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MUSLIM CENTRE FOR JUSTICE AND LAW

**POSITION PAPER ON ISLAM AND INHERITANCE:
A CASE STUDY OF THE MUSLIM TRADITIONS
VERSUS THE UGANDAN LEGAL REGIME**

June 2017



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CONSULTANCY PROJECT

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VERSUS **THE UGANDAN LEGAL REGIME****

CONSULTANT:

DR. WALUSIMBI ABDUL HAFIZ

P.O Box 2555 MBALE, UGANDA

Email: haafizmusa@gmail.com

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1.0 INTRODUCTION

Uganda is a landlocked country. It gained independence on 9th October 1962 from the British colonial rule. The total population is now estimated at 36.5 million people with a range of 42 tribes and religious denominations dominated by Christianity and Islam.

Muslims in Uganda represent 12.1% of the total population, with sects majority being the Sunni sect composed of 88%, followed by the Shia composed of 7%, followed by Ahmadiyya composed of 4% and non-denominational Muslims, like the Sufi Muslims. By history, Muslims in Uganda subscribe to the Shafie school of thought, though the current religious terrain incline towards disregard to subscription to any school, as individuals adhere to individual Islamic verdicts irrespective of their roots from any of the four schools of thought.

There are three legal systems in Uganda: customary law, religious law (particularly Islamic law), and statutory law. The 1995 Constitution is the supreme law of the land and all laws must conform to it. Any law or custom that is in conflict with the Constitution is null and void to the extent of the inconsistency.

Inheritance in Uganda is mainly regulated by the Succession Act which confers the right to inheritance to close relatives regardless of their legal relationships to the deceased. This is different from the customary/Islamic law which requires the wife and children of the deceased to be in legitimate relationship, lest they are locked out in the distribution of the estate.

This contradiction has led to inconsistencies in adherence to the supreme law of the land and therefore calls for a position paper to study both legal regimes and make recommendations for policy makers for future amendment of the law on succession in Uganda.

2.0 Problem Definition

2.1 Background of the Problem

The succession Act is the main law regulating inheritance matters in Uganda. Like many laws in Uganda, the Succession Act dates back to 1904 and replaced the succession ordinance of 1906, which was based on English common law. The Succession Act was a clear attempt to put in place a uniform law of succession that would apply to both intestate and testate succession. The amendment of the Act was aimed at addressing gender issues and customary laws. As a result, all succession matters shifted from the hands of clan leaders to the courts of law. Subsequently, new set of rules of inheritance that could neither be classified as custom of fully statutory was created.

However, since colonial era, the rights of Muslims to settle their matters of faith under the Islamic system was acknowledged. The Succession Ordinance and the Succession Act contained

provisions empowering the Governor and the Minister, respectively to exempt Muslims and the African Natives from the operation of the provisions contained in the Ordinances and Act on intestate succession. However, the exemption currently available under the current Act is based on customary law. Rule 2 of **The Succession Act (Exemption) Order** provides that “Any person to whom any customary law relating to succession in force in any part of Uganda applies is exempted from the operation of the provisions of section 24 to 33 of the Act (Intestacy)

The above legal position was stayed in the Legal Notice of 1951 Vol. 7 Subsidiary Legislation Caps 31-101 and Buganda Native Laws, in which Muslims were excluded from the operations of Part V of the Succession Ordinance of 1906 (repealed) which provided for distribution of an intestate’s property. Muslims were therefore entirely left to rely on the Sharia law in cases of intestate.

This contradicting legal positions has led to Legal pluralism in that what counts as law in Uganda is not only the legislation enacted by the national parliament of state-made law for that matter, but also non-state made law whether recognized by the state or not, i.e., customary and religious laws such as those inspired by Islamic practices.

Ideally, customary and religious laws ought to comply with a higher legal order of state-made laws but this is more in theory than in practice. Application of customary or religious laws have been preferred to state-made statutory laws in inheritance because of holding the former sacrosanct.

2.2 Current Status of the Problem

Legal pluralism is one of the principal setbacks to realizing a uniform legal position. As earlier noted, In Uganda what counts as law is not only the legislation enacted by the national parliament of state-made law for that matter, but also non-state made law whether recognized by the state or not, i.e., customary and religious laws such as those inspired by Islamic practices.

Article 129(i) (d) of Uganda’s Constitution provides that “Parliament may enact a law to provide for the establishment of Qadhis courts to deal with Islamic matters of marriage, divorce, inheritance of property and guardianship. Although parliament has not yet enacted the said law, among Muslims it is Islamic law that is enforced in property distribution of their estate in practice. The Uganda Muslim Supreme Council (UMSC) appoints a Sheikh for every district in the country who handles property distribution in accordance with the Quran. The government is reluctant to make Islamic family law compliant with the Constitution and particularly the Succession Act even when it is clear that the distribution under Islamic law of succession is contradicting the provisions of the Constitution and the Succession Act especially on women, illegitimate and adopted children.

This contradictory standpoint has led to dissatisfaction in the distribution of property among beneficiaries of the Muslim property and consequently sought redress from civil courts. In the case of **Abasi Magunda & Anor Vs Sulaiman Senoga & Ors**, the petitioners prayed to court to declare that a will left by a Muslim testator was invalid because the testator was a Muslim who should not have made a will but relied on Sharia Islamic law for succession. Justice Okello held that the law of succession in Uganda had been codified largely under the Succession Act as amended. Therefore there was no such thing as customary or religious law of succession. She added that the deceased had opted out of Sharia law when he chose to make a will. Such has been the courts position on the legal pluralism of succession in Uganda.

Similarly, in *Haji Sulaiti Habib Ijumba & Ors v Hajati Sararani Sanyu, Rehema Nalwanga v Hadija Nassibwa & Anor* the civil courts applied civil law in total and disregarded Muslim law. The implication of these decisions is that the civil court may uphold any will made by a Muslim even if it contradicts rules of Islamic inheritance.

2.3 Statement of the Problem

Acquisition of property can be in any form so long as it is legal. However, a problem could arise in any dubious form which contradicts the law.

Distribution of property under statutory and customary/religious provisions has not been free from criticisms based on discrimination, unfairness and injustice depending on individual perspectives. For instance, intestate succession provided for under the Succession Act does not acknowledge the fact that much as the deceased might have been survived by one “official” widow, who is in this case entitled to 15%, the reality is that men are survived by other widows who are not catered by the distribution schedule. In addition the law and Advocacy for Women in Uganda, petitioned the Constitutional Court to declare a number of sections in the Succession Act unconstitutional. On April 5, 2007, the Constitutional Court declared Section 27 of the Succession Act, which guarantees a widow only 15% of the value of the estate and Rule 8 (a) of the Second Schedule that provides for a widow’s right of occupancy of the matrimonial home when she marries, to be unconstitutional.

On the other hand, women suffering especially after the death of their husbands has been strongly linked to the unfair distribution of property. Rachel C. Loftspring in her research on inheritance rights in Uganda, argued that if women in Uganda had inheritance rights, there would be less poverty and a reduction of the spread of HIV/AIDS in the country.

In the same line of argument, street children and child labor may be linked to their deprivation of being acknowledged as legitimate children and the consequence denial of any entitlement to inheritance under Islamic law.

2.4 Impact of the Problem

Ownership of property provides people with security after dissolution of marriage especially by death. In one interview, one woman had inherited 15 acres of land from her father when she was 18 years old. After marriage, she moved to her husband’s smaller plot within the same village, and when her marriage disintegrated, she was able to return to the land that she inherited and this land was the basis of her economic development and prosperity because she managed to rear cattle and goats, and consequently acquired more land, and other property. She proclaims that her own story should serve as concrete evidence for the paramount importance for women’s land rights.

In another interview, a woman became economically vulnerable when her husband died in such a society where women seldom own land and, due to devastatingly unequal inheritance laws and customs. In order to survive, she was left with no choice but to submit to wife inheritance, a customary practice in Uganda in which a widow is inherited just as property would be inherited.

Access to ownership of assets is critical for increasing productivity and empowering individuals to move out of poverty. Women’s access to property is often tied to their relationship within the

household and community and they thus become vulnerable to losing this access when the household dissolves more especially by death.

2.5 Significance of the Position Paper

Rectifying this legal inconsistency shall be a big step towards harmonizing the statutory and the Islamic religious laws on inheritance. Muslims are bound to practice the sacred dictates of their faith regardless of any man-made law (statutory) disapprovals. At the same time, the continuous reluctance of the government not to iron out customary/religious inconsistencies in the supreme law is seen as a violation to the very laws it has to hold supreme. A holistic study of both regimes would conclude that though the approaches differ, they both aim at achieving the general objective of ensuring fairness and justice in the disposal of the deceased's property to the rightful beneficiaries.

Recommendations in this paper can therefore form a legal basis for amending the Succession Act to come up with a new set of rules of inheritance that could neither be classified as custom or fully statutory.

3.0 Methodology

This paper is addressing a real life dilemma in the Ugandan community. The methodology therefore combines both field and descriptive studies. The field study is intended to bring out the real current situation in the distribution of the estate among Muslims. It involved meeting and interviewing the registrar of the directorate of Shariah at Uganda Muslim Supreme Council to solicit reliable information on the current Muslim traditions in inheritance, the successes registered and the challenges.

The descriptive method included reviewing the current Ugandan laws, the Islamic law of inheritance, reports on the application of Muslim personal law and decided cases in order to highlight the inconsistencies between the Islamic and secular legal regimes, and then make recommendations for harmonization of the legal position.

4. 0 Alternative Solutions/Policies

4.1. Statutory policies on Succession

Property rights in Uganda are usually discussed in the context of land, with little written about women's rights and access to other forms of physical and financial assets such as agricultural equipment, livestock, and savings and credit.

There has been various legal interventions to address the above problem at both international and local levels. Articles 2(a) – (f) and 16 (i) (h) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibit discrimination and enjoin State parties to ensure substantive equality between men and women in marriage and family relations.

Article 1 of CEDAW defines discrimination as “For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion, or restriction made on the basis of sex which has effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”

In 1985 by ratifying the CEDAW without any reservations, Uganda willingly undertook to make her laws and institutions regulating rights of succession to property compliant with CEDAW.

Besides, Uganda has been praised of being on the forefront of land reform efforts with the passage of national legislation mandating gender equitable land laws under the 1995 Ugandan constitution and the 1998 Land Act as amended in 2004 and 2010. The Uganda constitution is heralded as one of the most gender neutral with regard to property rights in sub-Saharan Africa including land rights, both in content and language. It accords both men and women the same status and rights.

In addition to the guarantee of property rights, without bias to gender or marital status, the Ugandan constitution also decrees equal land rights for men and women during marriage and at its dissolution, with a clauses on the use of “affirmative action in favor of marginalized groups based on gender or other reason created by history, tradition or custom, for the purpose of redressing existing imbalances.

The Succession Act is divided into two parts; one part deals with testate succession and the second deals with intestate succession. In the second part (intestate), the law provides for appointment of a personal representative of the deceased to administer and distribute the estate according to defined and fixed percentages.

According to the distribution schedule, the widow acquires 15% of the entire estate, the children acquire 75%; the legal heir 1% and the dependants acquire 9%. Though the distribution schedule was declared unconstitutional, parties can agree and maintain that distribution. The personal representative of the deceased, referred to as the Administrator, acquires Letters of Administration before she or he can distribute the property. An executor executes a will but an administrator manages the estate of an intestate or a testator who didn't appoint an executor in the will.

Testate inheritance on the other hand refers to a situation where a deceased person dies having written a valid will. In the will, a person expresses his/her wishes regarding the disposal of his/her property. And other rights or obligations. In the will the person making the will (testator) is expected to name an executor of the will and the beneficiaries of the estate. The main strength of the rules of testate succession in the Succession Act is that they allow a person to dispose of his/her property as so he wishes without following defined rules for distribution of the property.

4.2 Islamic Law policies on succession

Before the rise of Islam in Arabia, Arabs were disposing off the property of the deceased on their customary system which was mainly characterized of depriving the woman of her succession rights and conferring much succession power and privilege to the elder son of the deceased.

With the rise of Islam, the woman's right to inheritance was reinstated and the elder son's dominance was abolished. This was laid down in Qur'an chapter 4:11 which declared the woman's right to inheritance as a daughter, sister, mother, without consideration of seniority or minority. Beneficiaries to the estate of the deceased were specified basing on their blood and marital relationship to the deceased. The closer to the deceased, the higher the chances of entitlement to the property. Adoption was abolished as a ground for inheritance and difference of religion was made a legal impediment to entitlement to property.

Legal beneficiaries, both males and females were specified. Male heirs include; son, grandson, father, grandfather, paternal uncle, son of paternal uncle, brother, brother's son and the husband. While females include daughter, son's daughter, mother, grandmother, sister, and wife.

On this Qur'an 5:11 provides *"Allah commands you as regards your children's (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (the distribution in all cases is) after the payment of legacies he may have bequeathed or debts....."*

Quran 5:12 further provides *"In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the tow gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a commandment from Allah; and Allah is Ever All-knowing, Most -Forbearing"*

However, the entitlement of the above categories is greatly regulated by the exclusion criteria under which the closer relatives excludes the distant one, except the son, daughter, father, mother, husband and wife, who cannot be totally excluded.

For instance, in case the deceased is survived by all the above male relatives, it is only the son, father and husband who are entitled to inheritance, and the rest are excluded, and in case all the above female relatives are present it is only the daughter, mother, wife and sister (under some circumstances) who shall be entitled to property.

It is worth noting that Islam is ethnic-centric and morality occupies a center stage in the Islamic faith. Marriage was therefore declared the strongest ground for inheritance and cohabitation declared immoral and prohibited. It therefore goes without saying that entitlement to property had to be based on a valid marriage between the husband and wife and the children entitlement had to be based on their legitimacy.

However, Islamic law provided room for catering for non-eligible successors irrespective of their religious denominations through the making of a will (Wasiyyah).

Wasiyyah is an Arabic word, which means a gift of property by its owner to another contingent on the giver's death. A Muslim testator (a person who writes a Will) should leave a Will which is compliant with both Sharia law and the Succession Act.

The testator should not only mention that his /her estate should be distributed in accordance with Islamic law, but should dedicate some of his/her property to non-eligible successors of his/her choice. The Islamic will has nothing to do with stipulating the shares of one's heirs as this has been pre-determined in the Sharia (in Quran and Sunnah).

Quran 2: 180 and **2: 240** provided for writing of a will and this was consolidated by a number of prophetic traditions which stipulated that it is right for any Muslim to spend two nights unless his will is written. In another Hadith, the prophet limited a monetary will not to exceed a third (1/3) of the testator's total estate. The intention of the testator should be clear and it can be made in favor of any male or female, Muslim or non-Muslim as long as they are capable of holding property.

Under Islamic law, a Will can be oral or written or both oral and written. In the case of ***Ali Mohammad Rashid Vs Hamis Said Alawi*** the will was written but it was also alleged that the deceased made an oral will revoking the written will of 1951. The court indicated that "a will may be made orally under Mohammedan law as considered in ***Rashid Begum v Administrator General and Another (2)*** where a properly proved oral variation of a written Mohammedan will was held to be valid. The court held further that: "... he who would propound an oral will must satisfy three requirements as to pleading proof and promptness. He must plead the terms or the effect of the will with precision, he must prove will precision what he has pleaded and he must have put the alleged will forward with as little delay as is reasonably possible after the deceased's death.

Quran 5:109 requires two witnesses on bequests which is also in line with Section 50 of Succession Act. These witnesses can be male or female of full legal capacity and commanding good character. But where witnesses are female, Qur'an 2:282 requires two women in a position of one man.

A person may make a bequest for any person/s (non-heirs only) or institutions for example mosques, schools, hospitals, road construction and community centers etc. that such a person or institution be given a certain amount of money or a certain item from his estate. Should a person at any time mention that money or items must be given to any person (non-heir) as a gift upon his death, such requests will be regarded as a *wasiyyah*, and will be confined to the maximum of one third of the estate. If the Will purports to bequeath more than one third of the net estate, the bequests may be reduced proportionally such that the aggregate will not exceed one third. On the other hand, if all the legal heirs voluntarily agree to the testator's will which bequests more than one-third of his total assets will be valid.

In ***Noorbhai v Adamji***, the Court while commenting on the testamentary power of the testator held that the limits on a Muslim's testamentary freedom up to one third of one's estate is seen in Islam as a means to ensuring balance between a Muslim's freedom and responsibility to his or her heirs. It reflects indications in the noble scripture that a Muslim may not so dispose off his

property by will as to leave his heirs destitute. In a similar situation, in *Shaik Abdul Latif v Shaik Elias Bux*, the court held that a man has the power to dispose by will of not more than one third of his property belonging to him at the time of death.

4.3 Evaluation and Comparison of Alternatives

Despite the progressive legal efforts to establish gender equality in property rights under statutory legal regime, there still exists a large disconnect between land reform legislation and actual reforms in practice, particularly with respect to women's rights to own and inherit land and other assets.

The failure to effectively implement land reform in Uganda is in part due to the presence of legal pluralism in the country. Legal pluralism is the co-existence and interaction of statutory laws with "multiple" legal orders such as state, customary, religion, project and local laws, all of which provide bases for claiming property rights.

In the context of Uganda's land laws, the 1995 Constitution and 1998 Land Act have enshrined the customary land tenure system, which is typically patriarchal and gender biased, while defining new statutory land tenure laws that legalize the property rights of women.

To mitigate the areas of conflict between the customary system and state laws, the Constitution mandates that state law prevails where it is contradicted by customary law. However, this stipulation is often unheeded, resulting in the continuation of gender inequality and discrimination in the ownership of land and other assets that is observed in many customary Ugandan communities today.

An attempt to address the shortcomings in some Acts like the Marriage Act of 2000 and the Customary Marriage (Registration) Act on the issues of divorce, property rights and inheritance in Uganda was made in the Domestic Relations Bill (DRB), which was introduced in 1965 but has remained contentious national debate over the decades, without being passed. One of the main points of contention in the Bill is its broad mandate to change and enforce all laws and practices that impact on the rights of the family in order to ensure that they conform to the Constitution, which entitles equal rights to both men and women in marriage, and to ensure that all barriers to equal justice within the family unit is confronted and challenged by active participation in the legal processes so as to uphold gender equality and respect for human rights in the family. With respect to property rights, the DRB provides legal recognition of a cohabiting couples (those in consensual union) joint rights to property, something that highly contradicts the Islamic teachings.

Much as the Succession Act is the grand norm on all succession matters in Uganda as per Section 1 which provides that "*except as provided by this Act or by any other law for the time being in force, this provisions in this Act shall constitute the law of Uganda applicable to all cases of intestate or testamentary succession.*", it doesn't cater for the interests of Muslims who are by virtue of Article 29 Of the 1995 Constitution of Uganda have a right to freedom of worship. The Succession Act does not have specific provisions for Muslim succession as it was in the earlier repealed Succession Act which provided under **Section 50 (2)** that "*Nothing in this section shall effect the validity of any will made by a Mohammedan or an African according to the provisions of Mohammedan law or customary law, as the case may be*".

This Section implied that Muslims were free to make their wills according to the teachings of their religion. This exemption given to Muslims was later revoked in the current Act, Cap 162.

The possibility of Muslims' adherence to their law of inheritance may be through application for an exemption from the provisions of the Succession Act as per **section 334 (1)** which provides that: *The Minister shall have power from time to time, by statutory order either retrospectively from passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act, any class or classes of persons, in Uganda or any part or parts of any such class or classes to whom he or she may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in this order.*

However, no statutory Order has so far been issued by the Minister to exempt the Muslims from the application of the Act. While commenting on the problems of intestate estates of Muslims, Hon. **Justice Moses Mukibi** recommended for unblocking the Islamic religious practices relating to succession and inheritance as requiring exemption of intestate estates of Muslims from the operation of the provisions of the Succession Act relating to interstate succession. His Lordship was of the view that the Magistrates' Courts and the High Court should always formally co-opt at least two proven knowledgeable Sheikhs to sit as assessors when those courts have to try cases relating to Succession to estates of Muslims. This option of getting sharia experts can solve some of the problems of understanding the nature of Islamic inheritance.

The recommendation of Hon. Justice Mukibi to unblock the Islamic religious practice relating to succession and inheritance is premised on the conflict of jurisdiction between the Ugandan laws and the Shariah provisions. Issues such as equal shares to all children, recognition of adoption as a basis for entitlement to property, disregard to legitimacy of the children and difference in religion are some of the fundamental issues that call for harmonization of the two legal regimes.

The conflict between Islam and Uganda's succession laws has given rise to the following legal areas which have to be harmonized:

- i. **Difference in shares of male and female inheritors.** Quran Chapter 4: 11 and 176 provided that a male takes twice the share of the female. This is one of the established principles of Islamic law of inheritance whenever a male and a female of the same lineal degree are found in the distribution of the property. This seems to be unfair distribution given the historical injustice committed against women. The Ugandan law of succession provides for equal shares for both male and female inheritors.

However, the rationale of this distribution is based on the holistic socio-economic system which requires the man to shoulder the financial responsibility. A man is thus responsible for providing for his family including his sister who have no guardian to take care of her financial responsibility. The wealth that a woman inherits remain in her custody without an associate partner, yet the estate inherited by a son is exposed to subtraction as a result of discharging his financial responsibilities. The woman's property is therefore protected from liability and thus likely to multiply through investment and even through other sources such dowry, gifts, etc.

It is also worth to mention that, the principle of a male taking twice the share of female is not a universal one; there are some cases in which the male and female

acquire equal shares, for instance where the deceased is only survived by a father and a mother. In this case both are entitled to a sixth. There are also cases where a woman's share is bigger than the share of the man, for instance, where the deceased is survived by husband and a daughter. The husband in this case is entitled a quarter while the daughter is entitled to a half.

- ii. **Intestate succession.** Where a Muslim dies intestate, the rules of the Succession Act on intestate succession materially differ from those of the Islamic law of succession. In the result, both the identity of the heirs and the shares that they would have received differ, depending upon which system of law is applied.

However, in the presence of a legal will, the courts would be bound to adhere to the directives stipulated in such a document, though still adherence to it in Shariah court is dependent on its compliance with Shariah conditions of not being dedicated in favor of a legal heir, and where he or she is not, not exceeding a third of the total estate.

- iii. **Legitimacy of children.** The child's entitlement to inheritance from the deceased father is dependent upon its legitimacy. Unlike maternity where legitimacy is not considered by Islamic law, Paternity is the legal relationship between a father and his child, provided the child is legitimate. For a child to be legitimate he or she must be an offspring of a man and his wife or a man and his slave; any other offspring is regarded as an offspring got as a result zina (adultery/fornication), i.e. illicit connection and cannot be legitimate. If the marriage between the parents is valid or irregular, the children would be legitimate; if it is void they would be illegitimate. The child shall be presumed legitimate if it is born in lawful wedlock. In case of doubt, Islamic laws lean in favor of legitimization rather than stigmatization.

Apart from this presumption, legitimacy may be established by acknowledgment even if there is no definite evidence of a valid marriage between the parties. In this case, acknowledgment by a father is sufficient to make the child legitimate but there must be a definite acknowledgment of son-ship. An acknowledgment of legitimacy is valid (a) when the ages of the parties admit that the acknowledged person could be the child of the acknowledger, i.e. the proximity of age or seniority of the acknowledge as would render the alleged relationship physically possible, (b) the descent of the acknowledged person must not be proved from another person, (c) the acknowledge must confirm the acknowledger in his acknowledgment, if he can give an account of himself.

- iv. **Difference of Religion.** One of the legal impediments to entitlement to inheritance is difference in religion. It is thus clear that succession to the estate of Muslim by a descendant who is non-Muslim is prohibited by Islamic law. The fact there is rampant inter-marriages between Muslims and members of other faith in which way the right to inheritance is denied.

- v. **Adopted Children.** Adoption is prohibited under Islamic law and thus doesn't confer any legal right on person adopted, including inheritance.

5.0 Recommendations

5.1 Description of Policy Recommendations

From the above study, the following recommendations are made in respect to harmonization of the conflict of jurisdiction between the Ugandan laws and the Islamic laws of inheritance:

1. Article 129(d) should be operationalized to effectively regulate the Muslim Personal Law for the Ugandan Muslim community.
2. The succession Act should be amended to provide an option for parties under Islam who may wish to opt for distribution of their property in accordance to their Islamic faith.
3. As it was in the Succession Ordinance and the Succession Act, the provisions empowering the Governor and the Minister, respectively to exempt Muslims from the operation of the provisions contained in the Succession Act on intestate succession should be reinstated.
4. Mass awareness on the spirit and implications of the Islamic law of inheritance provision on the religious practice of allocating women half the share of the male of the same level in succession should be done. So that the relevancy and applicability of these provisions are willingly accepted by the affected parties.
5. A leaflet specifying the elements of a valid will in compliance with both the Ugandan law and Islamic law should be developed, in order to protect that legal document from being challenged by any of the two legal regimes.
6. Muslim district councils should be empowered to appoint qualified persons in the field of Islamic inheritance to distribute the estate of Muslims. The Shariah Court at the UMSC can retain its status as an appellate court in this matter. In case of dissatisfaction at this level, an appeal may be made to the high court in whose sitting two qualified Muslim assessors shall be called to attend and provide the Shariah legal position on the contested matter.
7. Where a person is survived by children who are not from definite valid marital relationship and where there is no proof to disowning them, such children shall be entitled to the deceased's estate and shall be considered in the distribution of shares like other children from legitimate relationship without need for scientific proof of their parentage.
8. A compulsory will (Al-Wasiyyah Al-wajibah) should be made by the testator for the benefit of illegitimate children and non-Muslim wife/wives found in marriage at the time of the death of the propositus. In this case, the conditions for the validity of the will under Islamic law regarding the limit of disposal shall be upheld.
9. Before the grant of Letters of Administration, a Muslim applicant shall be required to submit an Inheritance Certificate from the district Qadhi or Sharia Court at UMSC.
10. The Inheritance Certificate shall be issued upon application to the Sharia Court and it shall be a requirement for any proceedings relating to the administration or distribution of the estate of a deceased person whose estate is to be distributed according to the Muslim Law.

11. The Certificate shall include all the surviving lawful heirs, state their relationships to the deceased, and specify their precise shares to the estate. The Certificate of Inheritance shall indicate how and to whom a particular deceased Muslim's estate is to be distributed in accordance with the Sharia Law.
12. The applicant must be a beneficiary (a Muslim) to the estate of the deceased Muslim or a law legal representative acting on behalf of the beneficiary.
13. Copies of supporting documents such as such the applicant's identity card, Death certificate, Marriage Certificate; The heirs Birth Certificate; Registration fee and other relevant documents shall accompany the application.
14. Since the majority of inheritance disputes involves establishing parentage of children with the deceased, children who born out of a valid marriage should be subjected to DNA finger print paternity test to establish their biological relationship with the deceased, and thus consider them in the distribution of property.

5.2 Rationale for Recommendations

Operationalization of the Qadhis Courts is justified on the background that the disputes in Muslims marriages and inheritance cannot be perfectly handled by civil courts in Uganda without proper guidance from Muslim scholars. The Constitution of the Republic of Uganda provides for freedom to practice any religion and the right to participate in the practices of such religion. Therefore by virtue of that provision, Muslims in Uganda are free to practice Islam and participate in the practices of Islam which cover their personal laws. Likewise, the constitution provides for the establishment of Qadhis courts for marriage, divorce, inheritance of property and guardianship. This initiative shall also remove the legal pluralism which affects the uniformity in the application of laws in Uganda.

In addition to that, amendment of the succession to provide an option for parties under Islam who may wish to opt for distribution of their property in accordance to their Islamic faith. This shall be exempting Muslims from the operation of the provisions contained in the Succession Act on intestate succession.

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MUSLIM CENTRE FOR JUSTICE AND LAW

Head Office:

Plot 401/2, Basiima Building (Umeme Offices), Bwaise Ku Ssatu
P.O. Box 6929 Kampala, Uganda | Tel: 0414 531084 / Mob: 0701 282887 / Fax: 0414 531088
Email: muslimjustice@yahoo.com, info@mcjl.ug, Website: www.mcjl.ug

- **Central Region Offices:** Mpigi District, Mpigi District Head quarters
- **Northern Region Offices:** Omoro District, Opposite Palenga Primary School, Palenga
- **Eastern Region Offices:** Mayuge District, Bodobeera zone, Opposite Bunya Secondary School