



**NETWORK FOR WOMEN'S RIGHTS IN GHANA
(NETRIGHT)**
(MOBILIZING FOR WOMEN'S RIGHTS IN GHANA)

BASELINE SURVEY:

BILLS ON THE PROMOTION OF WOMEN'S RIGHTS AND GENDER EQUALITY IN GHANA

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Prepared By:
Joana Opare, Consultant
Hilary Gbedemah, Consultant

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Network for Women's Rights in Ghana (NETRIGHT)
10 Ollenu Street East-Legon
P. O. BOX 19452 Accra North
Tel +233 302511 189 / 500429 / 505669
Email: netright@ymail.com / info@netrightghana.org
Website: www.netrightghana.org

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ACRONYMS

AU	The African Union
AWLA	African Women Lawyers Association
BPfA	Beijing Platform for Action
CEDAW	Convention on the Elimination of all Forms of Violence Against Women
COBs	CEDAW Concluding Observations
GR	CEDAW General Recommendations
CRC	Constitutional Review Commission, Ghana
CSOs	Civil Society Organizations
EC	Electoral Commission
FIDA	Federation of Female Lawyers
ISB	Intestate Succession Bill
MDGs	Millennium Development Goals
MoGCSP	Ministry of Gender, Children and Social Protection
NCWD	National Council for Women and Development
NEPAD	New Partnership for Africa's Development
PRSB	Property Rights of Spouses Bill
SDGs	The Sustainable Development Goals
TSMs	Temporary Special Measures
UNFPA	United Nations Population Fund
WILDAF	Women in Law and Development in Africa

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EXECUTIVE SUMMARY

Introduction

This report presents the findings of a baseline survey on the status of gender-related bills, specifically, the Spousal and Property Rights Bill, Affirmative Action Bill, the review of the Intestate Succession Law and other related bills/legislations in Ghana. It also proposes recommendations for advocacy strategies towards passage of the said bills into laws.

Background to Survey

Women's rights are fundamental human rights that were enshrined by the United Nations in the Universal Declaration of Human Rights adopted by world leaders in 1945. The declaration came with a fundamental principle of "equal rights of men and women". Though Gender equality is at the very heart of human rights and United Nations values, and protecting and promoting women's human rights is the responsibility of all States, millions of women around the world continue to experience discrimination.

In Ghana, women make up 52% of the population; however, their participation in politics, public life and decision making processes is abysmally low. This can be attributed to several reasons which include deep-seated patriarchal norms which impact on stereotypes and influence perceptions of women and girls' capabilities and roles. Winning rights for women involves changing laws and policies, winning hearts and minds, and investing in strong women's organizations and movements among many others.

It is against this background that NETRIGHT under the AWDF LFS funded project is carrying out a baseline survey to assess the status of all pending women's rights and gender equality bills such as Affirmative Action Bill, the Spousal and Property Rights Bill as well as the Revised Intestate Succession Law and other gender-related legislations to inform advocacy interventions by the women's movement to push for passage of the bills in question.

The assessment employed a predominantly qualitative approach owing to its exploratory and in-depth nature and executed the following tasks in line with the objective:

- Identify existing gender-related and women's rights bills and assess its implementation;
- Assess the status and content of the Affirmative Action Bill, Spousal and Property Rights Bill and review of the Intestate Succession Law;
- Assess women's knowledge on the bills and existing women's rights legislations;
- Interrogate the position of duty-bearers and key stakeholders on the bills;
- Propose strategies to enhance advocacy for the passage of the bills;

Findings

Existing gender-related and women's rights bills and their status of implementation; These include:

- Spousal Property Rights Bill 2013, 2017
- Intestate Succession Law Bill 2013;
- Affirmative Action Bill – 2013, 2014, 2015, 2016;
- Petroleum Management Bill;
- Land Administration Bills
- The Children's Act, (1998), Act 560.
- Subsidiary legislation on the Children's Act; DV Act and DV LI;
- Human Trafficking Act;
- Labour Act (2003) Act 651
- Amendments to Criminal Offences (1960) Act 29

Policies with important commitments for gender and women's right issues: These include

- Social Protection Policy;
- Family Welfare Policy;
- Affirmative Action Policy Guideline;
- Land Policy;

Those passed include

- The National Gender Policy;
- Gender and Agricultural Development Strategy;
- Ghana Poverty Reduction Strategy Paper (GPRS);

Policies identified as ancillary, yet important to enable women access their rights holistically and participate in public life, but not finalized included

- Ghana Educational Service Girls' re-entry Policy
- Adolescent Sexual and Reproductive Health Rights Policy

MDAs and NGOs were the ones mainly responsible for sensitization workshops, advocacy programmes, training sessions and simplification of gender-related Bills, legislations and policies. The implementation was however found to be generally weak with no effective monitoring.

Status of Gender-Related Bills in Parliament

Currently, there are no gender-related Bills before parliament. Most of the Bills in question have elapsed so need to be re-submitted.

Summary of Contents of the Affirmative Action Bill, 2016

The Bill is a culmination of Ghana's historical experience, international obligations, academic research and developmental imperatives. It is intended to eliminate discrimination and ensure the progressive achievement of gender equality in political, social, economic and educational life in the public and private sectors within five years after which it will be re-evaluated.

It sets a 40% target consistent with the 1998 Cabinet Guidelines and international obligations. Bodies addressed extend beyond women's political representation to include governance institutions, the Civil Service, security services, the Judiciary, educational sector, local government, political parties, traditional authorities, trade unions and private employers. There is provision for the establishment of an enforcement body, a grievance procedure, authority to request data and an Interpretation Section. The Schedules contain strategies for implementation.

Property Rights of Spouses Bill (PRSB) 2013 & the Intestate Succession Bill (ISB) 2013

Status

Both Bills have lapsed, so they were withdrawn from Parliament for review. While the Property Rights Bill went through the 1st reading and stalled, the Intestate Succession Bill stalled after the 2nd reading. The stakeholders involved in the drafting, namely the AG's department, the Ghana Bar Association and NGOs like LAWA and AWLA have carried out reviews of them and are in the process of re-submitting them to Cabinet. All the Bills have to be re-submitted to Parliament for reconsideration.

Salient Features of the PRSB

It defines the property rights of cohabitees – commendable also because of the difficulties of proof and finalization of some customary marriages as evidenced by the low response and resultant amendment to PNDC Law 112 (the Customary Marriage and Divorce (Registration) Law); marital property agreement; features of joint and separate property; factors to be taken into consideration in the distribution of property upon divorce; transactions relating to the matrimonial home which should have the consent of both spouses; rules relating to property settlement; distribution of property in polygamous marriages; occupation and allocation of rented property upon divorce; spouses' contribution to acquisition of property during marriage, and presumptions as to property acquired during marriage.

Salient Provisions of the Intestate Succession Law

The previous apportionment of the estate in fractions has been replaced by percentages. Specific provisions now exist for the distribution of the matrimonial home; joint ownership is recognized, so a surviving spouse who has contributed to the acquisition of the matrimonial home is entitled to an additional 25%, and the option of a buy-out. Provision is now made for polygamous marriages, school-going and other dependants of deceased.

Survey Results: Women's knowledge on the bills and existing women's rights legislations;

Generally, the survey revealed that apart from the key stakeholders involved in drafting and monitoring of the processes involved in ensuring the passage of the three affected Bills into law, the majority of women contacted – especially from grass-roots, the regions, CSOs, FBOs, – lacked knowledge about the Bills, but were aware the AA law ensures women can occupy decision-making positions/public life.

Challenges Left Unprotected By the Laws

Property Rights of Spouses Bill: Areas for Further Consideration include: Pre-nuptial Agreements; Cohabitation; Polygamous Marriages

The Intestate Succession Bill: Areas for further consideration include: the entitlement of a spouse, child or both entitled to one house, clauses on Buy out, the Interest of estranged spouses, School-going dependants of deceased, lack of clarity on the purpose behind provisions on "Intestate survived by spouse and children of 'another woman'", Grandchildren of the estate, and the definition of "matrimonial home" (see Annex 2).

The position of duty-bearers and key stakeholders on the Bills: Challenges/Bottlenecks

Content of the Bills: opposition to some of the provisions in the Bills by parliamentary groups. With the Property Rights and Spouses Bill for instance, the main issue reportedly has to do with transient marriages which were said to be attracting too much share of estates.

Apprehensions over the Impact of the Bills

The survey and previous interactions with duty-bearers revealed that the passage of each of the three bills pose a general threat to the status quo. With the AA bill, there is the fear that the quest for increased women's representation may cause sitting parliamentarians to cede their seats to new female entrants. With the PRSB and the ISB, the recognition of women as joint owners of property, the recognition of unpaid care work, a lack of understanding about the provisions on co-habitees are a challenge to those who benefit from the current situation.

Lack of Political Will/Funding

Another challenge with duty-bearers has been the lack of political will to 'push'/advance the women's empowerment agenda and to adequately fund the Gender Ministry to effectively and efficiently lead and ensure proper monitoring and implementation of the Bills.

Assigning specific roles to Stakeholders

A lack of clear assigned roles to stakeholders in promoting the course of the various bills has been a major challenge.

Oversight Entity

The issue of an appropriate independent oversight entity to monitor and supervise the implementation of the Bills is critical.

Recommendations:

- Need for promoters/sponsors of the bills;
- Need coalitions on the various Bills to expedite action;
- Need for clarity on who is leading and monitoring the process
- Various coalitions should push duty bearers to act. More diverse stakeholders should be roped in
- Need to create a strong lobby group in parliament to advocate for passage of the Bill before it is laid for discussions.
- Need to lobby relevant MPs on what and how to convince their colleagues to be attracted to the Bills and to have the Bill prioritized. E.g. Majority leader
- Form allies from among MPS; get them well informed by providing them with a lot of relevant literature
- Suspicion between CSOs and Parliamentary groups/caucuses must cease; need to erode mistrust between them. Need for parliamentary caucuses to disabuse their minds that they are being used
- Need to compromise with some of the "Trouble spots" in Bills to facilitate passage
- Sensitization on the Bill should be stepped up using the media as catalyst to get the message across to all stakeholders and the public in general
- For the AA bill in particular, map out an implementation strategy with a long transition period to allay fears of current MPs
- For the ISB which was initiated by Civil Society in collaboration with the AGs Department, the MoGCSP should take the lead role to advance it from where AWLA/LAWA stopped.
- Speed up work on pending Bills in a non-political manner.

- Sensitization should be stepped up using the media as catalyst to get the message across to stakeholders and the general public.
- Various coalitions should push duty bearers to act

Institutional level strategies to facilitate the passage of the Bills:

- Role of Political Parties -Need to do more to support women's political empowerment through reviewing their internal functions
- Role of CSOs and Advocacy Groups - Need for CSOs to reorganize to be more of a critical voice
- Strategies to enhance advocacy for the Bills should be stepped up to include global changes, e.g. people are now more materialistic and want security of tenure, so there is need to move beyond volunteerism
- Enhance MOGCSP, Co-ordination and Institutional Strengthening
- Strengthen institutions that protect women's rights e.g. CHRAJ DOVSSU and position them like NACOB
- Need to have serious co-ordination at inter-ministerial level as MoGCSP can't handle it alone
- Need for massive education on the existing laws and pending bills
- Enhance Political Will and step up negotiation
- Government should have the political will to implement laws and speed up the process for bills that are still pending
- Need to compromise or devise workable means to tackle bottlenecks of the Bills at stake;
- Create hubs of professionals and businesses where issues are picked on within their contexts
- Situate issues within professional spaces. Technology mindedness should be incorporated in all strategies
- Need to continuously tap into the experience of seasoned experts
- Need to revisit mandate of the AA Technical Working group to make them more effective after the drafting of the Bill

CHAPTER 1

INTRODUCTION AND BACKGROUND

Introduction

This report presents the findings of a baseline survey on the status of gender-related bills, specifically, the Spousal and Property Rights Bill, Affirmative Action Bill, the review of the Intestate Succession Law and other related bills/legislations in Ghana. It also proposes recommendations for advocacy strategies towards passage of the said bills into law.

The report is organized into four main sections. The first section covers an introduction and background to the research as well as the objectives and survey questions. The second section presents the survey approach and methodology. The third section presents analyses of data and findings of the survey, while the fourth section presents conclusions drawn from the survey and proposes recommendations for advocacy strategies towards passage of the bills into law.

Background to Survey

Women's rights are fundamental human rights that were enshrined by the United Nations in the Universal Declaration of Human Rights adopted by world leaders in 1945. The declaration came with a fundamental principle of "equal rights of men and women". These rights include the right to live free from violence, slavery, and discrimination; to be educated; to own property; to vote; and to earn a fair and equal wage. Though "women's rights are human rights," women and girls are still denied their rights almost everywhere around the world, often simply because of their gender.

Though Gender equality is at the very heart of human rights and United Nations values, and protecting and promoting women's human rights is the responsibility of all States, millions of women around the world continue to experience discrimination. Some key areas include:

- Laws and policies prohibit women from equal access to land, property, and housing
- Economic and social discrimination results in fewer and poorer life choices for women, rendering them vulnerable to trafficking
- Gender-based violence affects at least 30% of women globally
- Women are denied their sexual and reproductive health rights

- Women human rights defenders are ostracized by their communities and seen as a threat to religion, honour or culture
- Women's crucial role in peace and security is often overlooked, as are the particular risks they face in conflict situations

Winning rights for women involves changing laws and policies, winning hearts and minds, and investing in strong women's organizations and movements among many others.

In Ghana, women make up 52% of the population; however, their participation in politics, public life and decision making processes is abysmally low. This can be attributed to several reasons which include deep seated patriarchal norms which impact on stereotypes and influence perceptions of women and girls' capabilities and roles.

Also, there still exists ideologies which places women and girls as subordinates to their male counterparts and undermine their ability to access their rights. There are also customary laws and norms which disadvantage women and girls as well as inheritance issues where lineage systems are key determinants of how women and girls are able to access resources such as land. Even though the 1992 Republic of Ghana Constitution has some gender sensitive provisions, it is an undeniable fact that currently there are still social structures that enable men to dominate women. Despite recent gains in some areas, gender inequalities continue to constrain women's ability to participate and contribute to the economy. For instance, women's ability to participate in market-related work is hampered by time constraints such as child care and home maintenance which are considered as 'women's work'.

Many forms of discrimination against women and girls are practiced in the name of culture. Although, culture belongs to the whole society, women and girls are often held to higher standards of cultural compliance than men and boys. In addition, in addressing social issues, policymakers tend to ignore the interrelationships of power and gender inequality, often leading to an exacerbation of the situation of women in relation to men.

Over the past decade, attempts have been made by a concerted effort of Civil Society groups, and some duty bearers led by the National Machinery for Gender issues to enact laws to address the gaps towards enhancing gender equality in Ghana. The bold attempts at rectifying certain aspects of gender insensitivity within the national fabric have however not resulted in any laws enacted over the period. Notable among these attempts are the Affirmative Action Bill, the Spousal and Property Rights Bill and the review of the Intestate Succession Law. While the Spousal and Property Rights Bill and the revised Intestate Succession Law have been in Parliament since 2009 and have gone through some hearing, the Affirmative Action Bill is yet to

attract any parliamentary hearing.

It is against this background that NETRIGHT under the *AWDF LFS funded project* is carrying out a baseline survey to assess the status of all pending women's rights and gender equality bills such as Affirmative Action Bill, the Spousal and Property Rights Bill as well as the Revised Intestate Succession Law and other gender-related legislations to inform advocacy interventions by the women's movement to push for passage of the bills in question.

Objectives of the assignment

The objective of the assignment was to conduct "a baseline survey on the status of Spousal and Property Rights Bill, Affirmative Action Bill, the review of the Intestate Succession Law and other related bills/legislations and propose recommendations for advocacy strategies towards passage of the bills into laws".

CHAPTER 2

APPROACH AND METHODOLOGY

Survey Design

The assessment adopted a predominantly qualitative approach owing to its exploratory and in-depth nature. Qualitative research methods have largely favoured depth of data and a deeper understanding of context over coverage and other general considerations of relevance to the focus of the research.

In line with the objective, the following tasks were to be executed:

- Identify existing gender-related and women's rights bills and assess its implementation;
- Assess the status and content of the Affirmative Action Bill, Spousal and Property Rights Bill and review of the Intestate Succession Law;
- Assess women's knowledge on the bills and existing women's rights legislations;
- Interrogate the position of duty-bearers and key stakeholders on the bills;
- Propose strategies to enhance advocacy for the passage of the bills;

For each of the tasks outlined, guiding questions were developed to help explore and assess issues and areas of concern as follows:

- **Identify existing gender-related and women's rights bills and assess their implementation;**

Questions employed:

- a) What bills do you (or have you worked) on regarding gender and women's right issues?*
- b) What policies do you recall, that have important commitments for gender and women's right issues?*
- c) How are these legislations implemented? Briefly describe*

- **Assess the status and content of the Affirmative Action Bill, Spousal and Property Rights Bill and the Intestate Succession Bill;**

Questions employed:

- a) What is the status of the bills/policies you have mentioned above? Where are these in the bill cycle?*
- b) Which committees and agencies are currently working on each of the bills you have listed?*

- **Assess women's knowledge on the bills and existing women's rights legislations;**

Questions employed:

- a) Name of community?.....District?.....Region?.....*
- b) What is (or are¹) your career focus?.....*
- c) How important are women's right concerns to you? And why?*
- d) What specific legislations do we have in Ghana governing women's rights? Kindly list as many as you can, particularly those in your area of expertise*
- e) What challenging women's right scenarios are protected by international and national commitments in Ghana that you know about?*
- f) What challenging women's right issues in your view have been left unprotected by our laws?*
- g) What bills do we have pending enactment at the national level?*
- h) What do you know about the following bills?*
 - 1. Affirmative Action Bill:.....*
 - 2. Spousal and Property Rights Bill*
 - 3. The Intestate Succession Bill**What recommendations do you have towards improving women's right legislation processes?*

- **Interrogate the position of duty-bearers and key stakeholders' on the bills;**

Questions employed:

- a) In your view, what challenges or issues do we have as a country with the review/enactment of the following bills and law?*
 - *Affirmative Action Bill*
 - *Spousal and Property Rights Bill*
 - *Review of the Intestate Succession Law*
- b) What are the bottlenecks in the legal processes and the bill - cycle to the women's right bills, particularly those listed above?*
- c) What key recommendations do you have regarding making the processes more effective and efficient?*

The Study Design

The objectives of the assignment situate the assessment in an exploratory descriptive explanatory and case methods framework with cross sectional elements. Largely a combination of these designs was employed in a qualitative manner.

¹ In the case of group interviews

The Assessment Population

Since the primary aim of the baseline survey focuses on assessing the status of bills and legislations regarding women and gender equality, individuals and institutions that were reached and interviewed included:

- Officials of Ministries Departments, and Agencies that were involved in drafting of the targeted bills and policies and their implementation, and also women's rights CSOs. Present and past ministers of state or their representatives, particularly the Ministry of Gender, Children and Social Protection, officials of the Attorney General's Department, Cabinet members, Members of Parliament (old and new), specifically those on the Gender Committee were also interviewed. A full list of respondents is attached in the appendix
- On women specific issues, clusters were developed around the diversities of women groups, careers, professions and ecological zones in the country. Faith group categorizations as well as cultural dynamics and patterns were taken into consideration at this level. These categorizations ensured that the varied bottlenecks to women's rights are marked for redress.

Sampling Techniques

- The assessment deployed basically purposive sampling and snow balling sampling techniques to reach out to officials and institutions stated in the study population. These two primary methods ensured critical exploration of officials and their roles in promoting or hindering the passage of the bills and legislations the study seeks to learn about.

The Survey and Assessment tools

Essentially, semi-structured interview guides were used for data gathering in line with the objectives and tasks spelt out. Focus Group Discussions and other participatory methods were also used. Specifically, the following approaches were outlined per the tasks specified:

1. "Identify existing gender-related and women's rights bills and assess their implementation"

A thorough literature review was done, using records from sector ministries, A-Gs department, parliamentary proceedings and documents. Records of parliamentary monitoring groups as well as literature from civil society groups that work on gender equality and women's rights issues were reviewed regarding this activity. Ghana's international and regional obligations contained

in ratified instruments, in addition to the national legal framework and case law were reviewed.

2. **“Assess the status and content of the Affirmative Action Bill, Spousal and Property Rights Bill and the Intestate Succession Bill”;**

Reports on various stages of the bills were reviewed, and individuals who worked on the committees during the drafting of the bills were interviewed to assess the reasoning behind key areas of the bills. Essentially, the reasons behind the current status of the bills were assessed.

The content of the laws was reviewed with focus on the challenges and issues left unprotected by the laws.

3. **“Assess women's knowledge on the bills and existing women's rights legislations”;**

A cross-sectional survey was carried out among women, purposively, and accidentally to determine the level of knowledge of women on the existing bills and legislations that seek to protect their rights on acceptable international and national commitments. Clusters of women and women's groups across careers and two regions of Ghana were interviewed. Focus Group Discussion sessions were held in one region to solicit ratings on this activity.

4. **“Interrogate the position of duty-bearers and key stakeholders' on the bills”;**

Process tracing methods, and the snow ball approach were employed to determine duty bearers and their positions on the state of the bills in question. The main duty bearers contacted in this case were representatives of the Attorney General's Department, and the Ministry of Gender, Children and Social Protection (MOGCSP).

5. **“Propose strategies to enhance advocacy for the passage of the bills”;**

These proposals were developed based on the results of the assessments, particularly regarding why the bills have not been passed and practical lessons from parliamentary committees that could help accelerate the passage of the bills into law. Various advocacy channels in dealing with the Parliament of Ghana including committees that work on the bills were targeted. Some respondents proposed strategies.

6. **“Present findings to participants at a workshop”;**

A participatory workshop presentation will be done showcasing the bottlenecks and opportunities in the passage and implementation of the bills. Advocacy interventions will be proposed.

7. **“In addition, the consultant is expected to include other matters considered relevant for this assignment”.**

The final report and workshop sessions were used to display case relevant matters that must be worked on to ensure that women's rights interventions are pursued.

Given that patriarchy, religion and culture play an important role in determining women's participation in public life, religious leaders – male and female, female traditional leaders and educationalists were also surveyed.

CHAPTER 3

SURVEY FINDINGS

Introduction

This section presents the study findings based on an assessment of the content of the three Bills in question i.e.: Affirmative Action Bill, Spousal and Property Rights Bill and the review of the Intestate Succession Law, and also analyses of qualitative data collected. The section is structured around the following survey themes:

- Existing gender-related and women's rights bills and their status of implementation;
- The status and content of the Affirmative Action Bill, Spousal and Property Rights Bill and the Review of the Intestate Succession Law;
- Women's knowledge on the bills and existing women's rights legislations;
- The position of duty-bearers and key stakeholders on the bills;
- Strategies to enhance advocacy for the passage of the bills.

Existing Gender-related and Women's Rights Bills and Their Status of Implementation;

A review of records from sector ministries, including the A-Gs department, parliamentary proceedings and documents; and discussions with some monitoring groups including NGOs like FIDA, AWLA (GH), WILDAF and some church groups that work on gender equality and women's rights identified the following as existing gender-related and women's rights Bills:

- Spousal Property Rights Bill 2013, 2017
- Intestate Succession Law Bill 2013;
- Affirmative Action Bill – 2013, 2014, 2015, 2016;
- Petroleum Management Bill;
- Land Administration Bills
- The Children's Act, (1998), Act 560.
- Subsidiary legislation on the Children's Act; DV Act and DV LI;
- Human Trafficking Act;
- Labour Act (2003) Act 651
- Amendments to Criminal Offences (1960) Act 29

Policies with important commitments for gender and women's right issues:

- Social Protection Policy;
- Family Welfare Policy;
- Affirmative Action Policy Guideline;
- Land Policy;

Those passed include

- The National Gender Policy;
- Gender and Agricultural Development Strategy;
- Ghana Poverty Reduction Strategy Paper (GPRS);

The implementation of the legislations and policies on gender-related and women's rights bills which was carried out mainly by MDAs and NGOs was found to be through sensitization workshops, advocacy programmes, training sessions and simplification of the Bills. The implementation was however found to be generally weak with no effective monitoring. For instance, the Human Trafficking Legislative Instrument (L.I.) has been passed and though implementation bodies have been set up, they sometimes face challenges due to political interferences. Also, most implementers do not understand the legislations properly and so do not attach much seriousness to them, and no one is held accountable. Even the implementation of The DV Act, 2007 (Act 715) which has made some positive strides still falls short of expectation due to the delay in the passage of the LI and the absence of demand for accountability. With the passage of the LI, implementation is expected to improve. There is generally the need to step up awareness creation of the bill to cover a wider section of the population.

Also, women in the Volta Region stressed the knock-on effect on women's low participation in public life, especially in the long term, of some of the bills and policies that have not been passed. They explained that it is impossible to have a strong grass-roots organization of women activists without progressive education policies that ensure girls' retention until their completion of senior high school. Women's participation in public life especially at the grassroots level is hampered by large families/responsibility due to limited control over reproductive rights. These very issues are highlighted in CEDAW's GR 23.

Status of Gender-Related bills in Parliament

Currently, there are no gender-related Bills before parliament. Most of the Bills under question have lapsed so need to be re-submitted. Normally, a change in government will attract a review of lapsed bills due to contextual changes that might have arisen, or change in government manifestos or commitments or ideologies.

Generally, agencies and committees like LAWA(GH), AWLA, GBA, NETRIGHT, FIDA, WILDAF, Constitutional and Legal Committee in Parliament, Gender and Children Committee in Parliament, as well as the AG's department were all found to have been involved in working on some or all the 3 Bills in question. The status of and content of each bill is presented below:

The Affirmative Action (AA) Bill

Status of the Bill

The AA Bill is back with the AGs after stalling. According to representatives of the MoGCSP, the Affirmative Action Technical working group and the Attorney General's (AG's) Department, the Bill is currently with the AG's for final review before being re-presented to Cabinet for approval. During the 4th quarter of 2016, The Bill was presented to the 3rd Cabinet of the Fourth Republic and subsequently submitted to Parliament, but could not go through any hearing before the closure of the said parliament. In line with the procedures for laying Bills before the legislative arm of government, the bill has since been brought back to be reviewed by the AG's and is due for Cabinet and then Parliament this year, 2018.

Background and Review of Literature

Rationale for Affirmative Action

Necessity, legal obligation (democracy) and value are three main grounds on which affirmative action is based (Tsikata, 2010). The *necessity* argument refers to the impossibility of increasing the prevailing low numbers of women participating in decision-making processes without affirmative action considering the deep rooted socio-cultural underpinnings that influence those figures (UNIFEM 2008/2009). The *legal* obligation argument demands that there should be adherence to the laws – national and international – that govern women's equal participation, and demands made for compliance. Where no such laws exist nationally, international conventions become the reference point for enacting equality laws. The *value* argument recognizes the importance, perspectives and benefits women's participation bring, and the need to accept affirmative action as a strategy to achieve this inclusion.

These grounds are articulated in the Beijing Platform for Action (BPfA), (Paragraph 109), which argues that women's equal participation provides a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning. The BPfA also states that women's equal participation performs a leverage function for equality in government policy-making. This rationale tallies with the *legal obligation/democracy* argument. Additionally, it mentions that equal representation plays a pivotal role in women's advancement and enables women's interests to be taken into account. These reasons form the bedrock of the "*value*" argument for affirmative action which advocates women's inclusion because of the added value and perspectives women bring to governance failing which, the goals of equality, development and peace cannot be achieved.

So essential is the equal representation of women to development that the SDGS, endorsed by all 193 UN member states, views the equal representation of women as central to development. Target 5.5 therefore benchmarks women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life, and Indicator 5.5.1 measures the proportion of seats held by women in national parliaments and local governments.

Gender Equality Strategies

Gender equality strategies comprise three main components (Norris P. 2004). First are the rhetorical strategies, comprising statements that recognize and express the need to change the status quo. An example of this is the IEA document (IEA, Strategies for increasing the Representation of Women in National Governance, 2011) committed to, and signed by the NDC, NPP, CPP and PNC on 15th December 2011, pledging *inter alia* the allocation of 30% of appointed positions at the national and district levels to women, reserving newly-created constituencies for women only, re-evaluating the first past the post electoral system, and putting in place training and funding interventions to support women aspirants.

The second set are the equal opportunity strategies, which comprise training, awareness raising and interventions to correct socio-cultural imbalances that have impeded women's equal participation in public life, which are mentioned in all instruments, literature on affirmative action and re-iterated by the survey respondents.

Thirdly, the positive action (affirmative action) strategies: these target electoral systems and impose legal quotas at the intra-party, constituency and national levels to ensure women's increased representation in a readily enforceable manner. Almost every country that has achieved the 30 percent mark has relied on positive action. The continuum of strategies is represented in the chart below, and these components are further addressed in the Literature Review.

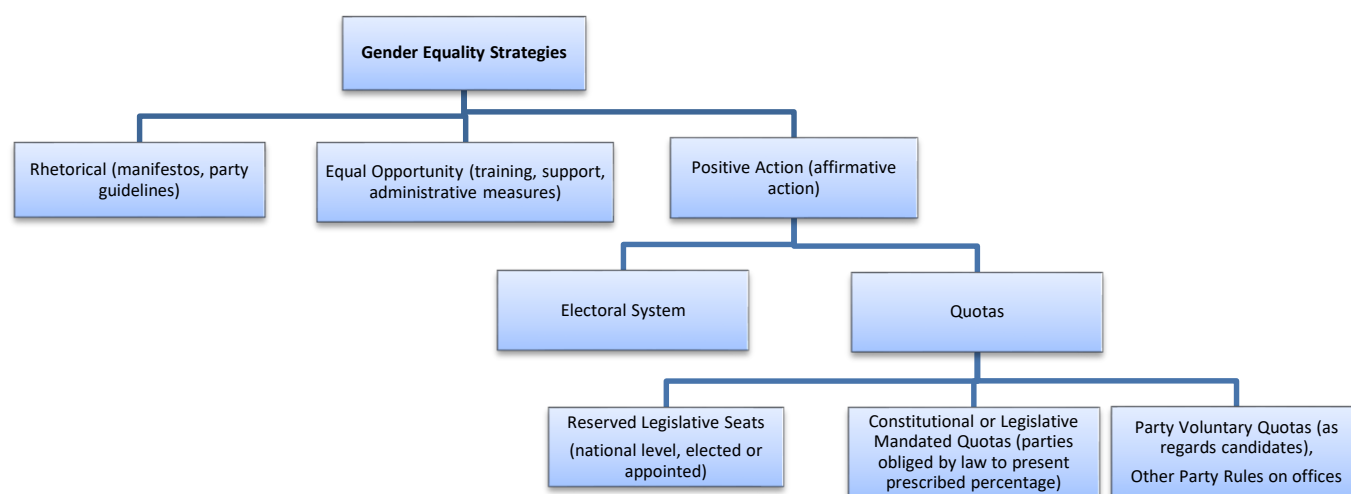


Figure 1: Framework Adapted from *Electoral Engineering: Voting Rules and Political Behavior*, Pippa Norris

Quota Profile Africa, West Africa

By 2015, African countries that adopted measures to increase women's participation in parliaments included Rwanda (68.3%, reserved seats), Senegal (42.7%, gender quotas), Uganda (35%, reserved seats), Kenya (19.7%, reserved seats), Mozambique (39.6%, 40% quota) (IPU, 2015).

In the West African sub-region, only seven (Burkina Faso, Cote D'Ivoire, Mali, Mauritania, Niger, Senegal and Sierra Leone) out of the 16 ECOWAS countries currently use quotas. Senegal is the only country with a comprehensive Gender Parity Law which provides for disqualification of non-compliant candidates. No West African country has constitutionally mandated quotas. Three West African countries – Senegal, Mauritania and Burkina Faso have election law quotas at the national and sub-national levels backed with sanctions. Mali, Niger and Cote D'Ivoire have political party quotas for their electoral candidates which are not always enforced. Others, including Ghana, Sierra Leone and Liberia have political party commitments to varying percentages. Ghana – which pioneered quotas, currently has no legally enforceable quotas at any level.

Normative Framework, Background to Affirmative Action in Ghana

National Context

The literature identifies two generations of affirmative action in Ghana (Tsikata, 2009). First generation affirmative action spanned the years 1957 to 1970 and focused on gender inequalities in politics and employment, and closing the gap between regional and urban differences. In June 1960, ten women out of 52 women were elected to special women's seats

under the Representation of the People (Women Members Bill). This was Ghana's first experience with affirmative action for women's representation in parliament.

Second generation affirmative action commenced from 1980 onwards. The 1992 Constitution contained provisions supporting affirmative action, and subsequently in 1998, Cabinet issued a policy on Affirmative Action.

a. 1992 Constitution

The 1992 Constitution contains three sets of provisions that provide the basis for continued affirmative action in Ghana. Article 17 (1) states that all persons are equal before the law and 17 (2) prohibits discrimination on the grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. This notwithstanding, Article 17 (4) (a) provides:

- (4) Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide -
 - (a) for the implementation of policies and programmes aimed at redressing social, economic or educational imbalance in the Ghanaian society;

Based on this provision, affirmative action laws can be used to correct gender imbalances as this falls under "socio-economic imbalance in the Ghanaian society".

Secondly, Article 37 (6) (b), under Chapter Six – The Directive Principles of State Policy – of the Constitution provides that appropriate measures should be taken to "achieve reasonable regional and *gender* balance in recruitment and appointment to public office."

Thirdly, Article 40 (d) makes it imperative that the Government adhere to the "principles, aims and ideals of the United Nations, the Organization of African Unity (now African Union), the Commonwealth, the Treaty of the Economic Community of West African States, and any international organization of which Ghana is a member". Ghana has made international commitments to gender equality since the Universal Declaration of Human Rights in 1948, UN Women's Conference in Mexico, 1975; CEDAW, 1979; Nairobi Conference 1985; The Beijing Platform for Action; CEDAW Recommendation 23 and 25; and the MDGs/SDGs.

At the continental level, commitments to the New Partnership for Africa's Development (NEPAD), the African Union (AU), the African Charter on Human and Peoples' Rights and its Optional Protocol on the Rights of Women, and the Solemn Declaration on Gender Equality all have an affirmative action focus which Ghana has a duty to attain. The AU's Gender Policy sets a target of 50 percent representation of men and women. The Commonwealth Plan of Action Equality for Gender Equality's goal is 30 percent for women's participation in the politics and public life, to be achieved between 2005 and 2015.

b. 1998 Cabinet Affirmative Action Directive

In 1998 Cabinet issued an administrative directive on Affirmative Action based on proposals submitted by the National Council for Women and Development (NCWD). The Guidelines were “for the systematic and sustained implementation of the various aspects of Affirmative Action towards equality of rights and opportunities for women in Ghana.” Recognizing Ghana's active role in the UN, its adoption and subsequent ratification of CEDAW without reservation in 1979, and full participation in the Fourth World Conference on Women in Beijing, China, 1995, the Guidelines covered the following:

- Establishment of a clear administrative framework for handling women's affairs
- Appropriate representation of women on all advisory bodies, with a 40% target in the medium and long term.
- Mainstreaming women's issues
- Initiation of action for 40% representation of women in parliament
- 30% representation of women at district and sub-district levels and 40% to other interest groups
- Effective education and training of women
- Public education on affirmative action.

These provisions are still unrealized, have formed the basis of the Affirmative Action bill and have been referred to in international fora: hence they underscore the urgency for the passage of the bill.

c. The Constitutional Review Process

In 2010, NETRIGHT made proposals to the Constitutional Review Commission (CRC). The CRC accepted two of the four main recommendations in part: namely, a constitutional amendment for an Affirmative Action Act be enacted by parliament within 12 months of the coming into force of the amendments to the Constitution, and that the Political Parties Act be amended to accord with the Affirmative Action Act as it pertains to creating gender balance in public offices. It dropped the proposal for a separate enforcement entity, in spite of NETRIGHT's observation that “There is no constitutional body whose primary responsibility is to hold government and public institutions accountable for persisting gender inequalities in all areas.”

The Government's subsequent White Paper issued in 2012 recommended that each gender should have at least 30% of presentation in all public institutions and offices (Chapter Four, Sub-Theme Three, Second Issue “Gender and Regional Balance in the Appointment of Ministers and Deputy Ministers” p.14), In its comments the White Paper also accepted that parliament enact within 12 months of the coming into force of the amendments, an Affirmative Action Act

to guarantee 30% representation of men and women in all public institutions and offices “in as far as it is practicable” (Chapter 7, Third Issue “Gender Balance in Appointments to Public services” p.22). These recommendations fall below the 40% proposed in the 1998 Cabinet Directives.

The White Paper endorsed an Affirmative Action (AA) Act to deal with “all types of discrimination against vulnerable groups and minorities” six months after the coming into force of the amendments (Chapter Thirteen, Sub-Theme Four “Equality Freedom from Discrimination”, Third Issue p.44).

It however disagreed with the CRC's proposal to amend the Political Parties Act to tally with the 30% representation of representation of each gender provision in the AA Act. The rationale was that the Political Parties Act is not to dictate the ideological orientation and organizational precepts to political parties, as they are voluntary organizations, and also because they can be reasonably expected to accommodate affirmative action in their policies and actions.

NETRIGHT strongly countered this position as follows:

“In the first place, it is not true that the Act does not dictate organizational precepts. Section 9 of the Political Parties Act prohibits ethnic or religious parties. Conditions for registration include that the NEC have at least one member from each region, branches in all regions and 2/3s of districts; each district have one founding member etc. So it is not clear how a provision on gender balance would be breaching the Act.

Secondly, political parties are demanding public funding from tax payers money; and the CRC and White Paper endorses this (p. 30 of White Paper). How can the government White Paper then hide behind the voluntary character of political parties and their presumed good judgement when their past and current practice does not support this presumption of good judgement? This is a clear case of double standards when it comes to gender equity issues.”

(NETRIGHT CDD Workshop on Government White Paper on CRC, Social Implications for Ghana, Report by Dzordzi Tsikata, NETRIGHT).

In clauses 18 and 19, the AA Bill requires political parties to adopt measures to overcome obstacles to the full participation and representation of women in party politics. This applies to the party machinery as well as the election contest. The Electoral Commission is to use its organs to reach a consensus for the implementation of the 30% voluntary compliance of affirmative action.

Further monitoring of political parties' compliance could be through the scorecard system produced by ABANTU for Development supported by Star Ghana in September 2016, covering

the period 2004 -2012. This tracking tool evaluated political party practices for accountability and gender responsiveness, assessing six areas namely: commitments made in Party Manifestos (rhetorical strategies), women's representation within the party National Executive Councils, primaries and nominations, actual representation in parliament, appointments of women into public office, and public policies on women.

iv. Regional Instruments

Instruments at the regional (Africa) level include the African Charter on Democracy, Elections and Governance which provides that State parties take "all possible measures to encourage the full and active participation of women in the electoral process and *ensure gender parity* in representation at all levels including legislatures" (Article 29 (3)).

The Protocol to the African Charter on the Human and Peoples' Rights on the Rights of Women in Africa African Charter (Optional Protocol) ratified by Ghana in 2007 also provides in Article 9 (1) that states should take specific positive action to promote participative governance and the equal participation of women in the political life of their countries *through affirmative action*, enabling national legislation and other measures to ensure that women participate without any discrimination in all elections, and are represented equally at all levels with men in all electoral processes. Article 9(2) provides that states ensure increased and effective representation and participation of women at all levels of decision-making.

v. International Instruments and Obligations in respect of an Affirmative Action Law

a. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979

In 1979, Ghana adopted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and ratified it in 1986. CEDAW is a comprehensive human rights document which addresses discrimination in various facets of women's lives. Article 7 enjoins state parties to take *all appropriate measures* to eliminate discrimination against women in political and public life; ensure women's eligibility for election to public bodies on the same terms with men 7(a), and that they hold public office at all levels of government and participate in the formulation of government policy 7(b). Article 8 extends the right of participation to the international level requiring that all appropriate measures be taken to ensure that women, on equal terms with men represent their Governments at the international level and participate in the work of international organizations.

Article 4 (1) prescribes that the right to equal participation in public life should be achieved through the "adoption of temporary special measures (TSMs) aimed at accelerating de facto equality between men and women". TSMs are not be considered discriminatory – similar to the

provision in the 1992 Constitution's Article 17(4) – and unequal or separate standards will be discontinued once the objectives of equal opportunity and treatment have been achieved.

b. CEDAW General Recommendations (GR) 23 on Article 7 (political and public life) & 25 on Article 4, paragraph 1 of the Convention (Temporary Special Measures)

Two General Recommendations, 23 and 25 developed in 1997 and 2004 respectively provide additional guidance to Articles 4 (1), 7, and 8. Together they further spell out the imperative of equality, women's participation in public life and the use of TSMs to achieve this end.

CEDAW General Recommendation (GR) 23, 1997

GR 23 provides comprehensive expansion of CEDAW's Article 7, containing recommendations that States parties should take into account when reviewing their laws and policies. It makes a critical connection between women's participation in political and public life and the use of TSMs in CEDAW Article 4 to achieve this goal (paragraph 15) stating that whilst the removal of *de jure* [legal] barriers is necessary, it is insufficient to ensure the full participation of women in public life or at least the 30 to 35 per cent "critical mass" needed for impact (Beijing Platform for Action), because "failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men."

Salient features of GR 23 include

- a. The identification of factors **impeding women's equal participation** such as the lack of information, women's double work burden, social and cultural stereotypes, the electoral system, prevailing negative attitudes towards women's political participation, a lack of confidence in and support for female candidates by the electorate and the fact that some women consider involvement in politics to be distasteful and avoid participation in political campaigns.
- b. The **scope of states' obligation** involves ensuring that TSMs are clearly designed to support the principle of equality and comply with constitutional principles which guarantee equality to all citizens. Political parties and public officials are also to be compliant.
- c. The **definition of "political and public life"** is broadened to encompass "the exercise of political ... legislative, judicial, executive and administrative powers ... all aspects of public administration and the formulation and implementation of policy at the international,

national, regional and local levels ... civil society, public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.”

Innovatively, paragraph 31 specifically observes that

... in certain cases the law excludes women from exercising royal powers, from serving as judges in religious or traditional tribunals vested with jurisdiction on behalf of the State or from full participation in the military. These provisions discriminate against women, deny to society the advantages of their involvement and skills in these areas of the life of their communities, and contravene the principles of the Convention.

The Affirmative Action Bill's ambit corresponds to this comprehensive definition in clause 13's provisions for 40% quota for the recruitment of women in security forces to be monitored by the National Security Council (clause 14). Female traditional leadership and trade unions are clauses (20 and 21 respectively). Clause 20 enjoins the National and Regional Houses of Chiefs – where the custom of Queen-mothers exists – to employ strategies to admit Queen-mothers into the Houses of Chiefs to ensure gender equality.

- d. Measures to be taken include recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies.

CEDAW General Recommendation (GR) 25, 2004

General Recommendation 25 elaborates CEDAW Article 4 (1) on temporary special measures (TSMs) “in order to facilitate and ensure its *full utilization* by States parties in the implementation of the Convention” and a necessary strategy to achieve de facto or substantive equality of women with men. GR 25 paragraph 7 obliges states to ensure that no direct or indirect discrimination against women exists in their laws. Indirect discrimination occurs when laws, policies and programmes are based on seemingly gender-neutral criteria but in practice have detrimental impacts on women. Special temporary measures then provide a counter-balance in order to produce ‘equality of results’ and will be discontinued when the objectives of equality of opportunity and treatment have been achieved.

TSMs comprise a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and *quota systems*. The choice of a particular

“measure” will depend on the context in which article 4, paragraph 1, is applied and on the specific goal it aims to achieve.

The CEDAW Committee recommended in Concluding Observations (COBs) to Ghana that the state apply the provisions of GRs 23 and 25 as corrective measures to achieve non-discrimination and the equal participation of women in public life.

b. CEDAW Committee's Concluding Observations on Ghana's Combined Sixth to Seventh Periodic Report, 2014 and the Third, Fourth and Fifth Periodic Report, 2006

In 2014, the CEDAW's Concluding Observations on Ghana's Combined Sixth to Seventh Periodic Report noted that the Affirmative Action (Gender Equality) Bill contained a 40 per cent quota for women's representation in Parliament and public administration. However, it expressed concern that no other temporary special measures had been introduced or were being planned as part of a necessary strategy to accelerate substantive equality between women and men in areas where women are underrepresented or disadvantaged. It recommended that Ghana use TSMs according to CEDAW article 4 (1), and GR 25 to a wider scope of women in public office to cover all areas under the Convention where women are underrepresented or disadvantaged.

Furthermore, it recommended Ghana expedite the enactment of the Affirmative Action (Gender Equality) Bill and implement TSMs in various forms, such as outreach and support programmes, quotas and other proactive and results-oriented measures to achieve substantive equality and encourage their use both in the public and private spheres. (CEDAW/C/GHA/CO/6-7, paragraphs 20&21).

This recommendation reiterated the Committee's earlier recommendation on Ghana's Third, Fourth and Fifth Periodic Report in 2006, that the 1998 Affirmative Action Policy be reviewed in line with CEDAW article 4 (1), and the Committee's GR 25 on TSMs; as in spite of the Policy, women remained underrepresented in decision-making positions in political and public life. It therefore proposed that Ghana's gender equality law contain provisions on TSMs backed by incentives and other compliance mechanisms to enhance women's participation in decision-making positions (Paragraphs 19 and 20).

c. The Beijing Platform for Action (BPfA), Fourth UN World Conference on Women, 1995

Ghana was among the 189 countries that unanimously approved the Beijing Declaration and Platform for Action (**BPfA**) in 1995 which declared that

despite the widespread movement towards democratization in most countries, women are largely underrepresented at most levels of government, especially in ministerial and other executive bodies, and have made little progress in attaining political power in legislative bodies or in achieving the target endorsed by the Economic and Social Council of having 30 per cent women in positions at decision-making levels by 1995(Paragraph 184).

The **BPfA** mentioned “positive measures” as a means through which the imbalance should be addressed. Two strategic objectives were identified – namely, taking measures to ensure women's equal access to, and full participation in power structures and decision-making; and increasing women's capacity to participate in decision-making and leadership. To this end, Governments, political parties and the United Nations were directed to ensure gender balance in governmental bodies, committees, public administrative entities and the judiciary; set specific targets and implement measures to substantially increase the number of women to achieve equal representation of women and men. Governments, national bodies, the private sector, political parties, trade unions, employers' organizations, research and academic institutions, sub-regional and regional bodies, non-governmental and international organizations were assigned far-reaching roles to address women's low representation.

Some measures recommended were “positive action” through review of the electoral system, data collection, addressing the issues underlying unequal domestic burdens, and promoting shared work and parental responsibilities to achieve women's increased participation in public life. “Unequal domestic burdens” (usually unpaid), underscores the rationale for the Property Rights of Spouses Bill.

vii. Programme of Action for Affirmative Action in Ghana, 2010

In 2010, a Programme of Action for Ghana, anticipating the passage of the affirmative action law by 2012 was drawn up. Even though it is titled “Political Representation for Women”, it is applicable to the entire scope of the Affirmative Action Bill. The present “Comment” section has been created by the Consultants as an update and assessment of the plan's implementation.

Table 1: Programme of Action for Affirmative Action (AA) in Political Representation for Women (Dzodzi Tsikata)

PROGRAMME OF ACTION FOR AFFIRMATIVE ACTION (AA) IN POLITICAL REPRESENTATION FOR WOMEN		YEAR						Comments
		2010			2011		2012	
ACTIVITY		Apr. - May	June	July - Dec	Jan - June	July - Dec	Jan - June	July - Dec
1	Mapping, analyzing, assessing support and opposition to affirmative action							Done
	Analyze arguments for, against, AA and rationale. Disaggregate for message crafting.							
2	Crafting and Implementing a Communications Strategy							
	Different strategies for respective groups							Not adequately done
3	Engaging with political parties, the NCCE, the Electoral Commission and CHRAJ							Ongoing. Some of these entities should be part of the advocacy
	- Arrive at consensus on the benefits, necessity, value and nature of the AA to promote political representation of women - Encourage voluntary codes, and mandatory codes to benefit from public financing							Consensus-building has been done with critical stakeholders, but should be an ongoing process, and the long-term move should be towards mandatory codes as in the Key Demands below, and as obtains in some African countries.
4	Building a strong constituency for Affirmative Action with women at the core, and recruiting new constituencies							Should be an ongoing process, especially with Women's Caucus in parliament.
	- Young women - Women entrepreneurs - Men - Media							There has not been enough ongoing engagements, especially with women entrepreneurs and Diplomats as suggested by some survey respondents.

PROGRAMME OF ACTION FOR AFFIRMATIVE ACTION (AA) IN POLITICAL REPRESENTATION FOR WOMEN		YEAR						Comments
		2010			2011		2012	
5	Public consultations and hearings to gain consensus on particular proposals							Done.
	• Consultation process to firm the main elements of AA to be put before government and non-state actors							Done
6	Drawing up a programme with clear realizable demands and an implementation strategy							Not adequately done
	• Strategic Plan • Programme of Work, roles/responsibilities agreed,							Done, but should be updated
	• Nationwide campaign for the adoption of AA ○ incorporate commitments made by political parties in their Manifestos and at the 2009 IEA Forum							Done, need to continue engagement and ensure implementation
	Key Demands • Constitutional (and Legislative) Amendments to one (of proportional representation) in which special groups also have representation ○ Mandatory quota for political parties to achieve minimum of 30% female representation by 2012 ○ Reform of party selection process (voluntary?) Incentives for compliance ○ Institutional reform for monitoring and implementing AA ○ Programme to support women aspirants							Should be ongoing, and part of long-term strategy, involving the EC. Programme to support women aspirants should be revamped and sustained, filtering down to leadership training for girls in second-cycle schools.

PROGRAMME OF ACTION FOR AFFIRMATIVE ACTION (AA) IN POLITICAL REPRESENTATION FOR WOMEN		YEAR						Comments
		2010			2011		2012	
	Non-partisan funds to support women's candidature							
7	Strengthening capacity of civil society to undertake successful campaign for Affirmative action provisions							Scan of NGOs, areas of operation done – Training/Capacity Building; Political Party engagement; Citizenship Education; Constituency building; Publication/Research; Electoral Assistance; Legal (Manu T, 2012)
	Strengthening Women's Manifesto Coalition and other women's organizations to improve understanding of AA and strengthening their mobilization for AA							Initiated, hampered by lack of funds
	- Follow up on AA proposals before the CRC - Constitutional quota (increase the numbers proposed) - Affirmative Action/Gender Equality Law - Constitutional Commission on Gender							Government issued a White Paper on the CRC proposals. Need to Revisit - NETRIGHT's proposal to the CRC to amend the Political Parties Act to align with the 30% representation of each gender in the AA Bill. - the rationale for an independent Constitutional body responsible for Gender

Summary of Contents of the Affirmative Action Bill, 2016

The Bill is a culmination of Ghana's historical experience, international obligations, academic research and developmental imperatives. It is intended to eliminate discrimination and ensure the progressive achievement of gender equality in political, social, economic and educational life in the public and private sectors within five years after which it will be re-evaluated.

It sets a 40% target consistent with the 1998 Cabinet Guidelines and international obligations. Bodies addressed extend beyond women's political representation to include governance institutions, the Civil Service, security services, the Judiciary, educational sector, local government, political parties, traditional authorities, trade unions and private employers. There is provision for the establishment of an enforcement body, a grievance procedure, authority to request data and an Interpretation Section. The Schedules contain strategies for implementation.

Property Rights of Spouses Bill (PRSB) 2013 & the Intestate Succession Bill (ISB) 2013

Status

Because both bills take their roots from the same Article 22 of the 1992 Constitution, and deal with spousal property rights, they will be reviewed together. Both Bills have lapsed, so they were withdrawn from Parliament for review. While the Property Rights Bill went through the 1st reading and stalled, the Intestate Succession Bill stalled after the 2nd reading. The stakeholders involved in the drafting, namely the AG's department, the Ghana Bar Association and NGOs like LAWLA and AWLA have carried out reviews of them and are in the process of re-submitting them to Cabinet. All the Bills have to be re-submitted to Parliament for reconsideration.

Constitutional Provisions in respect of the ISB and PRSB

Article 22 provides that

- (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.
- (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.

Property Rights of Spouses Bill: Background

Ghanaian Case Law, International Instruments

Prior to this Constitutional provision, it was generally accepted that marriage does not have any more effect on property acquired during it than those acquired before, based on the concept of the husband/male as the sole breadwinner. (Kuenyehia, A. & Ofei-Aboagye, E. [date] 33) This was affirmed in *Quartey v. Martey* [1959] GLR 377.

... by customary law it is the domestic responsibility of a man's wife and children to assist him in the carrying out of the duties of his station in life e.g. farming or business. The proceeds of this joint effort ... are by customary law the individual property of the man.

In contemporary times, this position conflicts diametrically with the Sustainable Development Goals (SDG) Target 5.4, which requires that unpaid care and domestic work be recognized and valued through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

CEDAW General Recommendation (GR)16 (1991) on Unpaid Women Workers in Rural and Urban Family Enterprises, similarly obliges states to

- (a) Include in their reports to the Committee information on the legal and social situation of unpaid women working in family enterprises;
- (b) Collect statistical data on women who work without payment, social security and social benefits in enterprises owned by a family member, and include these data in their report to the Committee;

GR 17 (1991) on the Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the GNP, obliges states parties to report on "information on the research and experimental studies undertaken to measure and value unremunerated domestic activities, as well as on the progress made in the incorporation of the unremunerated domestic activities of women in national accounts." Unpaid domestic and care work is therefore a concern of the international human rights discourse, and is redressed in the passage of the PRSB.

Progressively, the courts have moved away from the *Quartey v. Martey* position, declaring that property rights between spouses should be determined according to the spouses' intentions. There is a string of cases where courts have relied on the rules of equity, holding a presumption of ownership in favour of the spouse who advances the money (*Domfe v. Adu* 1984-86); held that where parties had not been married but acquired property together, that the woman was entitled to a 1/3 share (*Owusu v. Nyarko*, 1980; and recognized a widow as a joint owner where

she contributed substantially to property of her intestate husband (*Etu v. Sika-Kyere-Abusa*, 1982-83) (Kuenyehia, A. & Ofei-Aboagye, E. [date] at 33-34).

The applicable legislation, the Matrimonial Causes Act 367, 1971, (Section 20) gave immense discretion to judges without accompanying detailed guidelines (as are now contained in clause 31 of the Property Rights of Spouses Bill).

Section 20 on Property Settlement provides:

- (1) The court may order either party to the marriage to pay to the other party such sum of money or convey to the other party such movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provision as the court thinks just and equitable.
- (2) Payments and conveyances under this section may be ordered to be made in gross or by installments.

Over the years the courts have tended to base their determination on

- a. Whether or not there was any contribution by the petitioner to the acquisition of the property
- b. What the extent of the contribution was
- c. Whether enough grounds had been established to justify the claims
- d. What the appropriate matrimonial relief would be having regard to the particular circumstances of the case

(*Mary Oparebea v. S. A. Mensah* 1989; and see Kuenyehia, A. & Ofei-Aboagye E. [date] at 41- 45 for an analysis of the cases including *Achiampong v. Achiampong*; *Ribero v. Ribero* [dates]).

The Supreme Court's 2012 groundbreaking case of *Mensah v. Mensah* relied on the Universal Declaration of Human Rights, Ghana's 1992 Constitution and CEDAW to hold that "it is unconstitutional for the courts in Ghana to discriminate against women in particular whenever issues pertaining to distribution of property acquired during marriage come up during divorce. There should in all appropriate cases be sharing of property on equality basis".

The court went on to pronounce,

We believe that, common sense, and principles of general fundamental human rights requires that a person who is married to another, *and performs various household chores for the other partner like keeping the home, washing and keeping the laundry generally clean, cooking and taking care of the partner's catering needs as well as those of visitors, raising up of the children in a congenial atmosphere and generally supervising the home such that the other partner, has a free hand to engage in economic activities must not be*

discriminated against in the distribution of properties acquired during the marriage when the marriage is dissolved.

This is so because, it can safely be argued that the acquisition of the properties was facilitated by the massive assistance that the other spouse derived from the other.

In such circumstances, it will not only be inequitable, but also unconstitutional as we have just discussed to state that because of the principle of substantial contribution which had been the principle used to determine the distribution of marital property upon dissolution of marriage in the earlier cases decided by the law courts, then the spouse will be denied any share in marital property, when it is ascertained that he or she did not make any substantial contributions thereof.

It was because of the inequalities in the older judicial decisions that we believe informed the Consultative Assembly to include article 22 in the Constitution of the 4th Republic.

This judgment encapsulates the spirit of the Property Rights of Spouses Bill.

CEDAW Concluding Observations 2014 (CEDAW/C/GHA/CO/6-7)

The CEDAW Committee expressed concern over the delays in adopting the Property of Spouses Bill 2009 bill, and noted the Ghanaian delegation's assurance that it would be adopted by the end of 2014. It recommended that Ghana should expeditiously adopt the bill to ensure equal distribution of property rights to women in the three types of marriage in addition to women in de facto unions; and ensure the wide dissemination of the Supreme Court decision in *Mensah vs. Mensah*, in particular in the district courts. It recommended that traditional leaders be sensitized on the importance of ensuring that women seeking divorce outside the court system benefit from rights in respect of the sharing of property and other rights. Similarly, it recommended the expeditious adoption of the Intestate Succession Bill, 2009 and its effective implementation throughout the country; (paragraph 41 (b) to (e)).

Also of relevance are CEDAW's GR 21 (1994) on Equality in marriage and family relations, and 29 (2013) on the Economic Consequences of Marriage, family relations and their dissolution.

Salient Features of the Property Rights of Spouses Bill

It defines the property rights of cohabitants – which is commendable because of the difficulties of proof and finalization of some customary marriages as evidenced by the low response and resultant amendment to PNDC Law 112 (the Customary Marriage and Divorce (Registration) Law); marital property agreement; features of joint and separate property; factors to be taken into consideration in the distribution of property upon divorce; transactions relating to the matrimonial home which should have the consent of both spouses; rules relating to property

settlement; distribution of property in polygamous marriages; occupation and allocation of rented property upon divorce; spouses' contribution to acquisition of property during marriage, and presumptions as to property acquired during marriage.

Miscellaneous matters include Offences, Regulations, repeal of sections of Act 367 (including section 20 critiqued above), and an Interpretation Section which defines important legal concepts including "contribution", "holding out to the public" and "matrimonial home".

The Intestate Succession Bill, 2013: Background

Prior to the passage of the Intestate Succession Law (PNDCL 111) in 1985, intestacy was governed by various laws. They included rules of customary law, which were applied differently depending on whether one's personal law was matrilineal or patrilineal; the Marriage Ordinance, Cap 127 whose provisions were discriminatory as a widower got more of his deceased wife's property than she did of her husband's. The Marriage of Mohammedans Ordinance, Cap 129 was hardly ever enforced, as the pre-condition for registration in the Ordinance was hardly used, and the one-week time limit and process of resort to the courts where the period had lapsed were not user-friendly. The existence and situation of the registers was even less common knowledge either to Muslims or to the legal profession.

As noted in the Memorandum to the law, in all these systems, women received less than men or nothing at all. PNDCL 111 provided a unified system of inheritance which did not distinguish between gender, systems of customary law or religion. When passed in 1985, it was innovative legislation, giving remedies to spouses and children who were often victims of ejection and other forms of persecution when the breadwinner of the family, usually the husband, died intestate. The Law noted the contribution of the nuclear family to the acquisition of the deceased's property, and sought to prevent the then common practice of extended family members taking over the assets of the deceased for their own use to the detriment of the surviving spouse and children of the deceased.

The experiences gained in implementing PNDCL 111 led to subsequent amendments. The Intestate Succession (Amendment) Law P.N.D.C. Law 264 created offences including ejecting a spouse and children before the distribution of the estate, and intermeddling with property. Reliefs and sanctions are provided.

In addition, the Children's Act 1998, Act 560 also made important amendments to PNDC Law 111. Section 7 of its Schedule defined the threshold of small estates to be inherited solely by the spouse and children. With respect to children, it clarified the definition of a "child" to include "whether or not born in wedlock" (to bring it in line with the decision in Re Asante; Asante v. Owusu [1992-93] GBR 458); and required that reasonable provision be made for

minor children undergoing educational training before the distribution of the estate. The Act further defined "house" to include "an immovable property for dwelling purposes" to align with the Court of Appeal decision in Appiah v Biani [1991] Ghana Law Reports, 155 where an uncompleted building was held to be a house for the purposes of the law.

Twenty-five years after its enactment – in 2009 – the need arose for a review and consolidation, hence the current Intestate Succession Bill.

Salient Provisions of the Law

The previous apportionment of the estate in fractions has been replaced by percentages. Specific provisions now exist for the distribution of the matrimonial home; joint ownership is recognized, so a surviving spouse who has contributed to the acquisition of the matrimonial home is entitled to an additional 25%, and the option of a buy-out. Provision is now made for polygamous marriages, school-going and other dependants of deceased.

Survey Results: Women's knowledge on the bills and existing women's rights legislations

Generally, the survey revealed that apart from the key stakeholders involved in drafting and monitoring of the processes involved in ensuring the passage of the three affected Bills into law, notably the AG's Department, Women's Rights CSOs, and the MoGCSP, the majority of women contacted – especially from grass-roots, the regions, CSOs, FBOs, – lacked knowledge about the Bills, their status, their situation in the bill-cycle, and the agencies working on them. They conceded they did not know much about the content of the bills, but were aware the AA law ensures women can occupy decision-making positions/public life, the Property Rights of Spouses Bill intends to address the issue of men hitherto being seen as the sole owners of property without regard for the roles women play, including the non-quantification of advice they give and protects spouses' equal rights to properties acquired during marriage, and after death.

The stakeholders' summary of the knowledge of the bills were stated as: that the Affirmative Action Bill is meant to promote women's participation in decision making, while the Spousal and Property Rights Bill is meant to ensure that women have their fair share of property when they are no longer with their partners. The Intestate Succession Law was said to provide guidance on how property should be shared when a partner dies without a will.

This situation confirms the outcomes of 2010 sensitization workshop on the Property Rights of Spouses Bill and the Intestate Succession Bill by Law and Advocacy for Women in Africa (LAWA) and African Women lawyers Association (AWLA). Many of the issues articulated are still relevant in the bill's current form.

CHAPTER 4

ISSUES IN RESPECT OF CONTENTS OF THE BILLS: CHALLENGES LEFT UNPROTECTED BY THE LAWS

Introduction

The outcomes of the 2010 sensitization outlined the strengths, weaknesses and critiques of the two Bills. Recommendations were made for their review and passage into law. Some of the key issues identified, as well as questions that needed further redress are identified below:

Property Rights of Spouses Bill: Areas for Further Consideration

Pre-nuptial Agreements

Considering that pre-nuptial agreements are not widespread in Ghana, there should be

- Standard Form Agreements to assist the parties think through the issues.
- clear guidelines on:
 - how the assets should be declared;
 - where the declaration should be lodged,
 - who should have copies, time limits, sanctions
- Compliance with the provisions of the Illiterate Protection Ordinance to protect illiterate parties from being victims.
- Provision for confirmation by affidavit if an oral agreement is to be relied on in court. If both are illiterate, how can they ensure proper compliance?

Cohabitation

The bill defines “cohabitation” as the “situation in which a man and woman hold themselves out to the public to be man and wife”; but “holding out” is defined tersely as “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” i.e. husband and wife. ;

- It was recommended that criteria/factors to be considered in determining cohabitation be provided in the Interpretation Section, such as those suggested by Prof. Adinkrah. They include
 - Length of time lived together.

- What community thinks of them.
- Absence or presence of issues.
- Common ventures engaged in e.g. farming.
- Commingling of money and property.
- Holding themselves out at funerals etc. and observing rites.
- Filing tax returns together etc.

The Fordham International Law Journal: Promise Unfulfilled: law, Culture and Women's Inheritance Rights in Ghana, 354 proposes another criterion

- "the actual or implied consent of their two families to the marriage"

Polygamous Marriages

No clear provision seems to have been made for situations in which the property acquisition is continuous. For example, where a man who owns land purchases the building materials during his marriage with wife 1, but puts up the building when wife 2 was married. Questions were raised as to how the property would be distributed.

The Intestate Succession Bill: Areas for Further Consideration

With respect to the Intestate Succession Bill, important questions were raised as to the entitlement of a spouse, child or both entitled to one house, as it does not state what factors are to be considered in exercising the discretion. Other issues pertained to clauses on Buy out, the Interest of estranged spouses, School-going dependants of deceased, lack of clarity on the purpose behind provisions on "Intestate survived by spouse and children of 'another woman'", Grandchildren of the estate, and the definition of "matrimonial home" (see Annex 2).

The position of duty-bearers and key stakeholders on the Bills; Challenges / Bottlenecks Content of the Bills

The study found that opposition to some of the provisions in the Bills by parliamentary groups is a major challenge with regards to the review/enactment of the 3 bills in question. With the Property Rights and Spouses Bill for instance, the main issue reportedly has to do with transient marriages which were said to be attracting too much share of estates. The issue may be resolved by providing additional criteria. The drafters should provide clarity on the issues raised vis-à-vis the contents of the bills. Other unresolved contentious portions should be explained/rationalized and incorporated into sensitization programmes.

Apprehensions over the Impact of the Bills

The survey and previous interactions with duty-bearers revealed that the passage of each of the three bills pose a general threat to the status quo. With the AA bill, there is the fear that the

quest for increased women's representation may cause sitting parliamentarians to cede their seats to new female entrants. With the PRSB and the ISB, the recognition of women as joint owners of property, the recognition of unpaid care work, a lack of understanding about the provisions on cohabitees are a challenge to those who benefit from the current situation.

Consequently, the communication strategy to the various stakeholders for implementation should have clarity. One recommendation is that implementation of quotas for women's representation should be staggered, starting by strengthening implementation in establishments that already have those provisions and then gradually implementing it in those that do not.

Assurance should be given to sitting parliamentarians that strategies to achieve the additional numbers of women will not affect their existing seats. Measures must be put in place to ensure that provisions within the Bill are discussed/adhered to in a non-partisan manner.

Lack of Political Will/Funding

Another challenge with duty-bearers has been the lack of political will to 'push'/advance the women's empowerment agenda and to adequately fund the Gender Ministry to effectively and efficiently lead and ensure proper monitoring and implementation of the Bills.

Assigning specific roles to Stakeholders

A lack of clear assigned roles to stakeholders in promoting the course of the various bills has been a major challenge.

Oversight Entity

The issue of an appropriate independent oversight entity to monitor and supervise the implementation of the Bills is critical.

CHAPTER 5

MATRIX OF RECOMMENDATIONS AND STRATEGIES TO ENHANCE PASSAGE OF THE THREE BILLS.

Introduction

The three Bills under study have all gone through long periods of preparation and have each been stalled in one way or the other; but since gender inequalities still persist in all the areas covered by the Bills, it is expedient that measures are put in place to expedite action on their passage into law.

The table 2.0 presents recommendations/strategies to speed up the processes towards ensuring the Bills are passed into law in the shortest possible time.

Generally, the following strategies were also stated as very necessary at the institutional levels to facilitate the passage as well as promote more effective implementation of all gender and women's rights related legislation:

Role of Political Parties

The role of political parties is key in the advocacy and adoption strategy. As observed in the ABANTU scorecard, they play a unique role in any democratic society and serve as "gatekeepers of women's participation in the political arena, facilitating and sometimes hindering women's access to power. For this reason, "the internal functioning of political parties [is] critical" and they "need to do more to support women's political empowerment".

Role of CSOs and Advocacy Groups

- Need for CSOs to reorganize to be more of a critical voice
- Strategies to enhance advocacy for the Bills should be stepped up to include global changes, e.g. people are now more materialistic and want security of tenure, so there is need to move beyond volunteerism

MOGCSP, Co-ordination and Institutional Strengthening

- Strengthen institutions that protect women's rights e.g. CHRAJ DOVSSU needs strengthening and positioning like NACOB
- Need to have serious co-ordination at inter-ministerial level as MoGCSP can't handle it alone

Education on the Laws

- Massive education on the existing laws and pending bills and increase of qualified staff to the Gender Ministry to carry out its mandate efficiently to clarify and allay challenges expressed on the content of the bills.

Political Will and negotiation

- Government should have the political will to implement laws and speed up the process for bills that are still pending
- Need to compromise or devise workable means to tackle bottlenecks of the Bills at stake; for instance, the issue of transient marriages with the Property Rights Bill; too much share of estate goes to the spouse with the Intestate Succession law; and oversight responsibility/implementation arrangements with respect to the AA Bill.
- Need to move bills through despite opposition.
- The interdependence/knock on effect of other bills and policies that have not been passed should be recognized, especially for the long term. i.e. it is impossible to have a strong groundswell of women activists without progressive education policies that ensure girls retention in school. Women especially at the grassroots will not be able to participate in public life if reproductive health services are not accessible.

Engaging Professional Expertise

- Create hubs of professionals and businesses where issues are picked on within their contexts
- Situate issues within professional spaces. Technology mindedness should be incorporated in all strategies
- Need to continuously tap into the experience of seasoned experts

Revamping Technical Working Group

- Need to revisit mandate of the AA Technical Working group to make them more effective after the drafting of the Bill

Table 2: Recommendations/Strategies

Type of Bill	Recommendation/Strategy	Responsibility	Timeframe	Remarks
Affirmative Action Bill	Pre-parliamentary Action:- Need promoters/sponsors; Need coalitions on the various Bills to expedite action; Need for clarity on who is leading and monitoring the process	MoGCSP/AA Bill		
	Prioritization Speed up work on AA Bill and make it top priority among pending Bills for speedy passage into law as environment is favourable even with the President of the Republic who is the AU Gender Champion.	MoGCSP and AG's/Parliament/AA technical working group		
	Galvanize Duty Bearers/include more diverse Stakeholders Various coalitions should push duty bearers to act. More diverse stakeholders should be roped in.	Women's Rights CSOs, CHRAJ and NCCE should be more involved		
	Lobbying Need to create a strong lobby group in parliament to advocate for passage of the Bill before it is laid for discussions.	Gender and Women's caucuses		
	Need to lobby relevant MPs on what and how to convince their colleagues to be attracted to the Bills and to have the Bill prioritized. E.g. Majority leader	MoGCSP/ Initiators/drafters of Bill		
	Alliance Building Form allies from among MPS; get them well informed by providing them with a lot of relevant literature	MoGCSP/CSOs/MPs		
	Trust Building Suspicion between CSOs and Parliamentary groups/caucuses must cease; need to erode mistrust between them. Need for parliamentary caucuses to disabuse their minds that they are being used	CSOs/MPs		

	Negotiation/Compromise Need to compromise with some of the "Trouble spots" in Bills to facilitate passage	MoGCSP/AA Technical working group/All stakeholders		
	Sensitization/Media Strategy Sensitization on the Bill should be stepped up using the media as catalyst to get the message across to all stakeholders and the public in general	MoGCSP/Media/CSOs		
	Map Implementation Strategy For the AA bill in particular, map out an implementation strategy with a long transition period to allay fears of current MPs.	MoGCSP/AA Technical working group/Media		
	Funding			
Intestate Succession Bill	Clear Leadership Roles For the ISB which was initiated by Civil Society in collaboration with the AGs Department, the MoGCSP should take the lead role to advance it from where AWLA/LAWA stopped.	MoGCSP		
	Expedite/Collaborate/Develop Media Strategy Speed up work on pending Bills in a non-political manner. Sensitization should be stepped up using the media as catalyst to get the message across to stakeholders and general public.	MoGCSP and AG's		
	Various coalitions should galvanize duty bearers to act	Women's Rights CSOs		
	Trust Building Suspicion between CSOs and Parliamentary groups/caucuses must cease; need to erode mistrust between them. Need for parliamentary caucuses to disabuse their minds that they are being used	CSOs/Parliamentary caucuses		
	Negotiation/Compromise Need to compromise with some of the "Trouble	MoGCSP/CSOs/AGs department		

	spots'' in the Bill to facilitate passage. (Refer to the challenges/bottlenecks section in report)			
Property Rights and Spouses Bill	Clear Leadership Roles For the Property Rights Bill which was initiated by Civil Society, the MoGCSP should take the lead role to push it from where AWLA stopped	MoGCSP in collaboration with initiators/drafters		
	Expedite/Collaborate/Develop Media Strategy Speed up work on pending Bills in a non-political manner.	MoGCSP and AG's		
	Various coalitions should push duty bearers to act	Women's Rights CSOs		
	Trust Building Suspicion between CSOs and Parliamentary groups/caucuses must cease; need to erode mistrust between them. Need for parliamentary caucuses to disabuse their minds that they are being used	CSOs/Parliamentary caucuses		
	Negotiation/Compromise Need to compromise with some of the "Trouble spots'' in Bills to facilitate passage	MoGCSP plus stakeholders		
	Expedite/Collaborate/Develop Media Strategy Sensitization on the Bill should be stepped up using the media as catalyst to get the message across to stakeholders and the public in general	All stakeholders		

Annexes

Annex 1

Strategy Proposed by Stakeholders	Bill			Responsibility	Time frame	Remarks
	AA	ISB	PRSB			
Pre-parliamentary Action:- Need for • promoters/sponsors; • coalitions on the various Bills to expedite action; • clarity on who leads and monitors the process	✓			MoGCSP/AA Bill		
Clear Leadership Roles outlined For the ISB which was initiated by Civil Society in collaboration with the AGs Department, the MoGCSP should take the lead role to advance it from where AWLA/LAWA stopped.		✓	✓	MoGCSP		For the PRSB, responsibility is between MoGCSP and initiators/drafters
Prioritization Speed up work on AA Bill and make it top priority among pending Bills for speedy passage into law as environment is favourable especially as the President of the Republic is currently the AU Gender Champion.	✓			MoGCSP and AG's/Parliament/AA technical working group		
Galvanize Duty Bearers/include more diverse Stakeholders Various coalitions should push duty bearers to act. More	✓	✓	✓	Women's Rights CSOs, CHRAJ and NCCE should be more involved		For the ISB, and PRSB, only Women's Rights

Strategy Proposed by Stakeholders	Bill			Responsibility	Time frame	Remarks
	AA	ISB	PRSB			
diverse stakeholders should be roped in.						CSOs were mentioned.
Lobbying Need to create a strong lobby group in parliament to advocate for passage of the Bill before it is laid for discussions.	✓			Gender and Women's caucuses		
Need to lobby relevant MPs on what and how to convince their colleagues to be attracted to the Bills and to have the Bill prioritized. E.g. Majority leader	✓			MoGCSP/ Initiators/drafters of Bill		
Alliance Building Form allies from among MPS; get them well informed by providing them with a lot of relevant literature	✓			MoGCSP/CSOs/MPs		
Trust Building Suspicion between CSOs and Parliamentary groups/caucuses must cease; need to erode mistrust between them. Need for parliamentary caucuses to disabuse their minds that they are being used	✓		✓	CSOs/MPs		
Trust Building Suspicion between CSOs and Parliamentary groups/caucuses must cease; need to erode mistrust between them. Need for parliamentary caucuses to disabuse their minds that they are		✓	✓	CSOs/Parliamentary caucuses		

Strategy Proposed by Stakeholders	Bill			Responsibility	Time frame	Remarks
	AA	ISB	PRSB			
being used						
Negotiation/Compromise Need to compromise with some of the “Trouble spots” in Bills to facilitate passage	✓	✓	✓	MoGCSP/CSOs/AGs department		For PRSB, responsibility is attributed to MoGCSP plus stakeholders
Sensitization/Media Strategy Sensitization on the Bill to be stepped up using the media as catalyst to get the message across to all stakeholders and the public in general	✓			MoGCSP/Media/CSOs		
Expedite/Collaborate/Develop Media Strategy Speed up work on pending Bills in a non-political manner. Sensitization should be stepped up using the media as catalyst to get the message across to stakeholders and general public.		✓	✓	MoGCSP and AG's		For PRSB, responsibility is attributed to all stakeholders.
Map Implementation Strategy For the AA bill in particular, map out an implementation strategy with a long transition period to allay fears of current MPs.	✓			MoGCSP/AA Technical working group/Media		
Funding	✓					

Annex 2

Outcomes from the 2010 Property Rights of Spouses Bill Sensitization and Questions Raised

Property Rights of Spouses Bill

i. Strengths:

Concepts clarified

- Spouse is defined, and the definition is comprehensive;
- Factors to be considered when distributing property are clear
- Clarifies personal, as against joint debts
- Enables a gift be distinguished as separate property
- Will prevent chaos, gives incoming polygamous wives an idea of what they are entitled to before they enter the marriage, thereby weeding out the gold-diggers

Recognizes societal changes and realities

- The recognition of the reality and inevitability of cohabitation is progressive
- Will change traditional beliefs
- Will help bring about societal change, and secures self-acquired property
- Secured self-acquired property will promote family stability and transparency
- Ensures fairness, equity, by identifying jointly owned/separate property
- Oral agreements are recognized which is advantageous for the rural population who might not have access to personnel to draw up agreements.

Provides protection and security

- Under section on Joint Properties, the Bill will encourage spouses to assist each other
- It protects the more vulnerable spouse as well as the spouse who has made a higher investment in the separate property/business.
- Gives greater financial security to the first wife since there is a clear distinction as to what accrues to each of the parties during the marriage and upon divorce.
- No one can dispose of property without the consent of the other
- Protects parties from fraud and underhand dealings. The power of a court to set aside a fraudulent transaction is commendable
- Will act as a check on predatory relationships (sugar daddies, mummies)
- Minimizes public exposure to the spouses' affairs
- Provides avenue for redress since spouses and third parties can petition against the earlier court order.

- Brings justice and legal relief close to the parties

Cohabitation

- The initial 5 years required in the Bill was too long since in the rural areas this represents several farming seasons. After two farming seasons a couple could build a mud hut; therefore, properties acquired after 5 years could amount to substantial wealth by local standards.
 - **This time frame has since been reduced to two years.**

Remedies and Sanctions not clear in the following cases:

- Remedies available where a lady acquires property with a man she cohabits with and is unaware he is married?
- Sanctions to be imposed on a man who moves some items to his cohabitee's house without his wife's consent?

Polygamous Marriages

- If a polygamous married man stakes raffle with money borrowed from one of his wives and wins, how will the money be distributed? This will certainly be property exclusive to the two of them or fall under the separate property regime.

Conflict with culture/religion

- Provisions under joint property may conflict with culture, and may be inimical to the woman who acquires substantial property as men are more likely to re-marry with the property they inherit from their wives' labour than vice-versa.
- Where the court agrees that each party be given 50%, which party buys the other out?
- Provisions under polygamous marriage conflicts with Islamic tenets that all the wives should be treated equally. No clear methods have been set out on the declaration of assets.
 - **Provisions should be made for Islamic marriages.**
 - In the case of Customary marriages or marriages under the Mohammedans Ordinance where polygamy is legal, will each of the wives have equal *access* to properties?

Evidentiary Obstacles

- Getting credible witnesses to testify or where the witnesses are dead in the situation where the couple made a verbal agreement as to separate property may be problematic

Access to Justice

- What assurance is there that judges are not biased, corrupted with respect to distribution of properties?

- The process of seeking consent in relation to transactions on the matrimonial home can give rise to tensions, and disagreements between the spouses, leading to separation, divorce. The benefits that may accrue from the transaction may be eroded as the parties pursue their rights in court. Is there provision for computation of interest on monies spent during the time properties are being shared?
- Men sometimes do not comply with the decisions of ADR fora. They do not respect them because they feel it is not a court.

Spousal Debts

- The debt incurred prior to the marriage may be for the benefit of the marriage, yet the spouse who incurs it may end up being disadvantaged. Are wedding debts incurred by one partner joint debts?
- The effect of this clause is that if one spouse refuses to give the other spouse consent to incur a debt for necessities (defined in clause 31, and could include food, medicine for the children), the spouse who incurs the debt is solely responsible. This is not fair.
 - A spouse should not need the consent of the other to incur a debt for the necessities of life for the marriage. The tests used in contract law should be applied; are they suitable to the “station in life”, does an adequate supply exist? (i.e. was it necessary to obtain them on credit)?

Spousal Gifts

- Apart from the provisions in the law, couples should also have the option of clarifying between themselves what constitutes a gift, and should be able to distinguish it from a loan/financial assistance, or an advancement

Passage and Implementation

- The Bill should be passed into law straightaway; Stakeholders and collaborators should get involved as no single group can conscientize communities on the issue of falsified documents.
- There should be collaboration with agencies mandated to celebrate customary marriages to ensure compliance with declaration of properties acquired on subsequent marriages. This makes it more important that customary marriages be documented and registered.
- Extensive education for and by all stakeholders e.g. Chiefs, queen mothers, families the general public CBOs, FBOs in view of the difficulties implementation will face.

The Intestate Succession Bill:

Challenges/Issues raised under the various clauses

Even though the numbering of the clauses based on the 2009 version of the law has changed in the 2013 draft, the contents unless where indicated have remained the same.

- **Application of the Bill to self-acquired property: (Clause 1.3)**
Does the law have provision for instances where the acquisition is mixed? i.e. the intestate puts up a separate building on family land; how will the distribution be done?
- **Spouse, child or both entitled to one house: (Clause 4.1)**
The provision is vague. It does not state what factors are to be considered in exercising the discretion. Where in a polygamous marriage some of the spouses have contributed to the acquisition of the property whilst others have not, what guidelines will be used?
- **Buy out**
In polygamous unions which wife has the right to buy out the others? (i.e. wife 1 over the subsequent ones: is length of marriage, contribution etc considered?)
- **Interest of estranged spouses: (Clause 7)**
There will be difficulty in establishing "estranged". What is the legal definition of "estranged spouse"? It may be difficult to establish the period of estrangement. What about couples who live together yet are estranged? This provision could be used mischievously by in-laws and rivals. What if the estrangement was occasioned by the deceased's conduct?
- **School-going dependants of deceased: (Clause 12)**
No age upper limit is contained in the law: is it to be assumed that the applicable age is 18; or should the provisions of s.54 of the Children's Act extending maintenance to "continuing education or training after that age" be used?
"... up to the university level or its equivalent" as contained in the law is vague, especially if the course of education is not continuous.

The factors to be considered in determining "reasonable provision" should be defined; i.e. the maximum percentage of the estate that should be applied to the "provision"? This is important because a spouse may have toiled with her husband for several years, only to find out that she has to relinquish a large chunk of the estate to a child born to her husband in the year before he died.

- Which takes precedence; a spouse's joint contribution which entitles him or her to 75% of jointly-acquired property in the residue, or the educational provision for the child under 18?

- **Intestate survived by spouse only:** (Clause 13)

If a widow takes 70% of the property (where there is no surviving child or parent) can she later re-marry and keep the property?

- **"The Estate"** (Clause 14 & 15)

References are made in clauses 14/15 to "the estate". Clearly in 15, it should rather be to the "**residue**" not the entire *estate* since the law envisages surviving spouses/children who will be entitled to a house and household property

➤ This has been corrected in the 2013 draft of the law.

- **Intestate survived by spouse and children of another woman:** (Clause 15)

➤ Concerns here include:

- **Gendered Considerations**

The way this provision is couched seems to apply only where a **man** dies and has children with another **woman** (other women?). Is this deliberately gender-specific? What about where a woman dies and has other children from other men (born either before or during the marriage)? Should the provision be gender-neutral?

- **Circumstances that give rise to the "child of another woman":**

What is the rationale of the provision? These children of the "another woman" may have been born before the marriage of the man to the surviving spouse, may have toiled alongside the deceased man to acquire the property, etc only to be disadvantaged because they are children of "another woman". Will pre-knowledge of these "children of the other woman" make a difference?

- **Application to Monogamy/Single Surviving Spouse/Polygamy?**

Is this provision meant to protect surviving spouses whose deceased spouse had children during the existence of a monogamous marriage as against a polygamous marriage? Here, does the singular (spouse) preclude the plural (spouses)? If so it should be clearly stated. Who then does the extra protections from "children of another woman" apply to – *monogamous* marriages, or

marriages where *one spouse survives*? It should be borne in mind that within a polygamous union the “children of another woman” could be borne by the wives in the polygamous union or other liaisons.

If the objective is to protect against “non-marital” children, the provisions should be gender-neutral and spin-off from the proposal (Fordham Law Journal, 351).

“Notwithstanding the provisions of ... where there are multiple surviving spouses, children of multiple spouses, and/or non-marital children, member 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.”

- **Additional protection to childless surviving spouse?**

Is the provision dependent on the surviving spouse not having a child with the deceased?

- **Possible conflict with other provisions of the Bill**

How is this provision to be reconciled with other provisions of the Bill on the distribution of the residue? Examples; Under

- s.5(1) where there is a spouse/children/parents, the spouse is entitled to 35%
- s. 5(2) where there is a spouse/children and no parents the spouse is entitled to 45%;

Will these proportions due a spouse increase to 50% because of the presence of “children of another woman”?

- **Variation of residue of estate: (Clause 21)**

What will the criteria for evaluation be?

- **Grandchildren of the estate: (Clause 24)**

It would appear that short of adoption, the only way a grandchild of the estate can inherit the intestate grandparent is as provided for by law – that his/her parent pre-deceased the grandparent and the grandchild was fully dependent on the grandparent. This does not take account of the numerous fostering situations between grandparents and grandchildren, where the parent may not be deceased, but otherwise (mentally/physically) incapable of looking after their child.

- **“matrimonial home” (Clause 25 (2))**

This should be more comprehensively defined in the Bill. The definition of *matrimonial home* in the Bill for the purposes of prohibiting ejection (s.25 (1)) is too restrictive as it requires actual **occupation** either singly or collectively by the deceased, the surviving spouse, or a surviving child **at the time of the death of the deceased**. What if the deceased, spouse and children lived abroad whilst the house was constructed in Ghana never lived in it (or only vacationed in it) until the death of the intestate, yet had property in it which the relatives of the deceased threw out upon his death? Does that action amount to ejection? Can the surviving widow successfully bring an action for ejection even though she never lived in the house?

There is no other definition of “matrimonial house” to be used in interpreting section 8 (1), (2) and section 10. Therefore, if the term is not specifically defined, there may be the tendency to apply this definition broadly throughout the Bill.

- The clause has been moved into the Interpretation Section in the 2013 draft, but the contents remain the same.
- Similarly, a “**house**” (under s. 4 of the Bill) should be defined and synchronized with the definition in the Children's Act, 1998 Act 560 where, “*house*” *includes an immovable property for dwelling purposes*, and there is no requirement for actual occupation. The definition should be guided by the reasoning in Appiah v. Biani 1991 GLR.

Annex 3: List of Persons Interviewed/Contacted

No	Name	Sex	Organization/Designation
1.	Patricia Essel	F	WILDAF Ghana/Prog. Manager,
2.	Frank Bodza	M	WILDAF Ghana/Prog. Manager, Governance
3.	Angela Dwamena-Aboagye	F	Consultant/CEO ARK Foundation
4.	Dr. Appiah-Kubi	M	Chair, Gender Committee, Parliament
5.	Maribel Okine	M	MoGCSP/Assistant Director
6.	Mavis Amoah	F	Ag's Department/Director
7.	Susan Aryeetey	F	FIDA Ghana/Cord
8.	Patricia Akakpo	F	NETRIGHT/
9.	Edna Kuma	F	AWLA/Co-ordinator
10.	Sheila Menka-Premo,	F	APEX Law Consults/CEO
11.	Dr. Charity Binka	F	Independent Consultant
Focus Groups			
	Queenmothers from, Volta Region		
12.	Mama Gblesi	F	Ziavi-Atornu
13.	Mama Kutor III	F	Alavanyo-Deme
14.	Mama Asantewa II	F	Wusuta North Dayi
15.	Mama Agblatsu	F	Asogli State
	Faith-Based Organisations		
16.	Alfa Anas Hamidu	M	Chief Imam, Volta Region
17.	Rev. Seth Mawutor	F	Christian Council

18.	Esther Chomaffo Adade	F	Christian Council – Women's Ministry
19.	Beatrice Amevor	F	Christian Council – Women's Ministry
	Ghana Education Service, Girls' Education Officers)		
20.	Regina A. M.Coffie	F	GES
21.	Evelyn A. S. Vuvor	F	GES M. SHEP
22.	Yvonne Ame-Bruce	F	GES Girls Education Officer
23.	Millicent Dakeh	F	GES Adaklu Girls Education Unit
Representatives from NGOs			
24.	Issaka Abdul Hakim	M	GLOWA
25.	Albertine Alipui	F	Volta Educational Renaissance Foundation, Peki
Catholic Secretariat			
26.	Sister Margaret Ankama	F	Head, Gender Unit

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NETWORK OF WOMEN'S RIGHTS IN GHANA [NETRIGHT]
10 OLLENU STREET EAST-LEGON
P. O. BOX 19452 ACCRA NORTH
Tel +233 302511 189 / 500429 / 505669
Cell +233 200 458 945
netright@ymail.com / info@netrightghana.org
www.netrightghana.org