

The Limits of Legal Intervention in Customary Practices: Understanding the Unpopularity of Ghana's PNDC Law 111 on Intestate Succession among the Anlo and Asante*

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Abstract: This study analyzes the level of popularity among the Anlo and the Asante in Ghana of PNDC Law 111 on intestate inheritance. Reasons for the promulgation of Law 111 include the removal of laws that discriminate against women and children, determination of intestacy and substitution for legal practices on inheritance after death, and provision of a uniform intestate inheritance law that is nationally applicable. The research uses both qualitative and quantitative approaches. The research finds that a lack of education, awareness of the law, rights-consciousness, financial resources and enforcement of the law provides only a partial explanation of the unpopularity of PNDC Law 111. More important is that certain contextual realities confronting the Anlo and the Asante were not adequately considered when the law was being drafted. This makes the law appear to some as an imposition. As a result, many remain unwilling to give up cultural institutions

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of intestate inheritance that appear to benefit them. Thus, it appears ineffective to use legislation alone to change such cultural practices. These findings are significant as they highlight the relatively low levels of popularity and observance of Law 111 among the research population, and the challenges facing the law moving forward. This greater appreciation of these difficulties allows the study to suggest effective interventions.

Keywords: Customary Law, Women's Rights, Legal Pluralism, Intergenerational Transmission of Poverty, Africa, Widows, Inheritance.

Historically, multiple laws have governed inheritance practices in Ghana. For example, adopted colonial law was added to elements of indigenous law that were promoted to the status of a national legal system, officially referred to as customary law. Apart from the state laws, Ghana also recognizes laws in different ethnic communities such the Anlo and Asante (Ashanti). For example, people inherit property and succeed to ranks either matrilineally or patrilineally outside the official state sanctioned structures and institutions (Manuh 1988). Recognizing that the various laws governing intestate inheritance discriminated against women when it comes to inheriting from a man, in 1985 the Ghanaian government promulgated PNDC Law 111 to generally regulate intestate inheritance (Gedzi 2012a, 2014).

The various laws governing intestate succession and inheritance practices connects Ghana to the wider discourse on the co-existence and interaction of state laws and indigenous or local legal decision-making institutions, and the influence of transnational legal systems on both. Previously, this coexistence of indigenous, national and transnational legal systems was described as legal pluralism (Gedzi 2014). However, critics point out that this usage encouraged "static analyses of plurality that failed to explore the interactions between the systems or the implications of power inequalities among them" (Merry 1992: 358).

Scholarship on the subject has shown the mutually constitutive nature of these systems rather than their separateness. Moreover, definitions of the “constituent orders” have been widened to include a range of informal ordering systems, sometimes called “private governance,” which are found in societies with pervasive state law such as the United States, as well as in post-colonial nations. Hence, plurality of legal systems is now recognized as a fundamental characteristic of all societies, not only those like Ghana with colonial histories (Merry 1992; Gedzi 2014). This theoretical position informs to some extent our understanding of how state law in the form of PNDC Law 111 attempts to penetrate and restructure the indigenous decision-making institutions. And, how the latter resist and try to circumvent this penetration. As such, the case of a widow winning a rightful share of a deceased husband’s estate, for example, becomes very complicated due to “the co-existence of different social normative systems with different ideologies” (Woodman 1996: 152).

However, the area of concern of this study is not on the constituent orders or different social normative systems. Rather, the focus is on the analyzing the continued unpopularity of the intestate succession PNDC Law 111 among the research population. The research uses both qualitative and quantitative approaches to assess attitudes towards the law among sections of the Anlo and the Asante. It finds that a lack of education, awareness of the law, rights-consciousness, financial resources, and enforcement of the law provide only part of the answer for the unpopularity of PNDC Law 111. The results show that the inadequate consideration of certain contextual realities confronting the population during the drafting of the law is a more important reason. Many thus consider the law to be an imposition, and remain unwilling to give up cultural institutions of intestate inheritance that appear to benefit them. Thus, it appears ineffective to use legislation alone to change such cultural practices. The study’s findings are significant as they highlight the relatively low levels of popularity and observance of Law 111 among the research population, and the challenges facing the law moving

forward. This greater appreciation of these difficulties allows the study to suggest effective interventions.

The article begins with a background of intestate succession in Ghana, PNDC Law 111 and the specific discriminations against women it was supposed to address. It then explains the study's research methodology. This is followed by a description of the results, and a discussion of their significance and meaning. The article concludes with suggestions of possible interventions based on the research findings.

Intestate Succession in Ghana

Until 1884, distribution of intestate self-acquired property in Ghana was done solely according to the indigenous laws¹ of the various socio-cultural groups (Ollenu and Woodman 1985: 38). The principal sources of indigenous laws of inheritance are the patrilineal and matrilineal kinship or family systems.² Every Ghanaian is born into one

¹ Terms such as "customary law," "native law and custom," "native customary law," "living law," among others, have been used by various scholars to describe laws that have emerged from Africa (see Allott 1960; Goldschmidt 1981, 1998; Erlich 1936). However, these terms do not adequately depict the character of the laws. Therefore, I prefer to use the term "indigenous law" in this study. The term reflects the origin and character of these types of law. Indigenous law of the Anlo and Asante are non-static, ever-changing forms of ordering, different from the fixed customary law of the state. The term "indigenous law," then, recognises the evolving character of these law systems and their location within a specific society at a specific time. The term as used in this study, therefore, is distinct from the codified indigenous law that has been raised to the status of state law (customary law). In this sense, it is semi-autonomous. The state of Ghana recognizes indigenous law in the various ethnic groups but not in all cases. A typical case where the state does not recognize indigenous law is in intestate succession or inheritance. Where the term "customary law" is used in this study, it is identified as state law.

² Patrilineage and matrilineage are the two main types of extended family in

of these lineages. When a male parent dies in the patrilineage, his property devolves primarily to his children or other individuals within that lineage; in the matrilineage, the property devolves to the lineage (WiLDAF-Ghana 2005).

An important factor obliging one to belong to one of these lineages is that the basis for traditional socio-economic organization is largely the extended family. This means that membership in an extended family largely determines one's socio-economic status within traditional society. Besides, members of the family also influence decisions on marriage and other dimensions of life. For instance, a marriage that is contracted without the approval of members of the extended family may be invalidated. Moreover, obligations that the extended family would normally owe a lineage member's spouse and children may not be honored (Awusabo-Asare 1990). Indigenous inheritance systems do not permit spouses to inherit from each other. In matrilineal areas, children have no right to inherit from their male parent. This situation creates socio-economic hardship for children and spouses, especially widows, in matrilineal communities (Dankwa 1998: 236).

To curtail the influence of the family on socio-economic issues, the British colonial government enacted a marriage law in 1884. The objectives of the law were to create alternative forms of marriage to indigenous marriage, to legalize all solemnized Christian marriages and to make provisions for the distribution of self-acquired estates to decedents. The idea was to vest one-third of the estate in the surviving spouse and two-thirds in the children, in equal shares. The purpose behind this was to alleviate the socio-economic problems widows and their children were facing (Awusabo-Asare 1990). The enactment made monogamy the only legally recognized form of marriage.

Following the enactment, chiefs and their people, especially in

Ghana. In twi the extended family is known as *abusua*. This is different from the nuclear family. Any time that the nuclear type of family is referred to in this study, it is identified as such.

Akan areas, protested that the extended family had rights over the self-acquired estate of its deceased member. Because of the protest, the authorities amended the law in 1902, and intestate self-acquired property devolved with one-third of it going to the extended family while two-thirds to the surviving spouse and children. The amendment also legally recognized polygamy as a form of marriage. This led to a pluralistic change in the legal landscape on marriage and intestate succession. For example, there was a traditional system of inheritance according to indigenous laws of succession of the various socio-cultural groups. In addition, there was succession under English law (Yeboa 1992: 309). In 1907, the Marriage of Mohammedans Ordinance (Cap. 129) came into law. This law required the registration of marriages and divorces contracted under Islamic law (Fenrich and Higgins 2001: 283), which made succession possible in accordance with Islamic law.

The personal law of the deceased at the time of his or her death continued to govern the succession to the estate of a man or woman. This could be the decedent's indigenous law, a combination of it and English law, or Islamic law (Yeboa 1992: 309). Under indigenous law of all Ewe and therefore also the Anlo, specific individuals such as children within the patrilineage, and not the deceased's family, inherit all property apart from land. Among the Asante on the other hand, the matrilineal family as a corporate body principally inherits property (Kludze 1973). If someone married under the Marriage Ordinance, or born out of such a marriage, died, then two-thirds of the property fell under the English Statute of Distribution while the remaining one-third was disposed of in accordance with the indigenous law of the deceased (Yeboa 1992: 310).

Despite the existence of alternative forms of marriage that gave inheritance rights to the surviving spouse with or without children eligible to inherit, indigenous systems continued to dominate inheritance in Ghana through the colonial period. The immediate post-independence government could not solve the problem associated with the intestate succession and inheritance. It was only in 1985, that the government of the People's National Defense Council (PNDC) made substantial

changes in aspects of indigenous marriage and intestate inheritance practice in the country.

Discrimination in Intestate Inheritance

From the 1884 enactment until 1985, then, intestate succession continued to discriminate against widows and offspring. Where applicable, intestate succession was determined according to the provisions of Sections 10 and 48 respectively of the Mohammedan Marriage Ordinance (Cap. 129) and the Marriage Ordinance (Cap. 127). However, the law governing intestate succession remained predominantly indigenous. The estate of the intestate³ continued to devolve primarily to the matri-family or to the children (if any) of the deceased within the patri-family.⁴ Thus, indigenous law together with manipulations from some extended family members worked to bereave widows and children of any property, including all support, maintenance and security.

A good example is the judicial decision in the case *Quartey v. Martey and Anor* in the formal court. In this case, Mr. H. A. Martey and Evelynna Quartey were married under customary law. On the death of her husband, the wife, Evelynna Quartey issued a writ of summons against the decedent's administrators claiming, one-third share of 70 cattle owned by the deceased, one-third share of a house at Accra and one-third share

³ Indigenous law on inheritance does not permit children to inherit from their fathers in the matrilineage. But children inherit property from their mothers. Property of a deceased man is inherited by his maternal family, that is, the matrilineage. In the patrilineage, on the other hand, indigenous law allows children to inherit property from their fathers and mothers. In both patrilineage and matrilineage, a wife and a husband, according to indigenous law, cannot inherit property from each other.

⁴ This is informed by an interview with, and unstructured research provided by, Clement Amofah, a lawyer at Trinity Chambers, Adum, Kumasi. I am grateful to him.

of cash. Justice Ollennu dismissed the plaintiff's claim stating:

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

In this and many other cases, the courts failed to significantly improve the situation for women. If a man wished to provide security for his spouse and children after his death, he needed to make a gift to them while alive. If a man failed to make such a gift, or failed to make a testamentary disposition to that effect, the wife and children had no guarantee of any benefit of his estate.

The need for a realistic and practical reappraisal of the situation women were in became more poignant with the growing shift from extended to nuclear families. This shift increased contestation over the appropriate line of devolution of intestate property. The contribution of the woman and children in the acquisition of property, coupled with new developments in family dynamics, gained so much prominence and significance that it was no longer realistic to deprive women and their children entirely of the benefit of the property. Eventually, this would lead to legislative intervention.

PNDC Law 111

This attempt to make some changes in some aspects of marriage and intestate succession occurred on 14 June 1985 during the military government of the Provisional National Defense Council (PNDC)

(Awusabo-Asare 1990). The law became known as PNDC Law 111 on intestate succession. The intention of the statute was to determine intestacy and to substitute for indigenous legal practices on inheritance. It deals with the distribution of the estate of a person who dies without a testamentary disposition of self-acquired property. It, along with three other laws, namely the Customary Marriage and Divorce (Registration) Law (PNDC Law 112), the Administration of Estate (Amendment) Law (PNDC Law 113) and the Head of Family (Accountability) Law (PNDC Law 114) came about together. Thus, all of these laws build upon the earlier enactments by the colonial government in 1884.

The justification for such legislative intervention appears in the Intestate Succession Law, 1985 Memorandum pages i-iv. The Memorandum, among other things, maintains that:

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

Thus, in theory, the law tilted the balance of convenience in favor of the conjugal family by providing adequate protection and security for the surviving spouse and children, and by removing the incongruence between the indigenous laws governing intestate inheritance and modern developments in family dynamics.

Devolution of intestate property under PNDC Law 111

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

dispensed with the house and household-chattel, the law, under Section 6 distributes the remainder of the estate in specific fractions as shown in the following table (Table 1).

Table 1.
Estate Distribution Proportions under PNDC Law 111

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

Note. From Gedzi 2012a: 216.

The table shows how the remainder of the intestate estate devolves among beneficiaries according to PNDC Law 111. Thus, the essence of the law, as indicated, is to give the bulk of the estate to the surviving spouse and children. PNDC Law 264 amended PNDC Law 111 by the inclusion of section 16a and substitution of section 17. The effect of this law is that before the distribution of the estate, no person shall, whether the decedent died intestate or testate, eject a surviving spouse or child from the matrimonial home. The punishment of such an offender is a “summary conviction to minimum fine” of 5 Ghana cedis and not exceeding 50 Ghana cedis or a term of imprisonment not exceeding one year (Gedzi 2012a; 2014).

As a statute, PNDC Law 111 supersedes and reforms the rules of indigenous law in as much as the latter affects inheritance. Nevertheless, indigenous law systems remain highly influential. Benneh, Kasanga and Amoyaw’s (1997) extensive survey on inheritance in peri-urban Kumasi concluded that the matrilineal inheritance system was here to stay for the foreseeable future. More recently, Fenrich and Higgins (2001) and R nger (2006) confirmed that indigenous inheritance practices are still

predominant, especially in rural areas.

The factors contributing to the continued ineffectiveness of PNDC Law 111 are complex. Fenrich and Higgins (2001) and Rünger (2006) found that many, including women, are simply ignorant of PNDC Law 111. They mentioned factors accounting for people's inability to use the law, including illiteracy, poverty, widespread legal ignorance, and a lack of rights consciousness. Furthermore, the unpopularity of the law is also attributed to a lack of enforcement and overall ineffectiveness of the law in many places, and the inadequacy of legal provisions. Where people are aware of the law, they may nevertheless misunderstand its provisions. For example, Manuh (1988) reported that instead of allocating a full house to the widow and her children as PNDC Law 111 prescribes, people give only a room in the house to them. In Muslim communities, opinion leaders including chiefs insist that Islamic principles govern intestate property distribution.

While this overall picture of Law 111's ineffectiveness is well known, the issue remains under-researched, and there is an incomplete understanding of community attitudes towards the law, and how these attitudes vary between patrilineal and matrilineal ethnic groups. The reasons why widows decide to assert their rights through the law or not are also require further investigation. This study was conducted to address these questions.

Methodology

A number of factors informed the selection of the Anlo and Asante societies as units of analysis. Both societies value tradition and cultural institutions highly. Each lineage group displays a certain degree of socio-cultural homogeneity. Kludze (1973), for instance, found that in general, the Ewe share the same socio-cultural heritage of intestate succession. They are both major players in the socio-economic organization of Ghana. The fact that the two societies represent the patrilineal and matrilineal family systems in Ghana also influenced the

choice of these two groups.

The Anlo are a subset of the patrilineal Ewe people. The Anlo society is based in the southern part of the Volta region of Ghana. Anloga, the traditional capital was one of two fieldsites for this study. The Anlo economy is provincial and based on subsistence cropping, fishing, the sale of basic goods, and a very limited amount of government employment.

The Asante, on the other hand, belong to the matrilineal group known as the Akan and are located in the southern central hinterland. Kumasi, the second fieldwork site, is the traditional capital of the Asante kingdom. Kumasi has more government jobs. There is much trading activity and farming. Kumasi has the added interest of being cosmopolitan alongside its “indigeneity.” This means that there is the possibility of an exchange between indigenous and the formal laws, which may in turn, affect indigenous property relations. Therefore, Kumasi was selected in order to avoid the bias of restricting the research to purely typical “indigenous” areas.

The approach of the research was both qualitative and quantitative, employing interviews and surveys. This mixed method approach facilitates close interactions with informants/respondents and their settings (Gedzi 2012b), while also allowing the explanation of the research object through collection and presentation of numerical or statistic data. Unstructured, open, closed, individual and group interviews were conducted. These helped to confirm the survey data and also provide a much richer and more complete picture of the research object possible through surveys alone. The relatively small number of interview informants (40 men and 40 women from both research units) obliged the use of a strategic sample for detailed individual and group interviews. Further qualitative data was collected through observation of the normal range of activities in the studied communities.

In order to deduce what mode of inheritance was popular among the research units, a survey comprising 486 respondents drawn from both research units was conducted. A further survey consisting of 300

respondents from both research units was also conducted. This was to help determine the extent of patronage of traditional inheritance among the research units. Even though the number of respondents involved in the surveys and interviews might not be large enough to be considered truly representative, the results could be sufficient to induce what pertains in other Asante and Anlo areas. This is due to the osmotic socio-cultural influence of Kumasi and Anloga as traditional capitals on towns and villages in their cultural hinterlands (see Arhin 1983: 475).

Results

A survey of 150 respondents, both men and women, was conducted in the majority Asante city of Kumasi. Of those surveyed, 39.6 percent of women and 34 percent of men admitted inheriting property from a deceased parent or family member. While 16.7 percent of men indicated they inherited their property through their fathers, 34.1 percent of women maintained they inherited the property maternally. Without making any distinction between genders, 18 respondents inherited through their fathers (patrilineally), while those who received matrilineally totaled 37, representing 12 and 24.7 percent of the sample respectively. The remainder had not inherited any property. This suggests that the matrilineal system of inheritance is still dominant among the people of Asante, though not to the extent it used to be.

The results from a survey conducted through brief group interviews with 243 respondents at Sepe-Timpom, Manhyia Palace, Adum and Bantuma in Kumasi supported the above result. A survey of the participants found that 90 (37 percent) preferred matrilineal indigenous inheritance. The next most popular inheritance practice was the making of a will, which attracted 61 respondents (25 percent). A smaller number of respondents (53 or 22 percent) preferred PNDC Law 111. Those favoring gift giving numbered 39 (16 percent). Thus, the survey suggests that even though the traditional way of inheritance is decreasing, it is still the most popular, while PNDC Law 111 is the third most popular choice.

Similar surveys were conducted in the mainly Anlo town of Anloga. The first survey comprised 150 respondents. In the survey, 44 percent of male respondents admitted they inherited their property from their fathers while 22 percent of women confirmed their inheritance from their fathers. The rest of the respondents either purchased their own property or did not have any. A further survey of 243 respondents in group interviews showed that the traditional patrilineal inheritance system was by far the most popular, attracting 182 respondents (75 percent). This was followed by 27 respondents (11 percent) who indicated they favored gift giving. Seventeen respondents (7 percent) preferred making a will. In spite of the fact that many indicated their awareness of PNDC Law 111, only 15 respondents (6 percent) reported that they preferred it.

Comparing the results from the two field sites, it is clear that the respondents in Anloga use the region's traditional patrilineal inheritance system more than the people in Kumasi use their region's traditional matrilineal system of inheritance. Out of the 243 respondents in each area, Anloga had 182 respondents (75 percent) in favor of the traditional way of inheritance against 90 respondents (37 percent) in Kumasi. On the other hand, Kumasi showed more confidence in other modes of inheritance such as the making of a will, PNDC Law 111, and gift giving. While 39 respondents (16 percent) in Kumasi showed interest in gift giving only, 27 respondents (11 percent) in Anloga favored it. Similarly, while 61 respondents (25 percent) in Kumasi showed more interest in the making of a will, 17 respondents (7 percent) in Anloga preferred it. In addition, whereas 53 respondents (22 percent) in Kumasi were attracted to PNDC Law 111, only 15 respondents (6 percent) in Anloga favored it.

In sum, two key results emerged from the surveys. First, only a minority of respondents in both field sites (14 percent) favored PNDC Law 111 over other inheritance systems. Second, support for the law was significantly higher among the matrilineal Asante (25 percent) than the patrilineal Anlo (7 percent). The following section discusses these survey results based on information gathered from the project's

qualitative interviews.

Discussion

Community Attitudes towards Inheritance

An important reason for the unpopularity of Law 111 is that its emphasis on the rights of widows and children is disconnected from community attitudes about what the rightful distribution of inheritance should be. The law has fixed percentages of property for each family type without considering how much investment the extended family made in its member before his death. The extended family provides financial support in difficult times such as when a member or his nuclear family members are ill. During funeral and burial ceremonies of a male member, his child or even his wife, the extended family continues to play a major material role. In addition, the inheritance systems, particularly those of the matri-lineage, are a form of social security or insurance policy that evolved over the years and takes care of the welfare of family members. They pool family resources to help individual members in need.

Thus, the question of investment is a crucial one, since in some cases the extended family has invested a fortune on a member with the intention of getting it back in the future. If the member dies before this happens, members of the extended family such as the decedent's parents, brothers and sisters claim the right to satisfy their needs and recoup this investment through the deceased's estate. Often, the extended family is seen as having a superior claim than that of the deceased's widow and children. For example, in Akan areas, extended family members do not understand why "outsiders" such as wives and their children should have shares in the deceased husbands' properties since the husbands were family members in whom the family had invested.

A key informant, Peter Kwasi Sarpong,⁵ explained that the

⁵ Emeritus Catholic Archbishop of Kumasi and anthropologist. As an Asante

extended family's claim on the resources of the deceased is increasingly in competition with the claims of his nuclear family:

People, nowadays may not necessarily inherit in their clans or lineage. They are likely to have self-acquired property. This is unlike in the past when people used property like family land to farm on. This is why a wife with children may say she helps her husband to acquire a property. Therefore, a wife and children may insist on their rights that such a property belongs to the husband or the father, and therefore they should have their due share. Family members may also contest that such a property belongs to their family member. This creates disputes. If money from the clan or lineage pays to set up a business or to educate, there may be problems there. If such a clan sponsored educated male parent or "businessman" acquires a property, then his wife and children cannot claim it as their own. Such a male parent, therefore, cannot deny the clan or the maternal family in the distribution of his property. If he is a chief, there are no ways his children or wife can succeed him. The next chief has to come from his own clan.

The extended family is still the dominant unit of social organization in Ghana, and therefore, the different cultural groups in Ghana are unwilling to surrender their legal heritages to the relatively new intestate succession law which favors the nuclear family.

There is also resistance to change being imposed from the outside, and without sufficient regard for existing practices. As one paramount chief in Asante told the author:

One does not change cultural imperatives by law. After all, every system has its own flaws or weaknesses. There is no need to replace

he understands the way of life of his people. He has done extensive research on culture and traditions of Asante. Other key informants during fieldwork include Asakore-Mamponghene (paramount chief of Asakore-Mampong), Owusu Ansah (a town planning officer at the Land Department, Manhyia), Kokofuhene (Head of Kokofu paramountcies), and Charles Coffie (an anthropologist).

the old system with a new one, which in any way, has also its own weaknesses and flaws; instead of improving upon or correcting the anomaly in the old system of inheritance.

The paramount chief of Kokofu, Kokofuhene,⁶ emphasized that the law underwent no public debate before it passed into law. Many informants thought it would have been preferable to select and nationalize the inheritance practices of one of Ghana's ethnic groups. The criterion would have been to consider which ethnic group has the broadest inheritance system.

However, this struggle between the extended family on the one hand and widows and children on the other is not uniform across the two societies studied. One important difference relates to economic and social development. Kumasi is a cosmopolitan city with a more modern social and economic life than Anloga. Kumasi seems to have moved from a predominantly subsistence economy to a more diversified economy, which has provided relatively better employment opportunities to its citizens. Anloga's economy, on the other hand, appears more or less to be subsistence-based, with fewer chances of non-farming employment. With less economic opportunities, people may compete for any conceivable economic resource. Thus, in the patrilineal Anloga, where the indigenous social and economic arrangements tend to favor men, such indigenous institutions seem to continue to be sustained. Kofi Togobo, an Anlo oral historian, corroborates that:

Today it becomes crystal clear that as there is increase in population, the size of Anlo cultivable land is not increasing. It is rather decreasing by the powerful effects of both the sea and the Keta Lagoon. The Ghanaian economy is also not performing well. The economic situation makes people protect what they have already had or reap what they have not sown.

This situation, according to the informant, may be a contributory factor

⁶ Kokofuhene is a retired educator, and is now head of all the paramountcies in the Kokofu traditional area.

that complicates women's property inheritance. It might also explain why Anlo society still insists on the indigenous system of inheritance, which favors men at the expense of women (Gedzi 2012b).

On the other hand, several lawyers in Kumasi, who wished to remain anonymous for security reasons, emphasized that the Asante traditional system of inheritance was unfair and inequitable, even though it may be lawful. This is because the wife and/or children of a deceased male are pushed out by people who often disregard their welfare. Second, they think that the concept among the Asante that children do not belong to their father's family brings about confusion between beneficiary and benefactor. Because of that conception, fathers treat their children as if they do not belong to them, and children also treat their fathers the same way. Therefore, according to them, matrilineal socialization in particular is a problem. They therefore see Law 111 as timely and relevant.

Interviews confirmed that a significant number of widows and children of intestate men do indeed experience considerable hardship due to indigenous systems of inheritance, particularly the matrilineal system traditional among the Asante.

For example, a case was reported by Obedie, an informant from Ejisu. According to the informant, his father married his mother and gave birth to five children. The mother served the father well during their marriage until the father died. At the time of his father's death, the informant was a student. When he heard the news that his father died he rushed home. Obedie described what he saw after he arrived:

My father's aunt had already come to lock the boxes and rooms of my father's self-acquired house. We, the children and mother, became very furious. One of my brothers tried to slash the aunt with a cutlass but he was prevented.

The rationale given by his father's matrilineal extended family was that the deceased, during his life, had used part of his property to educate his children. Therefore, "we should use the dividend of our education to look after ourselves and our mother."

Another case was reported by Adzoga⁷ in Anloga. She had ten

children with her husband but only three boys and a girl survived. Even though life was difficult for them, it was relatively better when her husband was alive, because both of them were able to support the children through farming. Unfortunately, she lost her husband in 2002. Now, she ekes out her living together with her children through the sale of kenkey, a Ghanaian local meal prepared from fermented maize flour. She buys the maize for the kenkey from a dealer on credit and settles the amount after sales. She could not get land to farm on because soon after the death of her husband the deceased family members seized his farm.

Clearly, extended families favor traditional modes of inheritance. As noted above, an important reason for this is that they complement traditional modes of investment in extended family members. These investments place a real burden on extended family members, and they justifiably claim a right to a deceased member's estate to recoup this investment. However, the claim of the extended family is at the expense of the nuclear family, which may also have contributed to the building up the estate and may rely on the deceased's estate for their continued welfare. PNDC Law 111 was implemented in order to tilt the balance significantly more in favor of the nuclear family, and would appear to be a logical recourse. However, as the surveys conducted for this study showed, and as was also confirmed in interviews such as that with the queen mother of Wiaso, it is only a minority of women that are using PNDC Law 111 to assert their rights, and the traditional way of inheritance still dominates.

Why do not More Widows and Children Make Use of Law 111?

The study found three main reasons for this limited utilization of Law 111. First, many of those that would benefit by Law 111 are not even aware that it exists. According to lawyers interviewed in Anloga, this

⁷ Adzoga and some other widows were key informants during fieldwork in Anloga.

ignorance is especially prevalent in rural areas, which form a substantial amount of the population in Ghana. In addition, many people are unaware of legal aid cases. For example, when asked why she did not take her case to the court, a woman interviewed for this study, Adzoga (see above), replied, “I am not aware of an option like that.”

Secondly, many saw the law as too costly to utilize, both in terms of money and time. According to lawyers Clement Amofa (Trinity Chambers, Adum in Kumasi) and Elizabeth Ofosu Agyare,⁸ a majority of Ghanaians do not use PNDC Law 111 because they think it may involve too much cost to take such cases to court. The informant from Ejisu, Obedie, mentioned above, said that his mother, siblings and he did not take the case to any of the formal courts where PNDC Law 111 could be applied as “there was no way after thinking about the cost involved and the prolonged nature of cases in the court.”

The case of a widow named Kafui was similar. According to Kafui, the very day her husband died, his valuables were locked up and the keys taken away by his eldest son (to a different mother). She mentioned that the son’s paternal uncle supported this action. Having considered that the disgruntled family members might not respect his summons, an elder advised her to seek the help of the Commission on Human Rights and Administrative Justice (CHRAJ) to claim her property rights. Yet, since she did not want to waste time, coupled with the fact that she did not have enough money to pursue the case, she decided not to go.

The final important reason that women are reluctant to assert their rights through Law 111 is the fear of retribution from the extended family. According to the paramount chief of Ejisu, a lawyer, and others at the Kumasi Regional House of Chiefs, there are some people who are aware of Law 111, but are unable to use it to claim their inheritance rights because they fear black magic (Gedzi 2012a; 2014). Widows also fear

⁸ Elizabeth Ofosu Agyare was one of the lawyers in Trinity Chambers, Adum, Kumasi, but she is now the minister of tourism, culture and creative arts in Ghana. She was one of my key informants.

the withdrawal of support from their deceased husband's family. In times of critical social events such as sickness or death of a child, the family members may withhold their assistance and may even refuse to be involved in burial ceremonies. According to De Witte (2001: 73):

in most areas of life the nuclear family is gaining control, but as regards death and funerals, and other social activities the *abusua* seems too strong to conquer. And it is exactly this contradiction that frequently gives rise to tensions at funerals. Such conflicts between the *abusua* and the nuclear family are mostly a matter of control, of family politics.

Thus even where women are aware of the law or are highly rights-conscious and financially capable, they sometimes remain silent for fear of such socio-spiritual reprisals from the *abusua*.

There is also considerable social stigma involved. The suggestion that a husband and wife may share rights in property is completely alien to the traditional Anlo and Asante system of inheritance. The fundamental Asante kinship unit, the *abusua*, comprises the adult descendants of a grandmother, her children, her daughters' children, and her granddaughters' children. These lineage units link mothers with children and uterine brothers. Traditionally, one must not take the *abusua* to court. According to Clark (1999), the absolute priority that urban as well as rural Asante give to their matrilineal kin is a strongly held moral value across class lines. Because of this, many women are not willing to report wrongs they suffer from the extended family to law enforcement agencies. They think this may be equivalent to betraying the extended family or washing the family linen in public, which society frowns on. Some informants indicated since they were very much aware of the tradition and custom surrounding intestate inheritance they did not want to protest legally.

The social pressure from the family and from communities sometimes leads to ostracism or boycotting of women who insist on their rights. Justice Lartey-Young⁹ confirmed that because of the fear of social ostracism, many women would not challenge or take the family to court,

and that most cases involving intestate succession are handled traditionally. Supreme Court Justice Joice Bamford Addo equally maintained that the “majority of people do not go to court. This is because their Chiefs are so powerful that they dare not go over their heads” (Fenrich and Higgins 2001). Hamza Umar, the regional chief imam of the Volta region mentioned, among other things, that Muslims continue to use Islamic prescriptions and that any Muslim woman who wants “to enforce her rights under Law 111” faces stronger sanction from the community than a woman who does not profess the Islamic faith.

Due to these formidable difficulties, the case of Asantewa, a widow that successfully leveraged PNDC Law 111 to assert her rights to her deceased husband’s estate, is a rare exception. Asantewa is a teacher in one of the Senior High Schools in Kumasi. She explained that:

My husband and I were married for 12 years when he died in 2002. As soon as he died, members of his maternal family came with their elders to seize his property. But I threatened to take the case to the formal court if they dared touch anything. Afraid of the threat, the family members retreated and never came back.

The informant admitted that many of these maternal family members were educated and aware of the relatively new law on intestate succession but they still sought to apply the traditional mode of property succession as it brings greater benefits.

Asantewa attributed the inability of other women to negotiate their rights or claim their due within the existing legal frameworks to factors

⁹ Fenrich and Higgins conducted field research on law, culture, and women’s inheritance rights in Ghana in June 2001. Their interviewees included Justice Joice Bamford Addo at the Supreme Court in Accra and Justice Isaac Lartey-Young at the Circuit Court in Tarkwa. The interviews showed that social pressure from kinship or extended family systems inhibits women from using legal rights in relation to their property rights (see Fenrich and Higgins 2001). Interviews conducted by the author in Manhyia, Bantama, Adum in Kumasi corroborated the power of the extended family in property matters.

such as illiteracy, fear that family members may spiritually hurt them, and ignorance of the law. Asantewa was one of the few women who questioned the authority of matrilineal family, or the *abusua*, to seize a deceased member's property. Nevertheless, the social consequences for her action were great. Asantewa's in-laws now refuse their assistance, meaning they have decided not only to divorce her but also to disown her children.

The Limits and Prospects of Legal Intervention

The presumption when PNDC Law 111 was enacted was that legislation would make cases like Asantewa's the norm. This has not proved to be the case. The inability of Law 111 to effect change on the social context has shown that law lacks the power to effect the intended transformation alone.

This is not surprising. This misapprehension that by such legal arrangements alone, the "social arrangements" that curtail women's ability to inherit their deceased husbands' estate would be controlled (Cochrane 1971) is widespread. In formulations like this, "the law" is used as shorthand for a very complex aggregation of principles, norms, ideas, rules, practices and the activities of agencies of legislation, administration, adjudication and enforcement, backed by political power and legitimacy. These complexities are thereby abstracted from the social context in which the law exists, "spoken of as if it were an entity capable of controlling that context" (Moore 1973: 719). Laws are part of ordinary social life (Bohannon 1965). Legal arrangements alone cannot control social arrangements since the law is a subset of the social universe, and society controls the law and not the other way around (Cochrane 1971: 93-94).

As such, it is not surprising that legislative intervention in the form of PNDC Law 111 has not been effective in improving the wellbeing of widows and dependent children to the extent hoped. Widows will not make use of the law if they do not know of it, if they cannot afford to go

to court, or if they fear reprisals or the withdrawal of support from their deceased husband's extended family or community.

At the same time, many in society will continue to see the goals of Law 111 as illegitimate because they do not adequately acknowledge the role of the extended family in Ghanaian social and economic life. Modern Ghana combines the traditional extended family with the modern nuclear family. This implies some adherence to old forms in favor of new ones. The extended family, comprising a wide range of kin, might feel entitled to a claim from a deceased's estate because of a previous investment in the member when he was alive. In the same way, the surviving spouse and children may make claims on their deceased husband or father's property because they contributed either directly or indirectly to the acquisition of his property as a nuclear family. Therefore, indigenous law and state legislation must change to keep up with present realities. In doing this, it remains imperative that the needs of both the extended and nuclear families are considered. This requires thorough discussion about how to satisfy both types of families so that neither side is aggrieved.

Conclusion

The study has analyzed the level of popularity of PNDC Law 111 on intestate inheritance among the Anlo and Asante in Ghana. The finding of the research shows that Law 111 is not popular among the research population, which implies that discrimination against women when it comes to inheriting intestate property from a man still continues. To some extent, it is possible to explain the unpopularity of PNDC Law 111 on the basis of lack of education, knowledge of the law, rights-consciousness, financial resources and enforcement of the law. However, ultimately, the unpopularity of Law 111 is due to a large extent to the fact that the law does not adequately consider certain contextual realities confronting the people in their social universe. For those who oppose the law because it subverts the right of the extended family, this

makes the law appear as an imposition. As a result, people are not willing to give up cultural institutions that appear to benefit them for the relatively new law. On the other hand, many widows and dependent children are aggrieved by customary inheritance practices that have failed to keep up with economic transformation and the shift towards the nuclear family. The needs of this group are not being met as their social context does not permit them to make use of the law. It follows that reform of the intestate inheritance law in Ghana needs to consider these social and economic realities for both sides in this issue. This will broaden and increase support for the law as an equitable system of intestate inheritance. There is also a need for legal education and enforcement of Law 111 to better reach a balance between the interests of widows and surviving children on one hand and the extended family on the other. Such an outcome would contribute significantly to the welfare of this vulnerable section of Ghanaian society.

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