

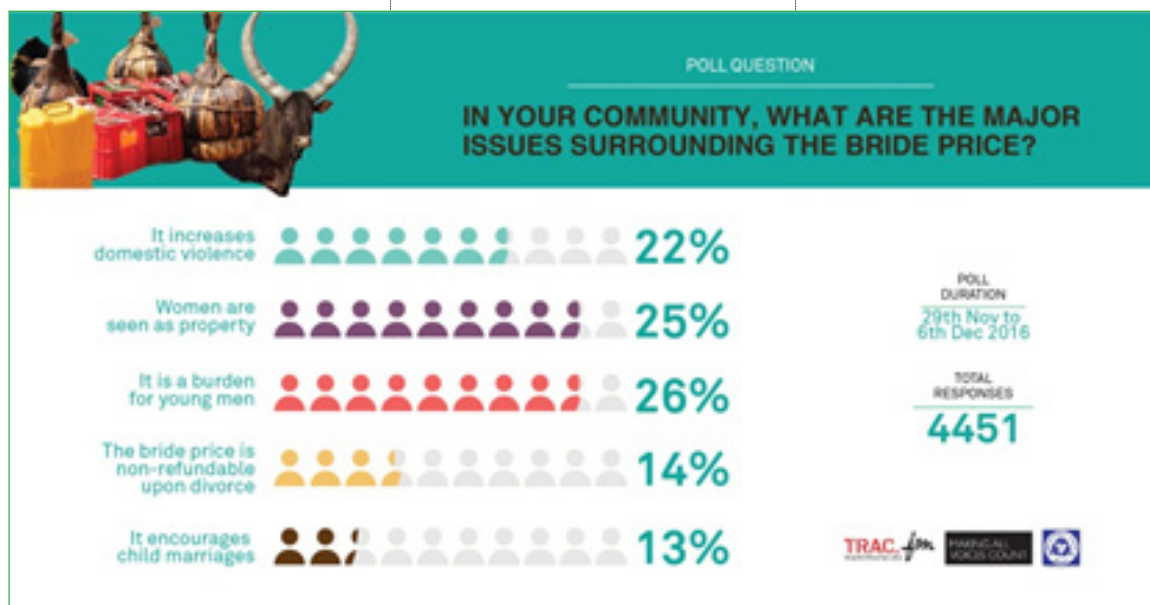


Gender Transformation & Empowerment

MEDIA PACK:

FREQUENTLY ASKED QUESTIONS AND FACTS IN THE 2017 BILL

Developed by: UWONET on behalf of the coalition



Introduction.

This is a media pack about the Marriage and Divorce Bill, 2009 for Media houses. In a effort to give clarity and correct negative public perceptions, the coalition seeks to address itself on the following frequently asked questions that have been documented over time during engagements and public debate of the provisions of the Bill. The media is recognized by the coalition as an important stakeholder that has a role to play in educating the public on that true content in the Bill.

The media pack will be disseminated among journalists, reports, editors and station managers at both national and district print, radio and televised media houses to increase their understanding on the Bill and influence factual reporting.

Frequently Asked Questions

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 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 Members of the 9th Parliament each received 5 million Uganda shillings to consult widely and the Bill remains on the order paper for the 10th Parliament.

3. 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.

4. 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 governments 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.

The civil society coalition on the Marriage and Divorce Bill is particularly interested in this bill because of some of the following considerations:

- a. The age of marriage is critical to defining prospects for a young teenager, especially the girl child. Girl child marriage not only strips a girl of her childhood, it lessens her chances to complete education and fulfill her opportunities. This Bill will help girls to enjoy their rights and have a say in their future.
- b. The Marriage and Divorce bill also has a stake in defining the reproductive rights of the women and men in the family setting.

5. 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 fulfills 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.

6. Why is the Bill being rushed?

Rushed? Surprising that anyone would have the impression or belief that the Marriage and Divorce 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 23 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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. After facing severe backlash amongst the communities, this provision isn't on the newest version of the bill.

12. The Bill does not deny 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.

13. 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.

14. 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.

15. 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 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.

16. 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 and Divorce 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 and Divorce Bill recognizes that spouses may own property jointly or separately.

17. 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.

18 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.

PART B: Facts about the 2017 Bill

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. In 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.

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.

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 16 years old, while the Marriage Act sets the age at 18 years. The bill sets the age to 18 years 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".

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, (1) Surgery that affects the capacity to engage in sexual intercourse, (2) poor health, (3) child birth; or, (4) reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm. UWONET in partnership with Trac FM used poll questions on nine radio stations throughout Uganda which attracted nearly 13,000 individual responses. The findings of the poll questions on conjugal rights are depicted in the photo below. The results of the polls were used in a variety of stakeholder meetings attended by the members of the Marriage and Divorce Bill coalition, which largely comprises of CSO partners, duty bearers and policy makers from the Uganda Law Reform Commission (ULRC). During the campaign.

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(2) 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

Cohabitation

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

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)

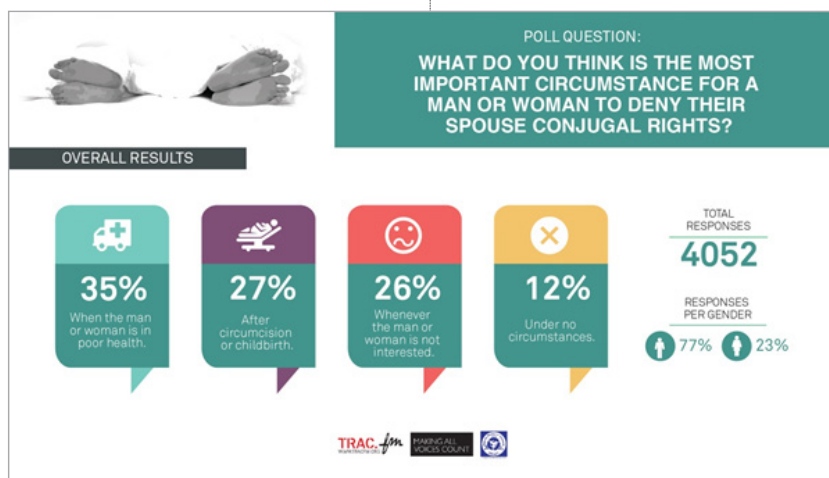
separate property of each spouse, (b) property acquired during the marriage, (c) distribution of property acquired during the marriage; The bill requires that the agreement shall be signed by the parties, in the presence of two witnesses, and signed and sealed by the Registrar of Documents. The bill recommends that each party to the agreement may obtain independent legal advice on the implications of the agreement before signing it.

Matrimonial Property

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

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 propertyless 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).

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).

4. The Bill considers divorce as a last option after all attempts at reconciliation have failed.

In Conclusion, The coalition calls upon the President, Cabinet Ministers and Members of Parliament to recognize the urgency of protecting the rights and lives of Ugandans and the institution of marriage.

The continued absence of a marriage law in Uganda not only hinders practical enforcement of the constitutional guarantees of equality of men and women but also points towards unwillingness by the government of Uganda to enact the Bill. While enacting such law would not necessarily or immediately translate into substantive equality between men and women, it offers a firm basis upon which the promotion of non-discriminatory treatment should be developed and integrated into all policies and programmes in line with national, regional and international gender obligations and commitments.

When we protect the family, we protect society and by so doing, we protect our nation.

This is the time to own the Marriage and Divorce Bill

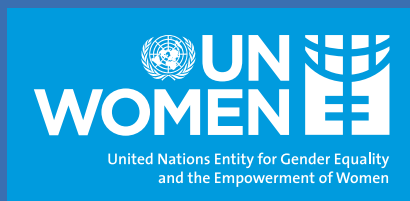
LIST OF THE MARRIAGE BILL COALITION MEMBERS

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

1. ActionAid International-Uganda
2. Action for Development (ACFODE)
3. Akina MamaWa AFrika
4. Anti- Domestic Violence Coalition in Jinja (ADOVIC)
5. Associates for Change
6. Association of Uganda Women Medical Doctors
7. Association of Women Lawyers in Uganda (FIDA-U)
8. Bahai Faith
9. Department of Women and Gender Studies, Makerere University
10. Department of Law, Makerere University
11. Development Network of Indigenous Voluntary Association (DENIVA)
12. Diakonia
13. Disabled Women's Resource Network Organisation (DWRNO)
14. East African Post Beijing Sub Regional Support Initiative (EASSI)
15. Care International-Uganda

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| 16. Centre for Domestic Violence Prevention (CEDOVIP) | 28. Mifumi Project | 40. Uganda Network on Law, Ethics and HIV/AIDS (UGANET) |
| 17. Community Development Rural Network (CDRN) | 29. National Association of Disabled Persons of Uganda (NUDIPU) | 41. VECO-U |
| 18. Foundation for Human Rights Initiative (FHRI) | 30. National Association of Women's Organisations in Uganda (NAWOU) | 42. Volunteer Efforts for Development Concerns (VEDCO) |
| 19. Forum for Women in Democracy | 31. Uganda National NGO Forum | 43. Women and Girl Child Education Development Association (WEGCEDA) |
| 20. Hope After Rape | 32. The Council for the Economic Empowerment of Women in Africa-Uganda (CEEWA) | 44. Women and Rural Development Network (WORUDET) |
| 21. Human Rights Peace Center (HURIPEC) | 33. Uganda Women's Parliamentary Association (UWOPA) | 45. Women Engineers, Technicians and Scientists in Uganda (WETSU) |
| 22. Human Rights Network (HURINET) | 34. Uganda Change Agent | 46. Women in Law and Development in Africa-uganda Chapter (WILDAF-U) |
| 23. Isis-Women's International Cross Cultural Exchange | 35. Uganda Law Society | 47. Women Spacee |
| 24. Institute for Social Transformation (IST) | 36. Uganda Land Alliance | 48. Pan African Movement (PAWLO) |
| 25. Law and Advocacy for women in Uganda (LAW-U) | 37. Uganda Media Women's Association (UMwA) | |
| 26. Ministry of Gender, Labour and Social Development | 38. Uganda Women's Network (UWONET)0 | |
| 27. Mpigi Women's Development Trust (MWODET) | 39. Uganda Women's Trust (UWT) | |

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