



Gender Transformation & Empowerment

THE MARRIAGE AND DIVORCE BILL: WHAT IS AT STAKE?

April, 2013

MDB/2013



Special Points of Interest

- ☼ *The Marriage and Divorce Bill 2009: What is at Play*
- ☼ *Frequently Asked Questions on The Marriage and Divorce Bill*
- ☼ *what your Member of Parliament said about The Marriage and Divorce Bill*

The Marriage and Divorce Bill 2009

- ☼ Has a long history that dates back to 1957, Kalema Report 1964, ULRC Reports (2010)
- ☼ Fully a Government of Uganda Bill
- ☼ Formerly the Domestic Relations Bill (DRB)
- ☼ First tabled in parliament 2003 (7th Parliament)
- ☼ Re-introduced in the 8th parliament in 2009
- ☼ Re-introduced in the 9th parliament in 2013

Intention of the Bill

- ☼ Consolidate laws on marriage, separation and divorce; Provide for the types of recognized marriages; Grounds for breakdown of marriages; and rights of parties on dissolution of marriage.
- ☼ It grants equal rights in marriage, during marriage and at its dissolution
- ☼ Upholds the institution of marriage; offers protection of rights of married people; and promotes fairness in order to achieve social justice.

- ✿ It provides for requirements of a valid marriage in line with the Constitution, that include age and consent of parties intending to marry.
- ✿ It provides for the duty of both parents to care for and bring up their children
- ✿ It provides for ownership of property –Defines matrimonial property owned in common and also allows married people to own property separately
- ✿ The Bill provides for conjugal rights of both parties and recognizes the consideration of sexual needs of each partner. However, forced sexual acts are unacceptable
- ✿ The Bill prohibits widow inheritance as a customary practice that undermines the dignity of women
- ✿ The Bill outlaws the demand for the return of marriage gifts in case of breakdown of marriage and stipulates that payment of bride price will be optional.

Existing Legal Regime on Marriage

1. The Customary Marriage (Registration) Act – Chapter 248
2. The Divorce Act – Chapter 249

3. The Hindu Marriage and Divorce Act – Chapter 250
4. The Marriage Act– Chapter 251
5. The Marriage and Divorce of the Mohammadians Act – Chapter 252
6. The Marriage of African Act– Chapter 253

Process of Legislation

- ✿ Committee of Legal and Parliamentary Affairs discussed the Bill and received memoranda from the following stakeholders:
- ✿ Ministry of Justice and Constitutional Affairs
- ✿ Uganda Law Reform Commission
- ✿ Uganda Joint Christian Council
- ✿ Uganda Women's Network
- ✿ His Highness Prince Aga Khan Shia Imami Ismaili Council of Uganda
- ✿ The Bahai Faith

Legal Committee Observation

- ✿ The Bill is very important and timely
- ✿ The Bill is necessary in dealing with the rights and obligations of spouses in a marriage
- ✿ The Bill recognises the sanctity of marriage, but takes cognisance of the fact that at one point in

time a marriage may inevitably breakdown

- ✿ The Bill recognises rights of cohabitees in sharing property after termination of the cohabitation but not as a form of marriage
- ✿ The obligation to report an objection to the marriage is put on the registrar or celebrant to the magistrate.
- ✿ The Bill prohibits solemnisation or contracting of a marriage in Uganda without the free consent of either party to the intended marriage.
- ✿ The Bill prohibits widow inheritance but provides that where a man wishes to marry his relative's widow, both the man and the widow have to give their free consent before the marriage can be valid.
- ✿ The bill prohibits a person in a potentially polygamous marriage from solemnising a monogamous marriage with another person or vice versa.
- ✿ However, parties to a polygamous marriage are allowed to convert that marriage to a monogamous marriage if the husband, at the time of conversion, has only one wife.

Committee Recommendation

- ✿ The Committee recommended that the Bill be passed into law subject to the proposed amendments

Why the bad Blood for the Bill

- ✿ Patriarchy is at Play – Do not threaten the Status quo
- ✿ Sheer Politics – Who is delivering and who is not?
- ✿ Ignorance about the Contents of the Bill – And we do not want to Know
- ✿ Running away from responsibility – the law will catch up with us the Abusers
- ✿ Wanting to get even – Educated women and the whole Women emancipation must stop.

Contentious Clauses in the Bill

- ✿ Marriage Gifts
- ✿ Cohabitation
- ✿ Division of property
- ✿ Conjugal Rights
- ✿ Widow Inheritance

Bride Price

- ✿ 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 for return of marriage gifts constitutes an offence.

Cohabitation

- ✿ The Bill does not recognize Cohabitation as a form of marriage.
- ✿ However it 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
 - ✿ (a) separate property,
 - ✿ (b) property acquired jointly during the cohabitation,
 - ✿ (c) distribution of property acquired during the cohabitation and
 - ✿ (d) distribution of property on dissolution of the cohabitation.
- ✿ A property agreement can either be oral or in writing.

Conjugal Rights

- ✿ The Bill recognizes that spouses shall have conjugal rights in marriage.
- ✿ However, a spouse may deny the other spouse

the right to sexual intercourse on reasonable grounds which many include –

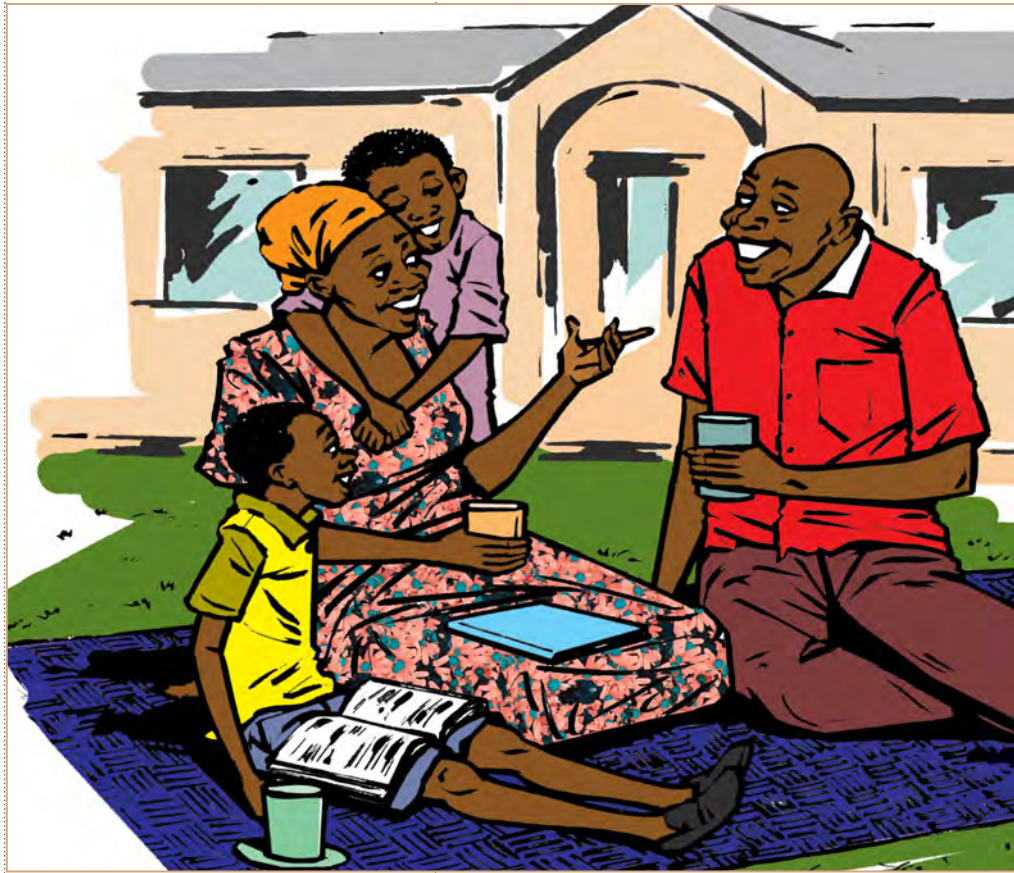
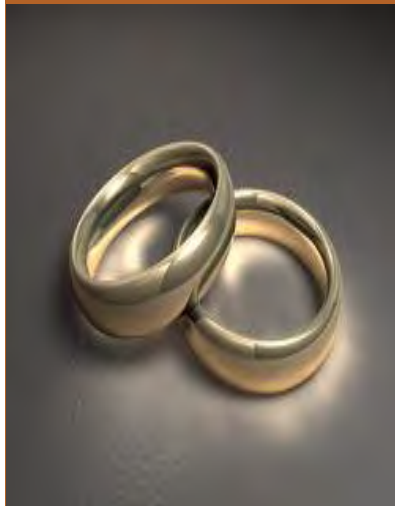
- Poor health;
- Surgery that affects the capacity to engage in sexual intercourse;
- Child birth;
- Reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm.

Widow Inheritance

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

What is the Status of the Bill?

- ✿ The Bill is Before Parliament
- ✿ It has gone through the first, second and third reading
- ✿ Twenty three clauses have been discussed and passed
- ✿ Minister in Charge of the Bill requested the Speaker for three more months for Public consultation
- ✿ Speaker requested for Political Party positions
- ✿ Consultations on-going



FREQUENTLY ASKED MARRIAGE AND

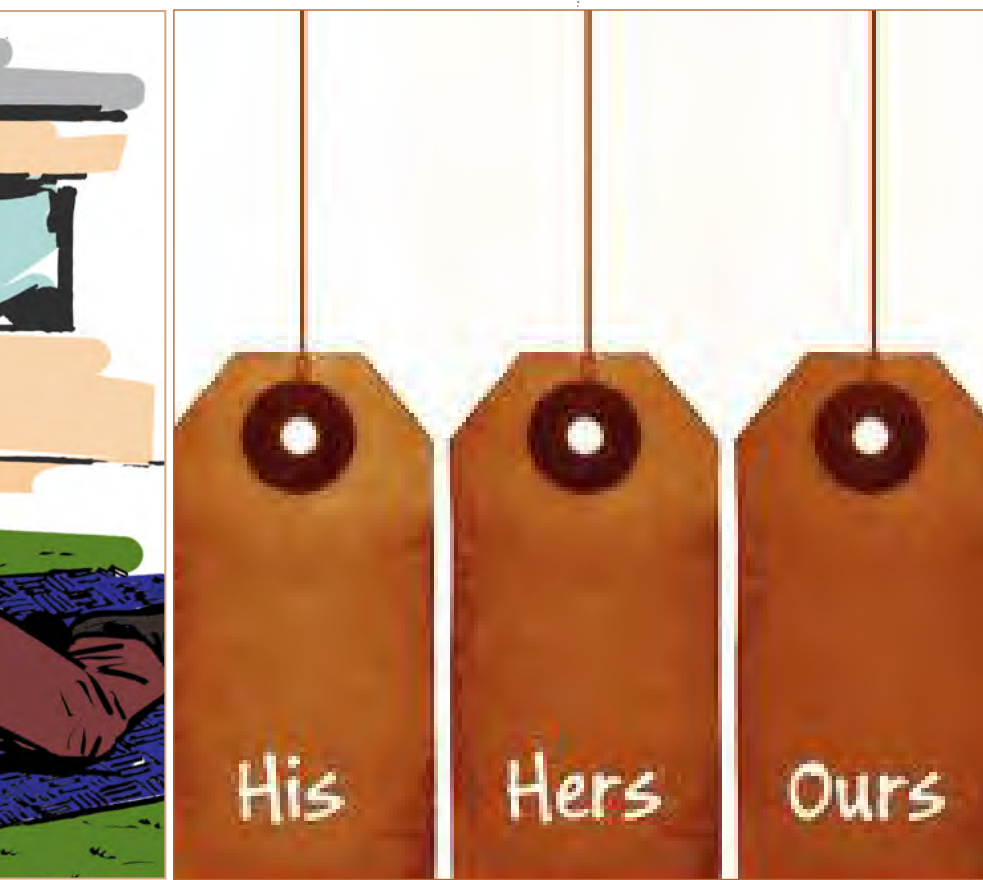
1. Why the Marriage and Divorce Bill?

It is important to emphasize that Uganda has always had laws regulating marriage. The purpose of the Marriage and Divorce Bill is to reform the current laws relating to marriage. However, the most compelling reason for the reform process of marriage laws is the urgent need to address the glaring gaps

in the current laws and to align Marriage laws with the provisions of the 1995 Constitution.

2. How did this Bill come about?

The Uganda Law Reform Commission conducted broad consultations and a research and a report was submitted to Cabinet, which was duly passed and presented to Parliament for



QUESTIONS ON THE DIVORCE BILL

debate. The First reading of the Marriage and Divorce Bill was done before the 8th Parliament in 2009, and the Bill was committed to the Legal and Parliamentary Affairs Committee for further scrutiny and consultation with different stakeholders. The current Members of Parliament were equally consulted in the 2012 before the Bill went to Cabinet.

3. Is it necessary to have a law on marriage at this time?

After Uganda has invested so much time and other resources in the reform process it is timely that this Bill is finally enacted so that we all see how it is applied in practice. Future generations may also come up with additional reforms appropriate for their time

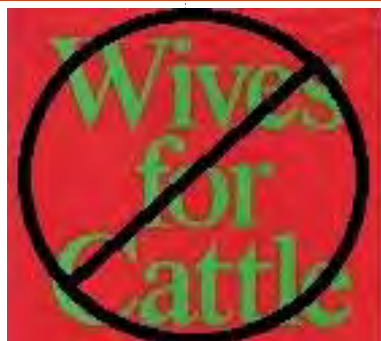
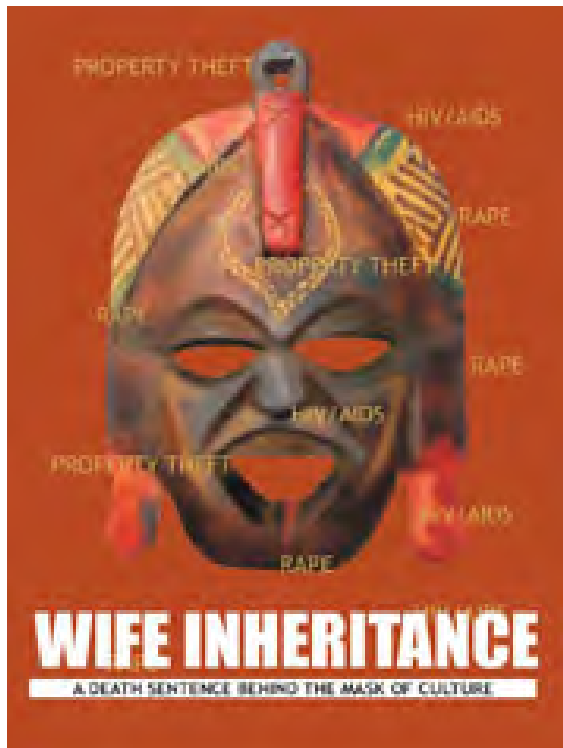
and circumstances. It is not only necessary it is absolutely essential to address the gaps in the current marriage laws and remove all contradictions that are not in line with the 1995 Constitution.

4. Is it timely to be discussing this Bill in Parliament yet there are more pressing development issues the country is facing?

The 9th Parliament of Uganda introduced a very good practice of adopting a Plan for its work at the beginning of each annual session. In the Session Schedule for 2013 the 9th Parliament is handling some of the outstanding business the House inherited from the 8th Parliament which includes among others the Marriage Bill. This is a priority issue and the Government of Uganda has prioritized it to ensure that all gaps and inconsistencies in marriage laws are finally addressed.

5. Does marriage/family need a code or not?

Uganda already codified all its laws to bring about fairness and consistency in its application. Laws on marriage were already codified and currently we have six laws relating to different forms of marriage. The Marriage Bill consolidates marriage laws, introduces a number of new provisions



to address the persistent gaps in the law that have been identified over the years since the constitutional making process and to align marriage laws with the Constitution of Uganda.

6. Is the Marriage Bill against customs and religion?

The intention of the Marriage Bill is to protect the institution of the Family as the most important unit

of society and a stable nation. It is not in any way intended to be against any custom or religion. However, practices or norms which are repugnant or against natural justice are already outlawed in the Constitution of Uganda. For example marrying a person who is below the age of 18 years is unlawful even where it may be permissible by some religions or customs. The law would go a long way

in guiding all endeavors to protect the rights of women, men, girls and boys. The Bill is conforming to the changing times.

7. What is 47 years of consultation over this Bill yet it has taken over 5,000 years to build our customs and marriage values that this Bill is going to destroy?

During the Constitutional review process it was clear that there are different interpretations of customs and cultures. The law attempts to provide an acceptable standard so that it fulfils its obligation to protect, defend and uphold the rights of individual persons where possible violations may occur due to archaic customs that are no longer applicable contemporary times.

8. Why is the Bill being rushed?

Rushed? Surprising that anyone would have the impression or belief that the Marriage Bill is being rushed. The Bill has been before Parliament since 2009! There is no rush at all. Parliament of Uganda is following its set schedule which is publicly announced so that all people of Uganda know what business the members are transacting on their behalf. It is 17 years since the enactment of the 1995 Constitution which

mandated Parliament to review and make appropriate laws that facilitate the implementation of Article 31 and 33 of the Constitution for example.

9. Isn't this law making divorce easy and thus breaking marriages and families?

The Process of divorce and separation as provided for in the Bill is stringent made to protect the institution of marriage and family. The law provides that divorce cannot be pursued before the end of 2 years of a marriage. The Court of law still has to issue a separation order first so that it gives the spouses time to sort out their difference, reconsider their actions and most importantly to reconcile. Even when the divorce is finally announced the final decree (decree absolute) is only issued after six months.

10. Is having this legislation in place going to solve all the problems with marriages? Is it the sole solution to the problem?

Enactment of the Marriage Bill is not intended to be a solution for all problems relating to marriage. In addition to having the laws reformed it is important that the people know what the law provides so that they can adhere to it. As the holy books say knowing the truth sets a person free. Knowing

what the law provides on marriage and the family sets every woman and man free to make choices and conduct his/her marriage and family affairs within the confines of the law.

11. The Bill is only focusing on property, is property the major reason why parties marry? Do we make the family a centre of love and mutual appreciation or a market place for property bargains?

The Bill in its current form has 178 Clauses and only about 25 Clauses are essentially focusing on property issues. It is therefore, not correct for anyone to claim that that the Marriage Bill is majorly focusing on property issues. The Laws of marriage first and foremost recognize that

people come together to live as husband and wife to form a family through consent.

12. What is the place of children in this law, are they going to be shared as property at dissolution of a marriage?

When a marriage breaks down and all attempts to save it have been made by the parties and the families involved and the religious leaders have also played their part, the spouses may decide to seek for a divorce. The guiding principle as already established under the Children Act which is replicated in the Marriage Bill is to make the interests of the children paramount in any decision made by the Court.



13. What about cohabitation?

This is a situation where an adult man and an adult woman decide to live together without being legally married under one roof and hold out to the rest of society that they are husband and wife but have not gone through any ceremony of marriage to contract a legally recognized marriage. The Marriage Bill does not make cohabitation a legally recognized marriage but it recognizes that this is a matter related to marriage and family and this is the reason for introducing specific provisions in the law on cohabitation.

14. What if the Christians withdraw from this law like the Muslims did, who will the government be legislating for?

Laws are made to promote peaceful co-existence and harmony in society and avoid anarchy, confusion and violation of rights of any persons. The government make secular laws, which harmonize different positions where there is conflict. In this case the Government is fulfilling its obligation to defend and protect the rights of all spouses in legally recognized marriages.

15. The Bill does not define consent in regard to conjugal rights. Is there going to be an invoice, a receipt or voucher to show proof of consent to sex in marriage?

Consent to conjugal rights and obligation is presumed in all types of marriage that are legally recognized in Uganda. However, this consent pertains where there is love, trust, confidence in each other, faithfulness, good health and good communication between the spouses. When these basic elements that sustain a marriage are violated and respect for the body and dignity of spouse is violated the presumed consent may be withdrawn for some time to provide space for objective consideration, negotiation and reconciliation.

16. If a spouse is sued for marital rape/denial of conjugal rights and is to serve a sentence of 5 years imprisonment what happens to the marriage after he/she has served his/her sentence?

It is important to note that the pursuit of justice is a high cost to pay. When a spouse accuses the other of marital rape it is obvious that this marriage is already broken down to a certain extent. Most probably the spouse who brings the accusation of marital rape will also go ahead and file for a divorce if reconciliation is not achieved.





17. What are the restorative measures that this Bill offers except for breaking marriages through legislations?

Clauses on how to contract a legally recognized marriage all have implied restorative measures. When the spouses have problems they first approach the persons who celebrated their marriage to help them resolve their differences. Secondly, a spouse has to first apply for a judicial separation. She or he cannot directly apply for a divorce. The separation is intended to give space to the couple to reconcile and sort out their differences without the complication of enforcing conjugal obligations when the fabric of the marriage is bleeding.

18. There is an apparent contradiction between Article 7 of the

Constitution which provides that Uganda shall not establish a State religion and Article 129 (1) which provides for the establishment of Quadi courts. This contradiction has serious implications on the stability of the institution of marriage in this country as well as the future stability of the nation as a whole. So how has this Bill addressed this issue?

The Marriage Bill is not enacted in a vacuum. There is the Constitution which clearly provides for the establishment of courts of judicature in Uganda. It provides that Parliament may establish subordinate courts including Quadi Courts to handle issues of marriage, divorce, inheritance of property and divorce. Quadi courts are subordinate courts to the High Court, Appeal Court, Constitutional Court and the Supreme Court of Uganda. Article 138 (2) provides that decisions of any lower court to the High Court shall be appealable to the High Court.

19. What happens if a man decided to put all his property in his 'children's names' would it be subject to sharing with the wife at divorce?

In a marriage there will always be property that is jointly owned, for example the matrimonial home, unless if the parties to the

marriage agree otherwise. The agreement according to the Marriage Bill may be oral or in writing and must be made with witnesses for it to stand the test of time. If a man decides to place all his properties in the names of her children this means that he never had the intention to own it jointly with the wife. The Marriage Bill recognizes that spouses may own property jointly or separately.

20. Does a woman deserve a share of property if she did not bear any children by the time of divorce?

Children are a gift from God. Failure to bear a child may be due to the condition of the man or woman in a marriage. If a woman has made a contribution to the accumulation of the property or the spouses orally or in writing agreed to equally share the property the rights of the woman cannot be denied just because she did not bear children during the subsistence of the marriage.

21. What does the Bill say about marriages across religions for instance Christian and Muslim?

The Marriage Bill clearly states that two consenting adults are free to choose the type of marriage to contract. Once they have made the choice then they have to abide by the rights and obligations that arise from that particular type of marriage.

WHAT YOUR MEMBER OF PARLIAMENT SAID ABOUT THE MARRIAGE AND DIVORCE BILL

NO.	NAME and CONSTITUENCY	COMMENT ON THE BILL AFTER CONSULTATIONS
1.	Jesca Abiku Adjumani Woman MP	People in my constituency have rejected the Bill because they think the contentious issues are not tallying with our cultural values
2.	Phyllis Chemutai Kapchorwa Woman MP	They are very negative about the Bill. They don't want to even hear about it. They want us to stick to the traditional way of resolving marriage issues.
3.	Yokasi Bihande Bwambale Bukoto County East	According to my people, the Bill is uncalled for. You cannot legislate on culture. Among the Bakonjo, we don't have cohabitation. It is a big taboo
4.	Victoria Businge Kabalore Woman MP	People have not yet understood the Bill. The majority were not in for the Bill. Many of them said the Bill is not more important than their needs of services by Government.
5.	Margret Komuhangi Nakasongola Woman MP	I had a radio program for three hours during which I explained the clauses in the Bill to my people and all the comments I got were positive in support of the Bill.
6.	Robinah Nabbanja Kibaale Woman MP	Majority are opposed to it. In fact there is a meeting I convened where I was seriously blasted.
7.	Patrick Nsanja Ntenjeru county South MP	Majority of the female support the Bill while the male are opposed to it. I have been troubled with explaining it to the people
8.	Wafula Oguttu Bukhooli Central	I had 31 rallies and in all these rallies they rejected the Bill. They don't want it. They think it is for the educated women in Kampala
9.	Milton Muwuma Kigulu South	In all the four sub-counties in my constituency, the Bill is unpopular and they even challenged the timing. They said among the things they sent us do, that Bill is not a priority.
10.	Gen. Elly Tumwine UPDF MP	I am glad that this matter is being debated countrywide involving both men and women. It touches the family which is the most important unit of any society. I have been in the countryside and I realized people are scared about the Bill
11.	Stephen Tashobya Kajara County	Some support the Bill while others are opposed to it. They think we are imposing on them western culture.
12.	Felix OkotOgong Dokolo County	They don't want it at all. They think it is introducing the western culture and commercializing marriage

13.	Beatrice Anywar Kitgum Woman MP	Men have rejected the Bill but women want the Bill to be amended to cater for traditional values.
14.	Sarah Kayaga Manafwa Woman MP	They have mixed views about the Bill. Many believe it is an importation of western culture
15.	Rosemary Seninde Nansubuga Wakiso	I find it difficult to support the Bill. Some sections are controversial. In my culture we say we don't bring bed room matters into the public
16.	Rita Ronah Ninsiima Kabale	I have withdrawn my support for the Bill since my constituents do not support it.
17.	Sanjay Tanna Tororo Municipality	It is a good Bill. We need it for society for now and for future generations. We should pass it with amendments
18.	Benson Obua-Ogwal Moroto County	I don't support some aspects of the Bill like cohabitation. The Bill seems to make marriage mechanical. You have to enter it as if it is a contract before-hand.
19.	Mujuni Vincent Kyamadidi Rwampara MP	This bill has some good clauses, which I support. But there are also controversial ones which even my electorate want deleted out. For instance, the one on conjugal rights is so controversial.
20.	Baba Diri Margaret Woman MP Koboko district	I support the bill 100%. We have come a long way. The laws we have are of decades ago. Women have suffered too much.
21.	Betty Amongi Oyam South	I support the bill; it is in line with the emerging challenges in the country. People think it's a new law but this is not the case.
22.	Jacqueline Amongin Woman MP Ngora district	I do not support the cohabitation clause. Our view as women is that we should have a separate clause on it
23.	KahindaOtafiire Justice Minister	I support the bill. We have kept it for a very long time and most of the things being contested - like cohabitation - are a reality.
24.	Mohammed Nsereko Kampala central MP	The grounds for dissolution of marriage might deter people from getting married. The Bill focuses on sharing assets but forgets that people have huge liabilities (debts) as well. What happens to the liabilities?
25.	John Amos Okot Agago country	My major problem with this bill is cohabitating. It is as if we are equating cohabiting to a marriage.

About UWONET

Uganda Women's Network-UWONET, is an advocacy and lobby network comprising of 16 national women's organizations, institutions and 9 individuals. It was established in 1993 to provide space for collective engagement of organizations advocating for women's rights especially the eradication of gender based discrimination.

Vision

A Ugandan society free of all forms of gender based discrimination.

Mission

To coordinate collective action among members and other stakeholders through networking, capacity building, resource mobilization, policy research and advocacy for the attainment of gender equality in Uganda.

Contact

Executive Director

Uganda Women's Network (UWONET),
Plot 198 Old Kiira Road Ntinda - Kampala, Uganda

Phone: +256 414 286 539,

Email: info@uwonet.or.ug

Website: www.uwonet.or.ug

Blog: <http://uwonetnews.blogspot.com>

Facebook: <https://www.facebook.com/uwonet>

Twitter: @uwonet