

Facts and Myths on the Marriage and Divorce Bill, 2009

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**Uganda
Women's
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Gender Transformation & Empowerment

Our Clarion Call:

**Stand Up and Be Counted:
Demand Your Right to a Fair Family Law!**

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 domestic 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 and property rights.

The purpose of the Marriage and Divorce Bill.

The major purpose of the Bill is to reform and consolidate the law relating to marriage, separation and divorce and to give 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 other human rights instruments to which Uganda is a signatory, e.g. Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

This Bill does not bring entirely new concepts from those already existing in the Marriage and Divorce Act. It harmonises and addresses the gaps the previous laws did not address.

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Myths and Facts on the Marriage and Divorce Bill

There are many distortions and misconceptions around the Bill. UWONET which is spearheading the need to pass this law thought it prudent to state the truth, correct and put right those misconceptions by clearly expressing the Bill's position.

Myth: The Bill ignores the importance of a family but rather focuses on divorce

- ✿ The Bill focuses on divorce and property rights on the dissolution of marriage hence making the institution of marriage commercial.
- ✿ The Bill does not provide for reconciliation of spouse and consolidation measures, it does not take into account the importance of the family.

Facts:

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;

- ✿ One cannot petition for divorce before the expiry of two years from the date of marriage.
- ✿ Divorce can only be attained on seeking leave first and proving to court that a spouse is suffering exceptional hardship in marriage

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

Myth: The Bill is Discriminatory

It is contended that the Bill is discriminatory because

- ✿ It proposes to provide for the adjudication over

matrimonial causes in the courts but makes no similar provision for Christians married in church to petition Canonical courts in matrimonial causes.

Facts:

- ✿ Uganda is a secular state therefore cannot legislate basing on different religious doctrines.
- ✿ The Bill acknowledges that the conventional courts have jurisdiction in matrimonial causes thus prudent to leave determination to them.
- ✿ Proceedings are usually in open court to ensure impartiality of the court however where prejudice is eminent, it will be in camera.

Myth: The Bill makes women hostile towards men and women accumulate wealth

- ✿ This law is not balanced at all, it favors only women to accumulate properties, it encourages them to rob or/ steal from their partners. (amass wealth).
- ✿ With such a law, the rate of crimes and brutality will be high in the name of revenge to those women who steal from men and men are skeptical about marriage under such a law.

Fact:

- ✿ The Bill in Clause 118 provides that two persons in contemplation of marriage or married may make an agreement with respect to

the ownership of property acquired during marriage or distribution of property acquired during the marriage.

- ✿ Property owned by one party before contracting a marriage does not become matrimonial property unless the other spouse makes a contribution towards its improvement hence acquiring a beneficial interest equivalent to contribution made.

Myth: This Bill is for a few educated women

Fact:

- ✿ This is Government Bill.

Myth: The Bill contravenes cultures as it dispenses with Consent

- ✿ The Bill dispenses with consents of other persons e.g. that of parents and relatives which several people contend to, since culture regards extended family as stakeholders.

Fact:

- ✿ The Bill does away with consent by extended family which is in line with Article 31 (3) of the Constitution which stipulates that marriage shall be entered into with the free consent of the man and woman intending to marry.

Myth: Age of Marriage

- Some people think the Bill does not want their children to get married.

Facts:

- 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 16 years old, while the Marriage Act is at 18 years.
- The Bill sets the age to 18 years for both men and women which is in line with Article 31(1) of the Constitution: "A man and woman are entitled to marry only if they are each of the age of eighteen years and above"

Myth: The issue of cohabitation and property rights

- A misconception that after several years of cohabitation the relationship is automatically upgraded to a marriage, with all the rights attendant thereto.

Facts:

- The Bill does not recognize Cohabitation as a form of marriage.
- The Bill seeks to protect the rights of persons in contemplation of a marriage or who are in cohabitation through a property agreement with respect to ownership of;
 - separate property,
 - property acquired jointly during the cohabitation,
 - distribution of property acquired during the cohabitation and

- distribution of property on dissolution of the cohabitation.

- A property agreement can either be oral or in writing.

Myth: The Bill empowers women to divorce impotent men.

- The Bill emphasizes impotence as a ground for divorce.

Facts:

- There is a huge difference between sterility and impotence.

Sterility is the inability for a man to bear children (impregnant a woman) and impotence is the inability for a man have sexual intercourse.

- If a partner (woman) enters into a marriage knowing that the other partner (Man) is impotent then there is no ground for divorce.

Myth: The issue of property at Separation/ Divorce

- The general belief is that the Bill is biased and provides for one ground in case of separation and divorce.

Facts:

- Separation and divorce are not the same.
- Separation is the suspension of marriage and the couple remain married while divorce extinguishes the marital obligations and people are free to remarry. The proper legal procedures have to be followed for a divorce to be valid.
- When dividing property at divorce, the courts consider the circumstances of each case.

Myth: The issue of gifts at marriage

- People are very concerned that one of the old customs- bride price (gifts to girl's families) is abolished by the bill.
- Since the bill abolishes this custom, it is opposed to Culture.

Facts:

- The Bill does not prohibit marriage gifts, expect,
- The payment of bride price will no longer be an essential requirement and will remain an option for those who wish to continue with this practice and the
- Demand of return of marriage gifts will constitute an offence.

Myth: Prohibits a widow from remarrying

- The Bill prohibits widows from remarrying

Facts:

- The Bill prohibits the custom or practice of widow inheritance and criminalizes it.
- Also recognizes a widow's right to re-marry any person of her choice with her free consent.

Myth: some marriages are more valued than others

- Civil marriages are contracts
- Some marriages are better than others.

Facts:

- ✿ The Bill gives all the legal marriages the same legal status and are all equal in law inline with Article 21(1) of the Constitution of Uganda.
- ✿ The legal marriages include; Customary marriages, Civil marriages, Hindu marriages, Christian marriages, and Bahai marriages. However
- ✿ Customary marriages are potentially polygamous
- ✿ All the other marriages are monogamous
- ✿ No type of marriage is more important or attracts more or different rights from another.

Myth: Gives women power to deny partners sexual intercourse

- ✿ Women will deny their husbands sexual intercourse.

Facts:

The Bill recognizes women's right to negotiate sex on grounds of health which include;

- ✿ Surgery that affects the capacity to engage in sexual intercourse, Child birth or
- ✿ Poor health,
- ✿ Reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm.

UWONET coordinates the coalition on the Marriage Bill and the members as of 2011 include:

1. Action Aid International- Uganda
2. Action for Development (ACFODE)
3. Akiika Embuga Women's Self Help Association
4. Akina Mama wa Afrika
5. Associates for Change
6. Association of Uganda Women Medical Doctors (AUWMD)
7. Association of Women Judges (AWJ)
8. Association of Women Lawyers in Uganda (FIDA – U)
9. Bukedi Development Foundation (BUDEF)
10. Bahai Faith
11. Department of Women & Gender Studies
12. Development Network of Indigenous Voluntary Associations (DENIVA)
13. Disabled Women's Resource Network Organisation (DWRNO)
14. East African Post-Beijing Sub Regional Support Initiative (EASSI)
15. Centre for Domestic Violence Prevention (CEDOVIP)
16. Community Development Rural Network (CDRN)
17. Foundation for Human Rights Initiative (FHRI)
18. Forum for Women in Democracy (FOWODE)
19. Hope After Rape
20. Human Rights Peace Center (HURIPEC)
21. Human Rights Network (HURINET)
22. Isis –Women's International Cross Cultural Exchange (Isis WICCE)
23. LAW and Advocacy For Women In Uganda (LAW – U)
24. Ministry of Gender, Labour and Social Development
25. Mpigi Women's Development Trust (MWODET)
26. MIFUMI Project
27. National Association of Disabled Persons of Uganda (NUDIPU)
28. National Association of Women's Organizations in Uganda (NAWOU)
29. Uganda National NGO Forum
30. The Council for the Economic Empowerment of Women in Africa- Uganda (CEEWA)
31. Uganda Women Parliamentarian's Association (UWOPA)
32. Uganda Change Agent
33. Uganda Law Society
34. Uganda Joint Christian Council (UJCC)
35. Uganda Land Alliance (ULA)
36. Uganda Law Reform Commission (ULRC)
37. Uganda Media Women's Association (UMWA)
38. Uganda Women's Finance Trust (UWFT)
39. Uganda Network on Law, Ethics and HIV/AIDS (UGANET)
40. VECO – U
41. Volunteer Efforts for Development Concerns (VEDCO)

Conclusion

We need to reform our laws for all Ugandans in order to fulfil our obligations as party to international and regional human rights instruments and also to comply and bring our laws in conformity with the Constitution of the Republic of Uganda, 1995.