

## ANNEX II

### *INTESTATE SUCCESSION LAW, 1985 (with recommended changes)*

In pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981 this Law is hereby made:

1. (1) On the commencement of this Law, the devolution of the estate of any person who dies intestate on or after such commencement shall be determined in accordance with the provisions of this Law subject to subsection (2) of this section and the rules of private international law.
  - (2) This Law shall not apply to any stool, skin, or family property *or the self-acquired property or share of property of the decedent's spouse.*
2. (1) A person shall be deemed to have died intestate under this Law if at the time of his death he had not made a will disposing of his estate.
  - (2) Any person who dies leaving a will disposing of part of his estate shall be deemed to have died intestate under this law in respect of that part of his estate which is not disposed of in the will and accordingly the provisions of this Law shall apply to such part of his estate.
3. Where the intestate is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled absolutely to the household, chattels of the intestate.
4. Notwithstanding the provisions of this Law: —
  - (a) where the estate includes only one house the surviving spouse or child or both of them, as the case may be, shall be entitled to that house and where it devolves to both spouse and child, they shall hold it as tenants-in-common;
  - (b) Where the estate includes more than one house, the surviving spouse or child or both of them, as the case may be, shall determine which of those houses shall devolve to the such spouse or child or both of them and where it devolved to both spouse and child they shall hold such house as tenants-in-common:

Provided that where there is disagreement as to which of the

houses shall devolve to the surviving spouse or child or to both of them, as the case may be, the surviving spouse or child or both of them shall have the exclusive right to choose any one of those houses; except that if for any reason the surviving spouse or child or both of them are unwilling or unable to make such choice the High Court shall, upon application made to it by the administrator of the estate, determine which of those houses shall devolve to the surviving spouse or child or both of them.

*(c) Notwithstanding (a) and (b) above, where the intestate is survived either by more than one spouse or by one spouse and children of another spouse or of a nonmarital relationship, each spouse shall be entitled absolutely, together with her children, to the marital home occupied by her and her children and to the household chattels in that home, to the exclusion of other spouses, children, and family, unless the other spouses, children, or family prove that they contributed substantially to the purchase the house or chattels.*

5. Where the intestate is survived by the spouse and child the residue of the estate shall devolve in the following manner:
  - (a) three-sixteenth to the surviving spouse;
  - (b) nine-sixteenth to the surviving child;
  - (c) one-eighth to the surviving parent;
  - (d) one-eighth in accordance with customary law:

Provided that there is no surviving parent one-fourth of the residue of the estate shall devolve in accordance with customary law.

6. Where the intestate is survived by a spouse and not a child the residue of the estate shall devolve in the following manner:
  - (a) one-half to the surviving spouse;
  - (b) one-fourth to the surviving parent;
  - (c) one-fourth in accordance with customary law:

Provided that where there is no surviving parent one-half of the residue of the estate shall devolve in accordance with customary law.

7. Where the intestate is survived by a child and not by a spouse the surviving child shall be entitled to three-fourths of the residue and of the remaining one-fourth, one-eighth

to the surviving parent and one-eighth shall devolve in accordance with customary law:

Provided that where there is no surviving parent the whole of the one-fourth shall devolve in accordance with customary law.

*7A. Notwithstanding the provisions of sections 5, 6, and 7 of this law, where there are multiple surviving spouses, children of multiple spouses, and/or nonmarital children, members of the judiciary are not required to distribute the residue of the estate pursuant to the fractions set forth above if equity and good conscience would dictate otherwise.*

8. Where the intestate is survived by a parent and not by a child or spouse, three-fourths of his estate shall devolve to the surviving parent and the remaining one-fourth shall devolve in accordance with customary law.
9. Where no customary law is applicable to the devolution of that part of the residue which by virtue of section 5, 6, 7 or 8 of this Law shall devolve in accordance with customary law such part of the residue shall devolve in equal shares to those beneficiaries otherwise entitled to share the residue under the relevant provisions of this Law.
10. Where the rules of succession under customary law applicable to any portion of the estate provide that the family of the intestate shall be entitled to a share in the estate: —
  - (a) That family shall be the family to which the intestate belonged for the purposes of succession in accordance with customary law in the community of which he was a member;
  - (b) In the case of the intestate who, being a member of two customary law communities belonged to two families for the purposes of succession, that family shall be the two families;
  - (c) In the case of an intestate not being a member of any family, that family shall be the family with which the intestate was identified at the time of his death or, failing that, to the families of his parents or failing that to the Republic.
11. (1) Where the intestate is not survived by a spouse, child or parent his estate shall devolve in accordance with customary law.
  - (2) Where there is no customary law applicable to the devolution of the estate of an intestate who is not survived by

a spouse, child or parent in the circumstances referred to in subsection (1) of this section shall devolve to the Republic.

- (3) Where the estate of an intestate devolves to the Republic under subsection (2) of this section, if upon an application made to the High Court the Court is satisfied that any person who was maintained by the intestate or with whom the intestate was closely identified, should be maintained out of his estate or that a portion of his estate or the whole of his estate should devolve to him the Court may make an order that such person is maintained out of the estate or that a portion of the estate or the whole estate devolves to him.
12. Notwithstanding the provisions of sections 4 and 5 to 8 of this Law –
  - (a) Where the total value of the residue does not exceed ₦50,000.00 the residue shall devolve to any surviving spouse or child of the intestate or where both the spouse and child survive the intestate to both of them;
  - (b) Where the intestate is survived only by the parent and the total value of the estate does not exceed ₦50,000.00 the estate shall devolve to the surviving parent.
13. The Provisional National Defence Council Secretary responsible for Justice may by legislative instrument vary the maximum value of the residue or estate prescribed under section 12 of this Law.
14. Subject to the rules of customary law relating to a member's interest in communal property, where two or more persons are entitled to share a portion of an estate under this Law they shall divide it among themselves in equal shares.
15. Where spouses die in circumstances—
  - (a) in which it appears that their deaths were simultaneous; or
  - (b) rendering it uncertain which of them survived the other,the older shall for the purposes of this Law, be presumed to have predeceased the younger.
16. Where a child of the intestate who has predeceased him is survived by a child (being the grandchild of the intestate)

the grandchild shall, if he is dependent upon the intestate at the time of his death be entitled to the whole or a portion of the estate which would have otherwise devolved to his parent if he had not predeceased the intestate.

A. (1) No person shall before the distribution of the estate of a deceased person, whether testate or intestate eject a surviving spouse or child from the matrimonial home—

- (a) where the matrimonial home is the self-acquired property of the deceased;
- (b) where the matrimonial home is rented property, unless the ejection is pursuant to a court order;
- (c) where the matrimonial home is the family house of the deceased, unless a period of six months has expired from the date of the death of the deceased; or
- (d) where the matrimonial home is public property unless a period of three months has expired from the date of the death of the deceased.

(2) For the purposes of this section “matrimonial house” means—

- (a) the house or premises occupied by the deceased and the surviving spouse, or the deceased and a surviving child or all as the case may be, at the time of the death of the deceased; or
- (b) any other self-acquired house of the deceased occupied by the surviving spouse or child or both at the time of death of the deceased.

17. Any person who before the distribution of the estate of a deceased person whether testate or intestate;

- (a) unlawfully ejects a surviving spouse or child from the matrimonial home contrary to the section 16A of this Law
- (b) unlawfully deprives the entitled person of the use of—
- (c) (i) any part of the property of the entitled person;
- (ii) any property shared by the entitled person with the deceased to which the provisions of Law apply; or
- (iii) removes, destroys or otherwise unlawfully in-

terferes with the property of the deceased person

commits an offence and is liable on summary conviction to a minimum fine of ₪50,000.00 and not exceeding ₪500,000.00 or a term of imprisonment not exceeding one year and the court or tribunal shall make such other orders as it considers necessary for the re-instatement of or reimbursement to the person thus ejected or deprived.

18. In this Law, except where the context otherwise requires—  
“child” includes a natural child, a person adopted under any enactment for the time being in force or under customary law related to adoption and any person recognised by the person in question as his child or recognised by law to be the child of such person;

“estate” means self-acquired property which the intestate was legally competent to dispose of during his lifetime and in respect of which his interest has not been terminated by or on his death; *and excluding any property or share of property acquired through substantial monetary or nonmonetary contribution of a spouse;*

“household chattels” include jewelry, clothes, furniture and furnishings, refrigerators, television, radiogram, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, books, motor vehicles other than vehicles used wholly for commercial purposes, and household livestock;

“parent” includes natural mother and father and any person recognised by law to be the mother or father of the intestate;

“residue” means all that part of the intestate’s estate that does not devolve according to sections 3 and 4 of this Law;

“rules of private international law” include such customary law rules of private international law for the time being in force;

“spouse” includes a person married under the *Marriage Ordinance (Cap. 127)*, the *Marriage of Mohammedans Ordinance (Cap. 129)*, customary law, or a person who is the surviving partner of a customary law marriage where the customary rites were not performed but where the parties lived together as husband and wife and obtained the actual or implied consent of their two families to the marriage;

“will” includes samansiw and any other form of will recognised at customary law.

2001]

*ANNEX II*

355

19. The following enactments are hereby repealed –
- (a) section 48 of the Marriage Ordinance
  - (b) section 10 of the Marriage of Mohammedans Ordinance (Cap. 129)
20. (1) The Statutes of England relating to intestate succession applicable in Ghana immediately before the coming into force of this Law shall cease to apply.
- (2) Notwithstanding subsection (1) of this section and subject to section 21 the provisions of this Law shall not affect the validity of any act done under any law in force in Ghana relating to intestate succession immediately before this Law comes into force.
21. (1) Notwithstanding the provisions of section 1 of this Law or any other enactment of any claim or adjudication pending before the Court or a Chief or Head of Family under customary law at the commencement of this Law in respect of administration or distribution of the estate of an intestate who dies before the commencement, and for the purposes this section the provisions of the Customary Marriage and Divorce (Registration) Law, 1985 (P.N.D.C.L. 112) and the Administration of Estates Act, 1961 (P.N.D.C.L. 113) shall be deemed to be applicable to such claim or adjudication.
- (2) For the avoidance of doubt the provisions of subsection (1) of this section shall not apply to any claim that is statute barred by virtue of the Limitations Decree, 1972 (N.R.C.D. 54).

*CUSTOMARY MARRIAGE AND DIVORCE (REGISTRATION)  
LAW, 1985 (with recommended changes)*

In pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981 this Law is hereby made:

PART I—REGISTRATION OF CUSTOMARY MARRIAGE

1. On the commencement of the Law any marriage contracted under customary law before or after such commencement may be registered in accordance with the following provisions.
2. (1) Where a marriage has been contracted under customary law, either party to the marriage or both parties may apply in writing to the Registrar of Marriages (referred to in this Law as “the Registrar”) of the District in which the marriage was contracted, *or in person to any such person to whom the District Assembly has delegated registration functions in that District*, for the registration of the marriage in the register of marriages in this Law referred to as the “register”.  
(2) Application for the registration of the marriage may be made at any time after the marriage except that the Secretary for Justice may at any time prescribe periods within which failure to register customary marriages contracted before or after the commencement of this Law shall be an offence.  
(3) The form of the register shall be as set out in the First Schedule to this Law.
3. (1) The application for registration of the marriage shall be accompanied by a statutory declaration stating the following:—
  - (a) names of the parties to the marriage; the places of residence of the parties at the time of the marriage;
  - (b) that the conditions essential to the validity of the marriage in accordance with the applicable customary law have been complied with.  
(2) The statutory declaration shall be supported by the parents of the spouses or persons standing in loco parentis to the spouses except where there are no such persons living at the time of application for registration.

4. (1) The Registrar, shall upon receipt of an application for the registration of marriage, register the marriage and shall by notice in the form set out in the Second Schedule to this Law notify the public of the registration of the marriage.
- (2) The notice shall be displayed on a public notice board in the office of the Registrar within twenty-eight days of the application for registration.
5. (1) Any person who knows of any cause why the Registrar should not have registered the marriage, or objects to the validity of the marriage under the applicable customary law, may at any time after the publication of the notice by the Registrar under section 4 of this Law, file the grounds of his objection in the District Court in the District in which the marriage was registered.
- (2) Copies of the grounds of objection shall be served on the parties affected by the objection.
- (3) If upon the hearing of the grounds of objection the District Court is satisfied that there are no legal grounds for the objection the Court shall dismiss the objection.
- (4) If the District Court, upon hearing the grounds of the objection, is satisfied that there are legal grounds for the objection the Court shall make an order empowering the Registrar to expunge any entries made in the register in respect of the registration of the marriage to which the objection was made.

#### PART II—REGISTRATION OF CUSTOMARY DIVORCE

6. (1) The dissolution of any marriage registered under this Law shall be recorded by the Registrar of the District in the register of divorces (referred to in this Law as the “register”) which shall be in the form set out in the Third Schedule to this Law.
- (2) The provisions of subsection (1) of this section shall not apply to any marriage dissolved under section 41 of the Matrimonial Causes Act, 1971 (Act 367).
7. (1) Where a marriage registered under this Law has been dissolved in accordance with the applicable customary law, the parties may within such period of the dissolution of the marriage as the Secretary for Justice may pre-

scribe, notify the Registrar of the District in which the marriage was registered of the dissolution.

- (2) The parties notifying the Registrar shall make a statutory declaration stating that the marriage has been dissolved in accordance with the applicable customary law.
  - (3) The statutory declaration shall be supported by the parents of the spouses or persons standing in loco parentis living at the time of the application.
  - (4) The Registrar may, upon receipt of such notification record in the register the dissolution of the marriage and may by notice in the form set out in the Second Schedule to this Law notify the public of the registration of the dissolution of the marriage.
  - (5) The notice shall be displayed on a public notice board in the office of the Registrar within twenty-eight days of the receipt of such notification.
8. (1) Any person who knows of any cause why the Registrar should not have registered the dissolution of the marriage, or objects to the validity of the dissolution of the marriage under the applicable customary law, may at any time after the publication of the notice under section 7 of this Law file the grounds of his objection in the District Court in the District in which the dissolution of the marriage in question was registered.
- (2) Copies of the grounds of objection shall be served on the parties affected by the objection.
  - (3) If upon the hearing of the grounds of objection the District Court is satisfied that there are no legal grounds for the objection the Court shall dismiss the objection.
  - (4) If the District Court upon hearing the grounds of objection is satisfied that there are legal grounds for the objection the Court shall make an order empowering the Registrar to expunge any entries made in the register in respect of the dissolution of the marriage.

### PART III—MISCELLANEOUS

9. Upon the registration of any marriage or the dissolution of any marriage the Registrar shall issue to the parties concerned a certified true copy of the entry in the register upon payment of a registration fee prescribed under this Law.

10. The grounds of any objection filed in the District Court under section 5 or 8 of this Law shall be heard in chambers.
11. The Registrar shall at all reasonable times allow searches to be made of the register and shall furnish on request and upon payment of a fee prescribed under this Law a certified true copy of any entry in the register.
12. Any clerical error in a register may, if discovered at the time of making the entry, be corrected by the Registrar and no other entry shall be corrected nor any alteration made in the register except on the application by the person by whom the information is furnished to the Registrar.
13. In any proceedings a true copy of the entry in the register certified under the hand of the Registrar shall be admissible in evidence as sufficient proof of the registration of the marriage or the dissolution of the marriage.
14. Any person who—
  - (a) applies to the Registrar for the registration of any customary law marriage or dissolution thereof which he knows has not been lawfully contracted or dissolved under the applicable customary law;
  - (b) knowingly makes any false entry in the register or a certified copy thereof; or
  - (c) with intent to defraud alters any entry in the register or certified copy thereof,shall be guilty of an offence and liable on summary conviction to a fine not exceeding ₪10,000.00 or to imprisonment not exceeding three years or both.
15. (1) The provisions of the Intestate Succession Law, 1985 (P.N.D.C.L. 111) shall apply to any spouse of a customary law marriage registered under this Law.
  - (2) Notwithstanding subsection (1) of this section, where a court or tribunal is satisfied by oral or documentary evidence before it that a customary law marriage had been validly contracted between a deceased and a surviving spouse, the court or tribunal shall make an order for the estate of the intestate to be distributed in the same manner as a customary law marriage registered under this Law.
16. The Secretary responsible for Justice may by legislative instrument—
  - (a) prescribe the periods within which customary mar-

- riages contracted before or after the commencement of this Law shall be registered;
- (b) prescribe the periods within which dissolution of such marriages shall be registered;
  - (c) specify offences and penalties for breach of any provision of this Law or regulations made thereunder;
  - (d) prescribe such fees as he may deem fit, and generally make provision for the full implementation of this Law.
17. In this Law,  
“District” means an area of authority of a District Council established under any enactment of the time being in force;  
“Registrar” means the Registrar of Marriages appointed by a District Council for the purposes of registering marriages and dissolution of marriages under this Law.
18. On the commencement of this Law the Bye-laws of any District Council relating to the registration of customary marriages and divorces shall on such commencement cease to have effect and shall be deemed to have been cancelled by this Law.
19. This Law shall be deemed to have come into force on the same day as the Intestate Succession Law, 1985 (P.N.D.C.L. 111).