



Gender Transformation & Empowerment

FACTS IN THE MARRIAGE BILL, 2017



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Introduction

These facts have been developed by the Marriage Bill Coalition to inform the public and policy makers of the facts in the Marriage Bill, 2017. The Coalition is made up of more than 40 human rights and women's rights organizations, institutions, and individuals. The Coalition has championed the campaign for a fair family law since 1999, with its major goal to ensure that Uganda has a just and fair domestic relations law with a family code based on principles of non-discrimination and gender equality.

Background

The Uganda Law reform Commission, in keeping with its mandate, which is to study and keep under constant review the Acts and other Laws of Uganda, undertook a study on domestics relations in which all relevant stakeholders were consulted.

In the report of the study from which the Bill emanated, the commission made several recommendations which informed the draft bill aimed at enacting a law that is fair and achieves social justice, addresses the issues of poverty; protects the human rights of all members of the family; is enforceable and accessible to the Ugandan population and is in line with the Constitution and International Legal obligations of Uganda.

The Bill spells out the rights protected at, during and at dissolution of marriage which include among others, the right to marry, consent, marriage gifts, marital conjugal rights, property rights, and division of property.

The object of the Marriage Bill.

The object of the Bill is to reform and consolidate the laws governing marriage, provide for the types of marriage, marital rights and duties arising from marriage,

grounds for separation and divorce and other connected matters.

The Bill gives effect to Article 31(1) of the Constitution of Uganda which states that men and women are entitled to equal rights at and in marriage, during marriage and at its dissolution.

This human rights principle is also enshrined in all the other human rights instruments, to which Uganda is a signatory, e.g. Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

The Marriage Bill, 2017 seeks to consolidate and repeal the following existing family laws;

- a. The Customary Marriage (Registration) Act (cap.248)
- b. The Divorce Act (Cap. 249)
- c. The Hindu Marriage and Divorce Act (Cap. 250)
- d. The Marriage Act (Cap. 251); and
- e. The Marriage of Africans Act (Cap. 253)

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Key Highlights of Changes from the Marriage and Divorce Bill, 2009 to the Marriage Bill, 2017.

Some changes were made to the Bill to ensure certainty in legislation, clarity and predictability. The changes are arranged under the following sub themes:

1. Subject matter
2. Procedural issues
3. Interpretation information
4. Structural arrangements

Key Facts In The Marriage Bill, 2017

Facts: Widow Inheritance Prohibited:

The Bill in Clause 14 (1) prohibits the custom or practice of widow inheritance and criminalizes it.

In Clause (2), without prejudice to sub clause (1), a man may marry his relative's widow where both the man and the widow, with their free consent, adopt any form of marriage provided for under this Bill.

Clause (3), a person who contravenes this clause commits an offence and is liable, on conviction, to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

Facts: Marriage Gifts

In Clause 15 (1), where a marriage gift has been given by a party to a marriage, it is an offence to demand the return of the Marriage gift.

A person convicted of the offence under sub clause (1) is liable to a fine not exceeding twenty currency points or imprisonments not exceeding one year or both.

This position has been upheld by the Constitutional Court in Uganda as explained in the text below;

In the decision in Mifumi & Others V Attorney General & Anor, the constitutional court recognised the significance of exchange of marriage gifts in the celebration of customary marriages but outlawed the practice of wife inheritance and demand of refund of bride gifts upon termination of marriage. The court also emphasized the need to use the term 'marriage gifts' as opposed to 'bride price' or 'bride wealth' that perpetuates the negative attitude towards the practice.

Facts: Age of Marriage

There is a lacuna in the current marriage laws, with regard to a uniform age of marriage, The Customary Marriage (Registration) Act allows a girl to get married at 16years old, while the Marriage Act sets the age at 18years.

The Bill sets the age to 18years for both men and women which is in line with the constitution. Article 31(1): "A man and woman are entitled to marry only if they are each of the age of eighteen years and above"

In a Zimbabwe court ruling, Justice Madala rules that a marriage of a girl below 18 years (child marriage) is an infringement on her rights as guaranteed by the Convention on the Rights of Children, this is detailed in the text below:

Justice Madala while upholding a petition to declare child marriages unconstitutional in Zimbabwe observed that, The studies showed how child marriage infringed the fundamental rights of the girl-child guaranteed by the CRC particularly; the right to education; the right to be protected from all forms of physical or mental violence, injury or abuse, including sexual abuse; the right to be protected from all forms of sexual exploitation; the right to the enjoyment of the highest attainable standard of health; the right to educational and vocational information and guidance; the right to seek, receive and impart information and ideas; the right to rest and leisure and to participate freely in cultural life; the right not to be separated from parents against their will and the right to protection against all forms of exploitation affecting any aspect of the child's welfare....Child marriage and lack of access to continued educational opportunities also limit young women's access to employment opportunities. Child marriage is also associated with early widowhood, divorce and abandonment which often results in "feminization of poverty."

Facts:Conjugal Rights

In Clause 113, The Bill allows a woman or man the right to deny a spouse sexual intercourse on reasonable grounds which may include;

- a. Surgery that affects the capacity to engage in sexual intercourse,

- b. Poor health,
- c. Child birth; or
- d. Reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm

The Ugandan courts, have now held that the law criminalizes rape and does not make an exception to married persons. The Court ruling in *Uganda V Yiga Hamidu* explains the court ruling in detail:

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The studies showed how child marriage infringed the fundamental rights of the girl-child guaranteed by the CRC particularly; the right to education; the right to be protected from all forms of physical or mental violence, injury or abuse, including sexual abuse; the right to be protected from all forms of sexual exploitation; the right to the enjoyment of the highest attainable standard of health; the right to educational and vocational information and guidance; the right to seek, receive and impart information and ideas; the right to rest and leisure and to participate freely in cultural life; the right not to be separated from parents against their will and the right to protection against all forms of exploitation affecting any aspect of the child's welfare.

Child marriage and lack of access to continued educational opportunities also limit young women's access to employment opportunities. Child marriage is also associated with early widowhood, divorce and abandonment which often results in "feminization of poverty."

Facts: Legal Status

1. The Bill gives all the legal marriages the same legal status and are all equal in law in line with Article 21(1) of the Constitution of Uganda.
2. The legal marriages include; Customary marriages, Civil marriages, Hindu marriages, Christian marriages, and Bahai marriages.
3. No type of marriage is more important or attracts more or different rights from another.

Facts: Cohabitation

The clause on cohabitation has been deleted in the Bill because cohabitation is not recognized as a form of marriage.

Facts: Pre-nuptial agreement

In Clause 16(1), a man and woman in contemplation of a marriage may make an agreement with respect to the ownership of

- a. Separate property of each spouse;
- b. Property acquired during the marriage;
- c. Distribution of property acquired during the marriage.

The Bill requires that the agreement shall be signed by the parties, in the presence of two witnesses, and signed and sealed by the Registrar of Documents.

The Bill recommends that each party to the agreement may obtain independent legal advice on the implications of the agreement before signing it.

Facts: Matrimonial Property

In Clause 114, The Bill provides that any matrimonial property shall be owned in common by the spouses. The Bills excludes

ancestral property from matrimonial property.

A spouse shall have equal access to matrimonial property which includes; the right to the use; to benefit from and to enter the property and where there is an agreement between the spouses, the right to share income from disposal of the property.

Facts: Capacity to acquire separate property

According to clause 115 (1), a spouse in any form of marriage recognized shall have the capacity to acquire his or her own separate property during the subsistence of the marriage.

Separate property shall not be taken into account for purposes of the distribution of matrimonial property unless there is an agreement to the contrary.

Where a spouse (Man or woman) proves that he or she made a contribution to the acquisition or maintenance of the separate property, with the consent and knowledge of the other spouse, sub clause (2) does not apply.

The Bill also defines separate property. Clause 115 (4).

This position has been upheld by the Ugandan courts in the Julius Rwabinumi v Hope Bahimbisomwe (2009), court ruling in the text below;

This position is in line with the Supreme Court decision in Julius Rwabinumi v Hope Bahimbisomwe (2009), where Justice Kisakye of the Supreme Court reinforced the fact that not all property either individually or jointly acquired before or during the subsistence of a marriage should in all cases be shared equally upon divorce, as this would constitute a violation

of the constitutional provision of Article 26(1) which guarantees the right of everyone to own property either individually or in association with others.

Facts: Divorce is not an automatic right

There is a clear position that divorce is not an automatic right that the Bill will grant. The Bill has inbuilt measures to ensure that divorce is a last option. For example;

1. One cannot petition for divorce before the expiry of two years from the date of marriage. Clause 135 (1).

2. A spouse may apply to the relevant court for leave to bring a petition for divorce before the expiry of the two years where a spouse can prove that he or she is suffering exceptional hardship in marriage. Clause 131(2).
3. The petition for divorce shall be on the sole ground that the Marriage has irretrievably broken down. Clause 135 (2).

The Bill considers divorce as a last option after all attempts at reconciliation have failed (irretrievably broken down).

Conclusion

We need to reform our laws for all Ugandans in order to fulfil our obligations as party to international and regional human rights and also to comply and bring our laws in conformity with the constitution of the Republic of Uganda, 1995 and the recent court pronouncements on family matters.

Our Clarion Call:

Stand Up and Be Counted:

Demand Your Right to a Fair Family Law!

List of The Marriage Bill Coalition Members

UWONET chairs the Marriage Bill Coalition, which is made up of the following Organisations:

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| 1. ActionAid International- Uganda | 26. Ministry of Gender, Labour and Social Development |
| 2. Action for Development (ACFODE) | 27. Mpigi Women's Development Trust (MWODET) |
| 3. Akina MamaWa AFrika | 28. Mifumi Project |
| 4. Anti-Domestic Violence Coalition in Jinja (ADOVIC) | 29. National Association of Disabled Persons of Uganda (NUDIPU) |
| 5. Associates for Change | 30. National Association of Women's Organisations in Uganda (NAWOU) |
| 6. Association of Uganda Women Medical Doctors | 31. Uganda National NGO Forum |
| 7. Association of Women Lawyers in Uganda (FIDA-U) | 32. Council for the Economic Empowerment of Women in Africa- Uganda (CEEWA) |
| 8. Bahai Faith | 33. Uganda Women's Parliamentary Association (UWOPA) |
| 9. Department of Women and Gender Studies, Makerere University | 34. Uganda Change Agent |
| 10. Department of Law, Makerere University | 35. Uganda Law Society |
| 11. Development Network of Indigenous Voluntary Association (DENIVA) | 36. Uganda Land Alliance |
| 12. Diakonia | 37. Uganda Media Women's Association (UMWA) |
| 13. Disabled Women's Resource Network Organisation (DWRNO) | 38. Uganda Women's Network (UWONET) |
| 14. East African Post Beijing Sub Regional Support Initiative (EASSI) | 39. Uganda Women's Trust (UWT) |
| 15. Care International-Uganda | 40. Uganda Network on Law, Ethics and HIV/ AIDS (UGANET) |
| 16. Centre for Domestic Violence Prevention (CEDOVIP) | 41. VECO-U |
| 17. Community Development Rural Network (CDRN) | 42. Volunteer Efforts for Development Concerns (VEDCO) |
| 18. Foundation for Human Rights Initiative (FHRI) | 43. Women and Girl Child Education Development Association (WEGCEDA) |
| 19. Forum for Women in Democracy | 44. Women and Rural Development Network (WORUDET) |
| 20. Hope After Rape | 45. Women Engineers, Technicians and Scientists in Uganda (WETSU) |
| 21. Human Rights Peace Center (HURIPEC) | 46. Women in Law and Development in Africa- Uganda Chapter (WILDAF-U) |
| 22. Human Rights Network (HURINET) | 47. Women Spacee |
| 23. Isis-Women's International Cross Cultural Exchange | 48. Pan African Movement (PAWLO) |
| 24. Institute for Social Transformation (IST) | |
| 25. Law and Advocacy for women in Uganda (LAW-U) | |

With Support from:



ON BEHALF OF:
THE MARRIAGE BILL COALITION

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