passion and commitment by women's rights groups to lobby for the passage of the Bill.

¹⁵⁸Also captured in the 'Family Law Act, of Ireland (1995) sec 36 at <http://www.irishstatutebook.ie/1995/en/act/pub/0026/sec0036.html#zza26y1995s36> (accessed 17 October 2010) and sec 11 of the Jamaican Family Property (Rights of Spouses) Act, 2003.

In addition to these challenges which could plague the passage of the Bill, there are still other challenges which could affect the implementation of the law. These range from lack of funds for training of key persons like judges and magistrates who will be in the frontline of implementation, apathy by the general populace, lack of information on the Bill by women who undeniably stand to benefit more, pre-existing inadequacies in the delivery of justice, challenges in accessing legal aid, judges interpretation of the law and inadequate monitoring to ensure that the provisions of the law are being properly applied.

Another challenge could be women's access to justice. It has been found that women's ability to bring cases of discrimination before the courts is limited by factors such as limited information on their rights, lack of assistance in pursuing these rights, and legal costs.¹⁶⁰

4.2 Concluding remarks

Legislation can be an important means through which a state can further ensure that rights of the citizen are better protected. It also offers an opportunity for the State to promote gender equality. Indeed it has been said that 'enacting legislation that conforms to constitutional rights and international standards is a preliminary step for consolidating democratic rule of law.'¹⁶¹ Thus legislating for better protection of WPR not only benefits the citizenry but the image of a state as well.

This chapter has sought to prove the need for the Bill by presenting the Bill and showing the extent to which it provides better protection to spouses especially women. It is evident that the Bill has the potential to offer better protection than the existing framework once it is passed into law as it seeks to bring divergent practices which negatively affect WPR in conformity with the Constitution.

¹⁵⁹ B Sam 'Domestic Violence Act, 2007 of Ghana (2007)' at www.wildaf-ao.org/eng/IMG/doc/1.03.07_CSW_WILDaf_Ghana_Presentatin.doc ghana's domestic violence act (accessed 17 October 2010). This paper presents some strategies which were used to lobby for the passage of the DV Bill. These included the formation of a DV Coalition, the making of a film on DV, several engagements through various means with the media, lobbying Members of Parliament, and the distribution of silicone wrist bands with messages on DV.

¹⁶⁰ Concluding comments (n 40 above) para 15.

¹⁶¹ J Shoemaker 'Constitutional Rights and Legislation' in *Inclusive Security, Sustainable Peace: A Toolkit for Advocacy and Action* (2007) 30 at http://www.huntalternatives.org/download/29_constitutional_rights.pdf (accessed 17 October 2010).

CHAPTER V: CONCLUSION AND RECOMMENDATIONS

5.1 Summary of findings

This study set out to investigate whether there was any justification for women to enjoy a right to property on divorce. Also examined was the extent to which the existing legal framework provided adequate protection for the enjoyment of those rights in Ghana. The Bill drafted to give effect to the statutory and Constitutional provisions captured in Article 22(3) of the Constitution was also scrutinised. This chapter sets out the summary of conclusions of the entire study and also touches on recommendations proffered to ensure that better protection can be offered for the protection of PRS particularly women.

The results of this study showed that Ghana because of the international human rights instruments it has ratified has an obligation to respect, protect and fulfill women's right to enjoy property during marriage and on divorce, as well as recognise informal unions termed as cohabitation.

In examining the existing legal framework, it was found that the existence of a plural legal system, a lack of existing guidelines and framework to assist judges and magistrates in the determination of property interests on divorce, and a heavy reliance on judicial discretion had operated to affect WPR on divorce negatively. It was also found that the courts were willing to recognise WPR on divorce if they showed proof of substantial financial contribution or the existence of an agreement between the parties which captured the intention for the wife to have some interest in the property on divorce. Thus the existing legal framework was found to have gaps in its protection on WPR; thereby perpetuating discrimination and gender inequality in the determination of property interest on divorce.

With regard to the Bill, it was discovered that it was a good piece of legislation which if passed into law had the potential of providing far better protection for women in the enjoyment of their property rights on divorce. It was also discovered that there were some obstacles which if not properly addressed could hinder the passage of the Bill and its effective implementation afterwards; an occurrence which could work to the disadvantage of women.

5.2 Conclusion

The recognition that women have a right to share equally in the proceeds of matrimonial property after divorce is in many legal systems a fairly recent development.¹⁶² This however does not mean that the protection of WPR in Ghana should necessarily lag behind. The power of the discretion which lies in the legal bosom of the judges who themselves operate within a social context unwilling to recognise the important contribution of wives in the acquisition of property needs to be curtailed. It is therefore important that the Bill be passed so as to bridge the existing gaps in the protection of WPR.

5.3 Recommendations

The Bill should be passed as soon as practicable to ensure that better legal protection is provided in the enjoyment of PRS on divorce.

It is also recommended that there must be sustained advocacy and programs to monitor implementation especially if this law is to have any positive impact on rural and urban marriages conducted under customary law. Any advocacy on the Bill should also stress on the values of marriage and dispel notions that it might encourage divorce. It is hoped that women's rights organisations which will undertake such advocacy will draw from the lessons learnt from advocacy and lobbying efforts to ensure the passage of the DV Act.

When the Bill becomes law, efforts must be made to monitor judicial decisions so to determine the extent of application and to verify whether they conform to the provisions in the law and to international standards.

Efforts must be made to incorporate existing and traditional structures so as to offer cheaper access to women and better enforcement of the law.

¹⁶² F Banda 'Report on Project on a Mechanism to Address Laws that discriminate against women' (2008) 96 at <http://www.ohchr.org/Documents/Publications/laws_that_discriminate_against_women.pdf> (accessed 31 August 2010).

It is suggested that though polygamy is a practice which is recognised, as evident from the Bill, efforts must be made to abolish it.¹⁶³ This is because from the Bill it is evident that it takes away from efforts to ensure gender equality by working to disempower women economically by placing in the hands of men in such unions an interest in the property of each wife, thereby enhancing their economic empowerment to the detriment of the female spouses.

Mere provisions in the Constitution do not mean that a right is guaranteed unless positive steps like the passage of this Bill are completed. As this will show the extent to which the Constitution is actually engendered and the extent to which legislation can be used as a tool to ensure gender equality.

WORD COUNT: 17,961 (Including footnotes)

¹⁶³ Concluding comments (n 40 above) para 36. This also contains recommendations urging the government to eliminate polygamy.

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Annexure 1: The Property Rights of Spouses Bill (2009)

Property Rights of Spouses Bill

MEMORANDUM

The purpose of the Bill is to regulate the property rights of spouses in accordance with article 22 of the Constitution, particularly *clauses (2) and (3)*.

The Constitution imposes an obligation on Parliament under article 22 to enact legislation to regulate the property rights of spouses. The Constitution has been in force since 7th January, 1993 and though the preparation of the Bill has been protracted, it is to fulfil the obligation of the supreme law that this Bill has been proposed in the best interest of spouses.

Article 22 (3) requires spouses to have equal access to property jointly acquired during marriage and for matrimonial property to be equitably distributed between the spouses upon termination of the marriage.

Until now, the determination of the property rights of spouses by the courts has not sufficiently reflected the more equitable and just regime guaranteed by article 22 of the Constitution. Different sets of rules using different principles and concepts have been used to determine the property rights of spouses. This state of affairs is largely attributable to the lack of a general standard fashioned on the philosophy of the constitutional provision on property rights of spouses.

This Bill establishes rules and workable standards for the courts and spouses for the realisation of the provision of the Constitution on spousal property rights. The focus of the Bill is the property rights of spouses as defined in the Bill. The Bill is not intended to deal with the property rights between parents and children. Provision for the maintenance of children is made in the Children's Act, 1998 (Act 560) and the forum for a child maintenance order is a family tribunal.

The Bill seeks to ensure certainty in matters connected with the property rights of spouses. Proposals for the Bill came from diverse sources including the Law Reform Commission, various civil society groups, traditional rulers, legal experts and faith based organisations. Legislation from other Commonwealth jurisdictions like Jamaica, Tanzania and South Africa influenced the proposals. There was also a study tour to South Africa to find out how property rights between spouses are handled in that jurisdiction. It is expected that the passage of the Bill will ensure fairness in determining matters that pertain to the property rights of spouses.

The Constitutional provision under article 22(3) which requires equal access by spouses to property jointly acquired during their marriage and fairness in the distribution of jointly acquired property when the marriage is dissolved is stated in *clause 1*.

Clause 2 provides the meaning of "spouse". This is necessary because although the Constitution uses "spouse" in article 22, the word is neither defined in that article nor in article 295.

Clause 3 recognises persons who live together as husband and wife without formal ceremony, normally referred to as cohabitantes. This concept includes a situation where customary marriage rites have commenced but have not been completed. This is in recognition of the fact that these persons may make contributions towards the acquisition of joint property during that relationship and should not lose their property rights merely because they have not completed or formalised their union.

Clause 4 provides for parties to a marriage and cohabitants to make an agreement referred to as a marital agreement to regulate their property rights.

Clause 5 states the requirements for the agreement. It may be oral or in writing, signed by both parties and witnessed by two persons chosen by the parties. Each party to an oral agreement is expected to have a witness. Where the oral agreement is to be used in court, it must be confirmed by affidavit. Issues to be dealt with in the agreement include the share of the property each party is entitled to and the method for the calculation of each party's share.

Clause 6 enjoins each party to obtain independent legal advice before making or entering into the agreement to forestall disputes. It also makes it mandatory for the person who provides the legal advice to spell out the implications of the agreement to the party and certify that this has been done.

Clause 7 gives the court the power not to enforce the agreement.

Clause 8 enables the court to make an enquiry into the agreement. Provision is also made in subclause (2) for a spouse, party or a person with interest in the subject matter of the agreement to apply to the court for an enquiry to be made where there are reasonable grounds to believe that the court may set aside the agreement.

Clause 9 states the factors that may vitiate the agreement. These are duress, undue influence, fraud, misrepresentation, illegality, lack of intention or any other vitiating factor such as the unequal bargaining position of a spouse.

Other grounds for the court to set aside the agreement are lack of full disclosure of assets by a party to the agreement and unconscionability.

Clause 10 defines joint property to include the matrimonial home if it is jointly acquired and other immovable property acquired by both spouses for the purpose of their marriage. Household property and other property acquired during the marriage also forms part of the joint property but separate property is excluded. The court is given power in this clause to restrain a spouse or third party from disposition of joint property.

Clause 11 excludes separate property from distribution and defines separate property. A spouse is given capacity to acquire and keep property during the subsistence of the marriage under the Bill. Separate property includes, among other things, property acquired before marriage or property acquired by bequest, devise, through inheritance or gift from a person other than the spouse. Damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship are separate property. The part of a settlement that represents those damages are also to be considered separate property. Property that the spouses have agreed is not to be included in the matrimonial property is obviously separate. Trust property is excluded except where it is a sham to deprive the vulnerable spouse of joint property.

Equal access to jointly acquired property is provided for in *clause 12*, whilst *clause 13* provides for the equitable distribution of property. Under *clause 13*, the various conditions for the distribution of jointly acquired property are spelt out. These include the length of marriage and the contribution of the immediate family. Any contribution to the maintenance of the matrimonial home by the immediate family which facilitates the acquisition of the property is also included. The interpretation clause in the Bill defines immediate family to mean wife, husband and children. The need to make reasonable provision for other spouses and their children where the marriage is polygamous is also a condition for the distribution. The Bill recognises here that polygamous marriage involves multiple wives.

Under *clause 14*, the consent of the spouse is to be obtained before a transaction that relates to the matrimonial home that is the joint property of the spouses can be entered into. Sub-clause (2) enumerates the conditions under which consent may be dispensed with. These include mental

incapacity of a spouse, determined by a mental health professional or psychiatrist, unknown whereabouts of a spouse for a period of seven years or any other good reason that the court considers appropriate.

Clause 15 provides for property settlement. The court is empowered to make an order for the alteration of a spouse's interest in property other than the matrimonial home if it is just and equitable to do so.

Clause 16 enables the court to set aside the order made in *clause 15* if the order was obtained by fraud, duress, through false evidence or suppression of evidence.

The Bill in *clause 17* takes cognizance of gifts between spouses during the subsistence of the marriage. The presumption is that the property in this situation belongs to the receiving spouse.

Similar recognition is given to debts incurred by a spouse prior to marriage in *clause 18*. A spouse is not liable for the debts of the other spouse incurred prior to the marriage unless there is an agreement to the contrary. Under *clause 19*, where a spouse incurs a debt during the subsistence of the marriage for the necessities of life for the immediate family with the consent of the other spouse, the debt is the liability of both spouses. However, for personal debts incurred during a marriage, the spouse who incurred the debt is liable because these debts relate to separate property.

Clause 20 makes provision for the distribution of property between spouses in polygamous marriages. Matrimonial property acquired during the first marriage and before the second marriage was contracted is owned jointly by the parties.

Clause 21 deals with situations where the matrimonial home is rented premises. In such situations, the premises may be assigned to a party even though that party is not a party to the tenancy agreement. Notice is to be given to the owner of the rented property.

Clause 22 provides protection for a spouse who has made contribution towards the maintenance or improvement of property acquired by the other spouse before marriage or during the marriage. A spouse in this category acquires a beneficial interest in the property.

Clause 23 states the presumptions related to property acquired during marriage. Property acquired in the name of a spouse belongs to both spouses with the onus on the person who claims it is separate property to prove that claim.

The court is given power to grant a maintenance order in *clause 24*. Maintenance may be in the form of a lump sum payment or periodic payments over a specified time to be taken into consideration in the grant of maintenance. The financial resources of the spouse seeking maintenance, including property apportioned to that spouse in the course of distribution is to be taken into consideration in the grant of maintenance. Reduced or lost earning capacity of the spouse seeking maintenance because that spouse gave up or delayed education, training, employment or other opportunities during the marriage is also to be taken into consideration. The contribution and services as a spouse, parent, wage earner and as a manager of the home are to be considered by the court. The career or career potential of the other spouse of the person who is seeking maintenance are also factors to be considered by the court. A maintenance order ends when the person receiving maintenance remarries or the person providing the maintenance dies.

Clause 25 empowers the District, Circuit and High Courts to hear and determine matters related to the property rights of spouses and requires that these matters should be heard in chambers to maintain the confidentiality of spouses. For spouses who cannot afford legal costs, an application can be made to the Legal Aid Scheme for assistance, *clause 26*. Provision is made for the settlement of disputes by alternative dispute resolution in *clause 27*.

Clause 28 provides for offences and these include the disposition of joint or household property without the consent of the other spouse, denying the other spouse use of the proceeds from the sale of joint property and destruction of joint property in order to defeat the purpose of the Act. The punishment for an offence is a fine of not more than four hundred and fifty penalty units or a term of

imprisonment of not more than three years or both. In order to avoid conflict, sections 19, 20 and 21 of the Matrimonial Causes Act, 1971 (Act 367) which provide for financial provisions in matrimonial causes are repealed.

Finally, *clauses* 30 and 31 provide for Regulations and interpretation respectively.

MRS. BETTY MOULD IDDRISU

Attorney-General and Minister for Justice

Date: *14th October, 2009*

Property Rights of Spouses Bill

ARRANGEMENT OF SECTIONS

Section

Relationships

1. Property rights under the Constitution
2. Definition of spouse
3. Cohabitation

Marital Property Agreements and related matters

4. Marital property agreement
5. Form of agreement
6. Independent legal advice
7. Power of court not to enforce agreement
8. Enquiry by court
9. Court to set aside agreement

Property Rights

10. Joint property
11. Separate property
12. Equal access
13. Distribution of property
14. Transactions related to matrimonial home
15. Alteration of property interest
16. Court to set aside order
17. Gifts
18. Debt of spouse incurred prior to marriage
19. Debt of spouse incurred during marriage
20. Polygamous marriage
21. Rented property
22. Spouse contributing to acquisition of property during marriage
23. Presumptions as to property acquired during marriage

Miscellaneous Matters

24. Maintenance
25. Jurisdiction
26. Application of Legal Aid Scheme Act
27. Settlement by alternative dispute resolution
28. Offences
29. Repeal of sections of Act 367
30. Regulations
31. Interpretation

A
BILL

ENTITLED

THE PROPERTY RIGHTS OF SPOUSES ACT, 2009

AN ACT to provide for and regulate the property rights of spouses during or upon termination of a marriage in accordance with article 22 of the Constitution, to provide for the property rights of cohabiting persons and for related matters.

ENACTED by the President and Parliament:

Relationships

Property rights under the Constitution

1. In accordance with article 22 of the Constitution,

- (a) a spouse shall have equal access to property jointly acquired during marriage, and
- (b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses on dissolution of the marriage.

Definition of spouse

2. (1) For the purposes of this Act a spouse means a man married to a woman or a woman married to a man under the Marriages Act, 1884 to 1985 which includes:

- (a) the Marriage Ordinance (Cap. 127);
- (b) Marriage of Mohammedans Ordinance (Cap. 129); and
- (c) customary marriage.

(2) A marriage under the Marriage Ordinance (Cap 127) is a monogamous union.

(3) A marriage under Parts One and Two of the Marriages Act 1884 – 1985 may be actually or potentially polygamous.

(4) A marriage is actually polygamous if there is more than one wife.

(5) A marriage is potentially polygamous if there is currently one wife but there could be others in the future.

Cohabitation

3. (1) Cohabitation refers to a situation in which a man and woman hold themselves out to the public to be man and wife.

(2) Persons who have cohabited for a period of five years or more shall be deemed to be spouses and have the rights of spouses for the purpose of this Act.

(3) The rights conferred by this section on cohabittees are available only to persons who

- (a) have the capacity to be married to each other under a marriage recognised under this Act,
- (b) are eighteen years and above, and
- (c) have held themselves out as husband and wife for a period of not less than five years.

Marital Property Agreements and related matters

Marital property agreement

4. (1) A man and a woman in contemplation of marriage or cohabitation or who are married or cohabitating may make an agreement with respect to

- (a) the ownership of the separate property of each spouse,
- (b) property acquired during the marriage or cohabitation, and
- (c) the distribution of property acquired during the marriage or cohabitation.

(2) Spouses may make an agreement during marriage or cohabitation as regards the ownership and distribution of property on dissolution of the marriage or termination of the cohabitation.

(3) The agreement may be for the settlement of any differences that may arise in relation to property owned by either or both spouses.

Form of agreement

5. (1) An agreement under section 4 may

- (a) define the share of the property, or any part of the property to which each spouse is entitled on separation, dissolution of marriage, or termination of cohabitation, or
- (b) provide for the calculation of the share and the method by which the property or part of the property may be divided.

(2) The agreement may be oral or in writing.

(3) Each party to an oral agreement shall have a witness and if an oral agreement is to be used in court, it shall be confirmed by affidavit.

(4) The written agreement shall be signed by both parties and witnessed by one person each for each party and may be filed in court.

(5) Where the agreement is filed in court, it may be amended or terminated only by an order of court on application by the parties witnessed by two persons chosen by the parties.

(6) If a third party will be affected by the amendment or termination, the application shall be on notice to the third party.

Independent legal advice and certification of agreement

6. (1) A party to an agreement under subsection (1) of section 4 may obtain independent legal advice before making or entering into the agreement.

(2) A person who provides legal advice for a marital property shall certify that the implications of the agreement have been explained to the person who seeks to obtain the advice.

Power of court not to enforce agreement

7. Subject to section 9, a marital property agreement is not enforceable where the court is of the opinion that it would be unjust to give effect to the agreement.

Enquiry by court

8. (1) A court has jurisdiction to enquire into an agreement made under subsection (1) of section 4 during cohabitation or marriage or on the termination of cohabitation or dissolution of the marriage.

(2) A spouse, party or any other person with interest in the subject matter of the agreement may apply to the court for an enquiry to be made where there are reasonable grounds to believe that the court may set the agreement aside under section 9.

(3) Where a spouse, party to the agreement or a person with interest in the subject matter of the agreement applies for an enquiry to be made, the court may make a declaration

- (a) that the agreement shall have effect in whole or in part; or
- (b) for a particular purpose if it is satisfied that the interest of a party has not been materially prejudiced by the action of a party to the agreement.

Court to set aside agreement

9. (1) Where a party to an agreement alleges that there was no intention to enter into the agreement or that the agreement

- (a) is illegal,
- (b) was entered into under
 - (i) duress,
 - (ii) undue influence,
 - (iii) fraud,
 - (iv) misrepresentation, or
 - (v) any other vitiating factor such as the unequal bargaining position of a spouse,

the court may set aside the agreement and make another order for the distribution of the property.

(2) An agreement may be set aside by the court for illegality or lack of full disclosure of assets by a party to the agreement.

(3) The court may set aside or modify an agreement on the ground of unconscionability where it is satisfied that the purpose and effect of the agreement is contrary to conscience or that the agreement exploits the unequal bargaining position of a spouse.

Property Rights

Joint property

10. (1) Subject to section 11 (4) joint property of spouses is property however titled, acquired by one or both spouses during the marriage and may include:

- (a) the matrimonial home, and other immovable property;
- (b) household property;
- (c) any property other than separate property acquired during the marriage;
- (d) property which was separate property but which a spouse has made a contribution towards except where this relates to the sale of family land; and
- (e) a business for which seed money was provided by a spouse for its establishment.

(2) The court may by order restrain a spouse or a third party from permitting the disposition of joint property and the court may rescind a disposition of joint property made with the intention of defeating the financial provision of a spouse except if the disposition is to a purchaser for value in good faith.

(3) The court may make an order to preserve or maintain joint property while a case about the joint property is pending before the court.

Separate property

11. (1) A spouse may acquire and keep separate property during the subsistence of the marriage.

(2) Separate property shall not be taken into account for the purpose of the distribution of joint property under this Act unless there is an agreement to the contrary.

(3) Subsection (2) does not apply where a spouse proves contribution in cash or in kind to the acquisition or maintenance of the separate property.

(4) Separate property includes:

- (a) self-acquired property and the proceeds and profits from the self acquired property;
- (b) property acquired before marriage or property acquired by bequest, devise, inheritance or gift from a person other than the spouse;
- (c) property that was acquired by gift or inheritance from a third party after the date of the marriage;

- (d) income from property referred to in paragraph (c) if the giver or testator has expressly stated that it is to be excluded from the spouse's joint property;
- (e) damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages;
- (f) a lump sum payment provided under a personal or similar plan;
- (g) proceeds or right to proceeds of an insurance policy payable on the death of the insured person;
- (h) property that the spouses have agreed is not to be included in the joint property;
- (i) property which the spouses by agreement regard as separate property;
- (j) trust property except where the trust is a sham in which event the court may set the trust aside in the best interest of the vulnerable spouse; and
- (k) any other property that a spouse can prove is separate property.

(5) The onus of proving that property is separate property is on the person who makes the claim.

Equal access

12. (1) Spouses shall have equal access to joint property under the following circumstances where each spouse:

- (a) is entitled to the possession of the property;
- (b) has the same interest in the property;
- (c) has the same title; or
- (d) has the property for the same time.

(2) Equal access includes the right to the use of, the benefit of and to enter the joint property and where there is agreement between spouses, to the disposal of the joint property.

Distribution of property

13. (1) Where a marriage is being dissolved, the court that determines the property rights of the spouses, may make an order to equitably distribute property jointly acquired during the marriage without regard to the reasons for the breakdown of the marriage.

(2) Where cohabitation terminates, a cohabitee may apply to the court for an order for the distribution of their joint property.

(3) The court may make an order for the distribution of property jointly acquired during the cohabitation.

(4) The distribution of the property shall generally be in equal shares but a spouse may on notice to the other spouse apply to the court to give not more than one third of the value of the jointly acquired property to the other spouse.

(5) The court shall take into consideration the particular circumstances of each case when distributing the property and shall take into consideration:

- (a) the length of the marriage;
- (b) the age of the spouse;
- (c) the contribution of each spouse to the acquisition, maintenance or improvement of the property including the contribution of a spouse towards the upkeep or maintenance of the property in cash or kind;
- (d) the contribution of the immediate family or any contribution
 - (i) to the maintenance of the matrimonial home, or
 - (ii) which facilitated the acquisition of the property or matrimonial home by a spouse;
- (e) the economic circumstances of each spouse at the time of the distribution of the property including the desirability to award the matrimonial home to a particular spouse or the right of a spouse who has custody of a child to live in the matrimonial home for a reasonable period of time;
- (f) the need to make reasonable provision for other spouses and their children as regard joint property after another marriage where the marriage is polygamous;
- (g) the period of cohabitation;
- (h) whether there is an agreement related to the ownership and distribution of the property in the best interest of a vulnerable spouse;
- (i) financial misconduct or the wasting of assets; and
- (j) any other fact which in the opinion of the Court requires consideration.

(6) A monetary contribution shall not be presumed to be of greater value than a non-monetary contribution.

(7) The non-monetary contribution shall not be proved in monetary terms.

Transactions related to the matrimonial home

14. (1) A transaction that relates to the matrimonial home that is joint property shall require the consent of both spouses.

(2) Where the transaction relates to the matrimonial home which is not jointly acquired, the non-owning spouse shall be given not less than six months notice of the transaction.

(3) Despite section 1, the interest of a purchaser for value in good faith without notice shall not be prejudiced on account of the absence of consent of the other spouse to the transaction.

(4) The Court may dispense with the consent of a spouse required under subsection (1) where it is satisfied that the consent cannot be obtained because of

- (a) the mental incapacity of the spouse which has been determined by a mental health professional or psychiatrist,
- (b) the unknown whereabouts of the spouse for seven years as declared by the court in which case the rules of the Administration of Estates Act 1961, (Act 63) shall apply to the spouse presumed dead, or
- (c) any other good reason for which consent should be dispensed with.

(5) Subject to subsection (3), where a spouse enters into a transaction that relates to the jointly acquired matrimonial home without the consent of the other spouse, that transaction may be set aside by the court on an application by the other spouse.

(6) Where the court does not set aside a transaction, the spouse whose interest is defeated is entitled to claim out of the proceeds of the transaction, the value of that spouse's share in the matrimonial home.

(7) Where a transfer of the jointly acquired matrimonial home is ordered by the court and a spouse ordered to make the transfer or conveyance is either unable or unwilling to do so, the court may order the registrar of the court to execute the appropriate transfer or conveyance on the part of that spouse.

Property settlement

15. (1) In a proceeding related to property, the court may make an order to alter the interest of either spouse in the property including an order

- (a) for a settlement of property in substitution for an interest in the property, or
- (b) requiring either or both spouses to make, a settlement or transfer of property determined by the court for the benefit of either or both spouses.

(2) The court shall not make the order unless it is satisfied that it is just and equitable to do so.

(3) Where the court makes an order under subsection (1) it shall have regard to

- (a) the effect of the proposed order on the earning capacity of either spouse, and
- (b) any other order that has been made under this Act in respect of a spouse.

Court to set aside order

16. (1) Where the court is satisfied on an application made by a person affected by an order, that the order was obtained by fraud, duress, the giving of false evidence or the suppression of evidence, the court may set aside the order and make another order.

(2) The court shall have regard to the protection of the interest of a purchaser in good faith for value without notice in exercising its power under subsection (1).

Gifts

17. Where a spouse gives property as a gift to the other spouse during the subsistence of a marriage, there shall be a rebuttable presumption that the property belongs to the receiving spouse.

Debt of spouse incurred prior to marriage

18. Unless there is an agreement to the contrary, a spouse is not liable for a debt incurred by the other spouse prior to the marriage.

Debt of spouse incurred during marriage

19. Where during the subsistence of a marriage, a debt is incurred to acquire the necessaries of life for the immediate family

- (a) with the consent of the other spouse, the debt shall become a family liability to be borne by both spouses equally, or
- (b) without the consent of the other spouse, the debt shall be borne by the spouse who incurred the debt unless agreed otherwise by the spouses.

Polygamous marriage

20. (1) Where a husband has more than one wife in a polygamous marriage, the ownership of the property shall be determined as follows:

- (a) joint property acquired during the first marriage and before the second marriage was contracted is owned by the husband and the first wife; and
- (b) any joint property acquired after the second marriage is owned by the husband and the co-wives and the same principle is applicable to a subsequent marriage.

(2) Despite subsection (1) (b), where it is clear either by agreement or through the conduct of the parties of the polygamous marriage that each has separate matrimonial property, each wife owns that separate matrimonial property separately without the inclusion of the other wives.

(3) A husband in a polygamous marriage who takes a subsequent wife or wives shall together with the existing wife or wives make a declaration as prescribed of their respective interest in the joint property.

(4) The provisions of section 5 shall apply to the declaration.

Rented property

21. (1) Where the parties to a marriage or cohabittees live in rented premises, the court may order the premises to be assigned to one of the parties on dissolution of the relationship even though that party is not a party to the tenancy agreement and shall take into consideration the best interest of any children of the marriage.

(2) Where an assignment is made under subsection (1) the party to whom the assignment is made shall be deemed to be a party to the tenancy agreement in replacement of the original tenant

and shall attorn tenancy to the owner, despite the presence in the tenancy agreement of a covenant against non-assignment.

(3) After the assignment, the original tenant may be ordered to continue to pay the rent for the premises for a period of at least six months and the owner of the rented premises shall be given notice of the order of the court.

Spouse contributing to acquisition of property during marriage

22. Where a spouse acquires property before marriage or acquires property during marriage which is not joint property but the other spouse makes a contribution towards the maintenance or improvement of the property, that other spouse shall acquire a beneficial interest in the property equivalent to the contribution made by that spouse.

Presumptions as to property acquired during marriage

23. Where during the subsistence of a marriage any property is acquired

- (a) in the name of a spouse, there shall be a rebuttable presumption that the property is joint property with the onus on the person who claims that the property is separate property to prove that it is separate property; or
- (b) in the names of the spouses jointly, there shall be a rebuttable presumption that the beneficial interests of the spouses are equal.

Miscellaneous Matters

Maintenance

24. (1) The court may grant a maintenance order to a spouse in addition to or apart from the property distribution order under section 13, to provide for the reasonable needs of the spouse until death or re-marriage.

(2) The maintenance order may be a lump sum or in specified amounts and for periods of time that the court considers just after the court has considered

- (a) the financial resources of the spouse seeking maintenance, including property apportioned to that spouse, under section 13;
- (b) the ability of the spouse to satisfy that spouse's needs independently;
- (c) the present and future earning capacity of both spouses including the time necessary to acquire sufficient education or training to enable the spouse who seeks maintenance to find appropriate employment;
- (d) the reduced or lost earning capacity of the spouse seeking maintenance because that spouse gave up or delayed education, training employment or career opportunities during the marriage;
- (e) the duration of the marriage;
- (f) the standard of living established during the marriage;

- (g) the age, physical and mental condition of the spouse who seeks maintenance;
- (h) the financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future;
- (i) the children of the marriage in the custody of the spouse who seeks or needs maintenance;
- (j) the contribution and services
 - (i) as a spouse, parent, wage earner,
 - (ii) as a manager of the home, and
 - (iii) to the career or career potential of the other spouse
 of the person who is seeking maintenance;
- (k) the wasteful dissipation of joint property by a spouse;
- (l) a transfer or encumbrance made by a spouse in contemplation of a suit for divorce without fair consideration; and
- (m) any other factor which the court may find to be just and equitable.

(3) Maintenance is not part of the chargeable income of a spouse and shall not be subject to tax.

Jurisdiction

25. (1) A District or Circuit Court or the High Court may hear and determine a matter that arises under this Act.

(2) A matter arising under this Act shall be heard by the court in chambers.

Application of Legal Aid Scheme Act

26. (1) The Legal Aid Scheme Act, 1997 (Act 542) applies for the purpose of providing representation by a lawyer for a spouse who cannot afford the payment of legal fees.

(2) A lawyer provided by the Legal Aid Scheme shall take the spouses through mediation.

Settlement by alternative dispute resolution

27. (1) Spouses may agree to use alternative dispute resolution methods for the distribution of property acquired during a marriage before or after the institution of legal proceedings for the dissolution of a marriage but the agreement shall not oust the jurisdiction of the court.

(2) A mediator shall attempt to resolve a dispute through mediation thirty days after referral by a spouse and a spouse may be represented at the mediation by a representative of the spouse's choice.

(3) Upon resolution of the dispute by the mediation, the agreed terms shall be reduced to a written mediation agreement.

(4) The mediator shall submit the mediation agreement to a court seven days after the resolution of the dispute.

(5) If the mediation is unsuccessful, a spouse may resort to court action.

Offences

28. (1) A spouse who

- (a) denies the other spouse an equal right to stay in the matrimonial home and to use the household property when a court has not determined the status of both spouses in relation to the use of the matrimonial home or household property;
- (b) disposes of joint property or household property
 - (i) in order to pre-empt the decision of the court on a matter that relates to the spouse, or
 - (ii) without the consent of the other spouse;
- (c) denies the other spouse use of the proceeds from the sale of joint property; or
- (d) destroys joint property in order to defeat the purpose of this Act or the Matrimonial Causes Act, 1971 (Act 367),

commits an offence and is liable on summary conviction to a fine of not more than four hundred and fifty penalty units or a term of imprisonment of not more than three years or both.

(2) The court may make an additional order for the restitution of property to the disadvantaged spouse and if restitution is not possible, the court may make an order for a right of recourse of the amount of the proceeds of the joint property upon the dissolution of the marriage.

Repeal of sections of Act 367

29. Sections 19, 20 and 21 of the Matrimonial Causes Act, 1971 (Act 367) are hereby repealed.

Regulations

30. The Minister may by legislative instrument make Regulations on

- (a) the format and contents of an agreement,
- (b) the forms to be used under this Act, and
- (c) any other matter necessary for the effective implementation of this Act.

Interpretation

31. In this Act unless the context otherwise requires

“agreement” means marital property agreement;

“attorn” means an agreement by a tenant to be a lawful party to a tenancy agreement although the tenant was not a party to the original agreement;

“cohabitation” means the relationship under section 3;

“contribution” includes

- (a) the payment of money or rendering of service for the acquisition of property;
- (b) the care of children, the aged or infirm, a relative or dependant of a spouse;
- (c) giving up a higher standard of living than would otherwise have been available;
- (d) giving of material assistance, support or otherwise by a spouse to the other which
 - (i) enables the other spouse to acquire a qualification, or
 - (ii) aids the other spouse to carry on that spouse’s occupation or business;
- (e) the management of the household and the performance of household duties;
- (f) the payment of money or rendering of service to maintain or increase the value of property; and
- (g) work on a spouse’s farm or business;

“customary marriage” means a marriage contracted under the customary law rules of one of the contracting parties;

“court” means a District Court, Circuit Court or the High Court;

“equal access” includes the right to the use of, the benefit of and the right to enter the joint property and where there is agreement between spouses, the disposal of the joint property;

“equitably distribute” means to give out or share property among parties using fair means;

“farm land” means land used for agricultural activity;

“holding out to the public” means to carry on a relationship as husband and wife and act in a way which makes the public believe in the existence of the relationship which the act portrays;

“household property” means property acquired for the purposes of the matrimonial home;

“immediate family” means husband, wife and children;

“marriage” has the meaning given to it in section 2 and includes cohabitees deemed to be married;

“matrimonial home” includes

- (a) any house or premises occupied by the spouse and the children of the marriage during the marriage;
- (b) any other self-acquired house or premises occupied by the spouses and the children during the marriage; or
- (c) premises rented for cohabitation where the cohabitees or spouses live or reside;

“mediator” means an impartial person appointed or qualified to be appointed to assist the parties to satisfactorily resolve their dispute;

“Minister” means the Minister responsible for Justice;

“necessaries” includes items for health, life, education and reasonable shelter suitable to the condition of life of a spouse at the time of the actual requirement of the spouse;

“notice” means written notice by registered mail or an oral declaration supported by a witness;

“personal purposes” do not include necessaries;

“prescribed” means prescribed by regulations made under this Act;

“property” includes matrimonial property and joint property and has the meaning given to it in section 10;

“separate property” is not joint property;

“spouse” includes multiple spouses in a polygamous marriage;

“termination” includes dissolution of a marriage and the end of cohabitation;

“trust” includes an executorship, administratorship, guardianship of children or the office, committee or receiver of the estate of a person with mental disorder or a person incapable of managing that person’s own affairs, a charitable trust, family trust and a non-governmental organisation; and

“trust property” includes the property in the possession or under the control wholly or partly of a trustee by virtue of a trust.

Annexure 2(a): Email from Barbara Ayesu, LAWA Ghana, 18 October 2010

From: Lawa Ghana (lawaghana@yahoo.com)
To: attaboahene@yahoo.com;
Date: Mon, October 18, 2010 8:26:18 AM
Subject: Re: ATTN: Barbara (urgent)

Dear Marian,

Thanks alot for the mail, I trust you are doing excellent and the studies going on well, by the grace of God. The copy of the PRSB I sent is the copy that cabinet approved and referred to parliament. Infact when it was referred to parliament it was again referred to two committees the Constitutional and Legal Committee of Parliament and the Gender and Children's committee, are working on it they are actually holding public fora on the Bill, infact Bills because they are doing the Intestate Sucession Bill at the same time.

I will get the latest info on the issue with respect to thier status in parliament f or you. Parliament is on recess but are due to resume soon I am not sure if its this week but I will get back to you soon.

Thanks Barbara.

--- On **Sat, 10/16/10**, **Marian Atta-Boahene <attaboahene@yahoo.com>** wrote:

From: Marian Atta-Boahene <attaboahene@yahoo.com>
Subject: Re: ATTN: Barbara (urgent)
To: "Lawa Ghana" <lawaghana@yahoo.com>
Date: Saturday, October 16, 2010, 8:34 AM

Hello Barbara,

I hope all is well with you and activities on the legislation LAWA is working on. I have some questions and i hope you will able to take time off your busy schedule to answer them for me.

1. Please can you confirm if the copy of the Property Rights of Spouses Bill you sent in the attachment of your 7th August 2010 mail, is the copy of the Bill which has been approved by cabinet to be forwarded to Parliament to be deliberated on.

2. What is the current status of the PRSB? Has it made it to Parliament yet?

3. Any other information relevant to the Bill will be most appreciated.

Thank you in advance for your cooperation.

Sincerely,

M. A. Boahene
LLM 2010
Centre for Human Rights

Annexure 2(b): Email from Agnes Quartey-Papafio, Legislative Drafting Section, Ministry of Justice and Attorney-General's Department, Ghana on 18 October 2010.

From: Agnes Quartey-Papafio (naakwaleyqp@yahoo.co.uk)

To: attaboahene@yahoo.com;

Date: Mon, October 18, 2010 3:21:33 PM

Subject: Re: Property Rights of Spouses Bill

Hello Marian,

Thanks for the email and hope you are doing fine. The Property Rights of Spouses Bill is currently before Parliament . They went round the country for nationwide consultation and I believe the Parliamentary Committee on Constitutional and Legal Affairs which is dealing with it. I do not know which version LAWA gave to you so I do not think I can say anything about it. However, the date on the copy sent to cabinet and subsequently to Parliament is dated 14th October, 2009.

I do not know if they have new proposals from the tour which will lead to changes to the Bill. Hope this answers some of your questions. Do let me know if you have any further questions. All the best. God Bless,
Agnes.

--- On Sat, 16/10/10, Marian Atta-Boahene < attaboahene@yahoo.com> wrote:

From: Marian Atta-Boahene < attaboahene@yahoo.com>

Subject: Property Rights of Spouses Bill

To: "Agnes Papafio" <naakwaleyqp@yahoo.co.uk>

Date: Saturday, 16 October, 2010, 17:07

Hello Agnes,

How are you? I hope life is treating you well. I am fine by the grace of God. I have some requests in relation to the Property Rights of Spouses Bill and I hope you will be able to help me.

1. I hear the PRSB has been approved by cabinet and it is to be sent to Parliament. Please can you tell me the status of that?

2. I have a copy of the current Bill from LAWA but it is not dated. I am writing on it for my dissertation and i was wondering if you could please tell me which year this current copy was put together. I am sure after it was sent to cabinet some changes were made to it.

Thanks

M. A. Boahene

LLM 2010

Centre for Human Rights