



Analysis of the 2024 Marriage Bill: A Women's Rights Perspective





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INTRODUCTION

The story of Uganda and its Marriage law is almost as old as Uganda itself, dating back to 1964, when the newly independent Ugandan Government instituted the Commission on Marriage, Divorce and the Status of Women.¹ The Commission was charged with coming up with regulations to govern marriage and divorce while considering the lived realities of Ugandan familial relations. The drafted report by the Commission was ignored, setting off a decades-long, unsuccessful attempt at enacting a comprehensive family law. The most notable among these efforts was the drafting of the Domestic Relations Bill (DRB) of 2003, aimed at transforming what Tamale refers to as Uganda's 'hetero-patriarchal-capitalist' arrangement, characterised by women's exploitation, subordination, and oppression.²

Some of the transformative issues that the DRB proposed were; the criminalization of dowry refund, conditions to be fulfilled before a polygynous man took on more wives, criminalization of widow inheritance, property rights of married and cohabiting women, women's right to negotiate sex on health grounds, among several other ground breaking provisions.³ The bill faced strong opposition as it was deemed too radical by some traditional, political and religious leaders. In order to make it more palatable, it was later split into; the Marriage and Divorce Bill (MDB) and the Administration of Muslim Personal Law Bill (AMPB).⁴ The MDB was also heavily opposed by the same groups that had opposed the DRB including the traditional leaders, religious leaders, and members of Parliament and once again, the bill was placed in legal limbo.⁵

¹ S. Tamale, 'Decolonizing Family Law' in Decolonization and Afro-Feminism, 330-339

² The Domestic Relations Bill, 2003. S. Tamale (322) Above.

³ Izama A, "Till Death: Uganda's Domestic Relations Bill and Its Discontents," Angelo Izama, accessed October 14, 2024, <https://angeloizama.com/till-death-ugandas-domestic-relations-bill-and-its-discontents/>.

⁴ Marriage & Divorce Bill, 2009, Parliament of Uganda,

⁵ S Tamale (As Above)

The long-drawn-out nature of the journey of coming up with a comprehensive family, speaks to the protracted nature of gendered rights which are often imbued with pervasive religious, socio-cultural, and patriarchal norms, that ultimately affect the adoption and subsequent implementation of a comprehensive marriage law.

The recently tabled Marriage bill of 2024 is a testament to this. At the heart of regulating marriage, is the discussion on the public and private dichotomy, and how the root of women's abuse is in the private sphere, which is often unregulated or under-regulated.⁶ This has prompted gender and feminist rights activists to push for the regulation of the private sphere, leading to numerous efforts, over the years, aimed at regulating marriage. These attempts, for the most part have been unsuccessful. Why? Our view is that there are clearly retrogressive forces that have often proved more powerful in hindering the enactment of a transformative marriage law.

Related to this, is the difficult legal terrain especially when it comes to promoting and protecting gendered rights. The legal terrain is still heavily influenced by persistent colonial laws with patriarchal undertones that are so pervasive that they always find themselves in statutes that purport to be progressive and contextualized.

Therefore, despite the several advances in promoting and protecting women's rights towards the realization of gender equality, there are still glaring challenges and disparities in regards to the enjoyment of these rights. Simply put, *"its not yet UHURU"*.

⁶ A Gheaus, 'Gender Justice', Journal of Ethics & Social Philosophy, Vol.6 No.2, January 2012.

TABLE A: Status of marriage as per UBOS: National Household Survey 2019/2020

Selected characteristic	Male %	Females %	Uganda %
Married monogamous/ living together	75.8	16.9	57.4
Married polygamous/ living together	10.5	12.7	11.2
Divorced/ separated	6.2	27.6	12.9
Widow/widower	1.9	37.6	13.0
Never married	5.6	5.2	5.5

TABLE B: Forms of marriages as per UBOS: National Household Survey 2019/2020

Age	Civil marriage	Customary marriage	Religious marriage	Living together
15-19	0.2	7.7	0.7	11.4
20-24	0.9	27.0	4.0	35.5
25-29	1.3	33.3	10.0	37.9
30-34	1.7	32.4	14.1	32.9
35-39	1.4	34.9	15.0	28.6
40-44	1.4	30.3	19.2	25.0
45-49	1.6	26.6	18.1	15.8
Total	1.1	25.4	9.1	26.9

A GENDERED ANALYSIS OF THE CONTENTS OF THE MARRIAGE BILL (2024)

The drafting of the Marriage Bill is a commendable step in amending Family law, in order for it to comply with the Constitution as has been recommended by Courts on several occasions.⁷ In fact, the bill extensively sets out the purpose for its adoption which is to reform, repeal and consolidate Uganda's marriage legal framework by; providing for marital rights, recognized marriages, property rights, conversion from one form of marriage, separation, and dissolution of marriage, among others.⁸

The bill contains several progressive provisions that are vital for advancing gender equality at the family level. These include; the emphasis on the recognised age of marriage (Clause 14) and outlawing child marriage (Clause 101). This provision is particularly vital in the sense that it holds liable, several entities directly or indirectly involved in a child marriage including; those who preside over or witness the purported marriage, those who marry a child in a formal or informal ceremony with or without the consent of a parent, those who knowingly attend or participate in holding a child marriage and those who involve a child in a formal or informal marital rites or initiation practices.

Another important provision is the one prohibiting the return of gifts including bride wealth (Clause 87). Clause 87(2) asserts that a person who demands the return of a marriage gift is liable, upon conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.

⁷ *Association of women Lawyers (FIDA) & 5 Others v Attorney-General, Constitutional Petition 2 of 2003. Annette Nakalema Kironde v Apollo Kaddu Mukasa Kironde & Another Divorce Cause 6 of 2001*

⁸ Article 1 of the Marriage Bill, No 73 2024.

The prohibition of the demand for the return of gifts is very vital as it would potentially aid in curbing the widely documented cases of sexual and gender-based violence derived from demanding the return of gifts at the dissolution of marriage.⁹ The inclusion of this provision can be attributed to the progressive work of feminist legal and women's rights activists as well as strategic litigation, specifically the Supreme Court in *Mifumi (U) Ltd & Anor v Attorney General & Anor* which declared as unconstitutional the demand for the refund of bride price.¹⁰

Other progressive provisions include; the Presumption of Parentage (clause 44) and presence of parties at the contraction of marriage (Clause 16) which provides for virtual presence through a digital platform and further states that the Minister shall by statutory instrument set out eligibility guidelines for the virtual presence of parties to a marriage. This is quite a commendable step in ensuring that people who might not be physically present, can participate in unions. However, if the bill is committed to, ensuring the effective conducting of virtual marriages, a clear procedure should be laid out, that would ensure that there are no structural bottlenecks in regard to certain authorizations or notices that might require those intending to marry to be physically present.

It can be argued that the most forward-looking provisions in regard to the realization of gender equality in marriage and its dissolution are the provisions on property rights as set out from clause 45 to clause 61. Among those worth mentioning is; owning matrimonial property in common (45); Prenuptial and postnuptial agreements (47), capacity to acquire individual property (48), monetary or in kind contribution towards property improvement (52(1)), Spousal gifts (54), consideration of in cash or in kind contribution of each spouse to the acquisition, maintenance and improvement of property (59(d)), presumption of marriage for maintenance of children and property rights (61) domestic work and management of the home (59(e)).

⁹ Gill Hague et al, 'Bride price and its link to domestic violence and poverty in Uganda : A Participatory Action Research study', Women's Studies International Forum, Volume 34, Issue 6, November–December 2011, Pages 550–561. Eyre, Mary Claire (2021) "Intimate Partner Violence against Women in Uganda," Ballard Brief: Vol. 2021: Iss. 3, Article 7.

¹⁰ Constitutional Appeal No. 2 of 2014) (2015) UGSC 13 (6 August 2015).

The particular provision, on domestic work, is especially vital as it takes note of the disproportionate amount of time incurred by women in executing productive and reproductive roles such as cooking, cleaning, caring for the children and the elderly, otherwise referred to as care work which often goes unrecognized and unpaid.¹¹ This is further emphasised under the same section on distribution of property (59(3)(4)) which sets out that, a monetary contribution shall not be presumed to be of greater value than a non-monetary contribution and that, the non-monetary contribution shall not be proved in monetary terms.

While the Bill has several progressive provisions as mentioned above, there are some contentious provisions therein. Even with the seemingly progressive provisions mentioned above, there are some gaps in line with their applicability, so much so that one participant in a review meeting held with women's rights activists and feminists on 10 October 2024 to assess the bill asserted, *"the bill gives with one hand and takes away with the other"*.

These provisions are the subject of this Memorandum;

i) **Consent of Parents**

Clause 5(d) of the bill, states that a Christian marriage shall be entered into with the consent of the parents of both parties.¹² This clause seems to be in contradiction with the article 31(3) of the Constitution which states that marriage shall be entered into with the free consent of the man and woman intending to marry. Thus, the free will and consent of the parties that are to marry supersedes that of any other parties including their parents. The requirement of seeking parental consent was one of the issues under contention in the case of *Aboneka v Watoto Church Ltd*.¹³

¹¹ Anca Gheaus, 'Gender Justice', Journal of Ethics & Social Philosophy, Vol.6 No.2, January 2012.

¹² Marriage Bill, 2024, Section 5.

¹³ *Aboneka v Watoto Church Ltd*, Constitutional Petition No. 19 of 2018.

In that case, the Court ruled that the church (Watoto) was free to put in places rules or procedures to govern the effective conduct of marriage and anyone who wasn't in agreement, was free to choose another place of worship and therefore seeking parental consent within the context, did not contravene the law.¹⁴

Unlike the *Aboneka* ruling, this provision (5(d)) seems to subject all those intending to marry under the Christian Marriage, to Parental Consent, thus limiting any choice in the matter as long as one subscribes to the Christian faith. The provision creates room for parents who are in objection of their children's union, coming up with several subjective and discriminatory grounds, to object to the union of their children, who are already presumed to be adults (over 18 years of age) thus possessing the ability to make independent decisions.¹⁵ Parents may abuse their powers in cultures where traditional authority is strong to control a child's choice of spouse, forcing marriages based on family interests, economic benefits, or social status rather than the individual's preferences. This undermines personal autonomy and may restrict freedom, especially for young or economically dependent individuals.

Viewing this section through a gendered lens, raises questions about equality and the importance of ensuring both men and women have equal decision-making rights in matters of marriage. Traditionally, decisions about marriage, especially regarding daughters have been influenced by patriarchal norms, where fathers often hold significant authority.¹⁶ Thus the requirement for parental consent could be more pronounced for daughters, potentially leading to forced or arranged marriages. The *Aboneka* case was a clear demonstration of such perceptions, where the Court decided that women (not men) intending to marry, were required to seek the consent and blessing of their parents prior to getting married.¹⁷

¹⁴ As Above.

¹⁵ African Feminism, 'Ugandan Court Upholding Church Rule of Parental Consent for Women to Marry: An Affront to Women's Rights'. Available at: <https://africanfeminism.com/ugandan-court-upholding-church-rule-of-parental-consent-for-women-to-marry-an-affront-to-womens-rights/> (Accessed: 18 October 2024).

¹⁶ D Nabagereka, "African Traditional Marriage: Two Ugandan Tribes at a Spotlight," *Winter Quarter Anthology*, <https://openwa.pressbooks.pub>.

¹⁷ *Aboneka v Watoto Church Ltd*, Constitutional Petition No. 19 of 2018.

In an astonishing, but not surprisingly sexist and partnerlistic ruling, the judge interpreted this form of discrimination, as an affirmative action measure, in line with article 32(1) of the Constitution which provides that the state shall provide affirmative action measures in favour of marginalized groups on the basis of gender, age, or disability.¹⁸

The judge also referred to article 33(2) and (3) which provide for putting in place facilities and opportunities to enable women to realize their full potential as well as the state's obligation to protect women and their rights bearing in mind their unique status and natural maternal functions in society.¹⁹ The judge justified the action of subjecting women and not men to parental consent, as a way of protecting the former from abuse.²⁰ This paternalistic stance is a clear illustration of the various ways the law, working together with religious and traditional institutions, justifies taking away women's choice and agency under the guise of protecting them.

ii) Pre-Marital Counselling

Related to seeking parental consent, is the provision on pre-marital counseling. Clause 15(1)(b) of the Bill, stipulates that a marriage shall not be celebrated in Uganda without the intended marriage undergoing pre-marital counselling as recognized under the specific type of marriage which the parties intend to contract. Section 15(2) further states that the Minister shall, through regulations, prescribe the guidelines for pre-marital counselling. From a general perspective, pre-marital counselling maybe viewed as a vital requirement for those intending to marry.²¹ However, when contextualized to the Ugandan environment, the introduction of pre-marital counselling as a pre-requisite for marriage, is problematic to the extent that it subjects the decision to marry to a moralistic, deeply patriarchal process, rife with religious undertones and pervasive gender

¹⁸ As Above.

¹⁹ As Above.

²⁰ As Above.

²¹ Premarital Counselling and Marital Stability in Anglican and Catholic churches of Bukoto - Nakawa Division. A Dissertation submitted to the School of Graduate Studies and Research in partial fulfilment of the requirements for the award of a Master's Degree in Clinical and Psychological Counselling of University of Kisubi, January, 2022. Available at <https://poverty-action.org/study/faith-based-couples-counseling-program-reduced-intimate-partner-violence-uganda> (Accessed 19 October 2024).

and social norms that often work against women.²² The introduction of pre-marital counselling as a condition for marriage, subjects the parties, more so women, to processes that are often not decided in their favour.²³

This was clearly demonstrated in the *Aboneka v Watoto Church Ltd*, as set out above.²⁴ More importantly, by deciding in favour of the Respondent (Watoto Church), the Court demonstrated the coveted position of religion in Uganda, as spelt out in article 29 of the Constitution.²⁵ In doing so, the judge inadvertently placed the right to practice one's religion over equality, freedom from discrimination, and free will in marriage, communicating the hierarchy of these rights in the Ugandan context.

While counselling is a useful tool in resolving marital disputes, pre-marital counselling as held in the Ugandan context is heavily tinged with the same religious or socio-cultural ideologies which in themselves are the root of problematic norms that often violate gender rights.²⁶ In the religious context, Christian and Islamic based pre-marital counselling is often based on the reading of religious texts and principles which often favour those who hold power in those religious denominations, most often the men. For instance, the verses that push for women's complete submission to men, while underplaying men's accountability, place an inordinate amount of pressure on women to uphold marriages and subsequently often place disproportionate blame on women for the failure of such marriages.²⁷

22 JS Ssentongo, 'Religion and Democracy in Uganda: A historical perspective', *Key Note Presentation delivered at an event to mark the International Day of Democracy, 20 September 2022-organised by the embassy of Sweden Kampala*. 'Gender Equality Strategy 2022-2025, United Nations Development Programme, Uganda Country Office, 5

23 *Aboneka v Watoto Church Ltd*, Constitutional Petition No. 19 of 2018.

24 *As Above*.

25 Article 29 (c) of the Constitution provides for the freedom to practice any religion which shall include the right to belong to and participate in the practices of any religious body or organisation in manner consistent with the Constitution.

26 Racheal Ninsiima, 'Fact or Fable: Is Marriage Counselling Necessary?', *The Observer*. Available at: <https://news.mak.ac.ug/wp-content/uploads/2014/06/20120510-The-Observer-Fact-or-Fable-Is-Marriage-Counselling-Necessary-Racheal-Ninsiima.pdf> (Accessed: 18 October 2024). Sinenhlanhla Sithulisiwe, C. "For Better or Worse: Pedagogies of Premarital Counselling and Intimate Wife Abuse: An African Woman's Interpretation." *African Journal of Gender and Religion* 22.1 (2016): 55-69.

27 Muchope Angel Kabasinguzi, *Premarital Counseling and Marital Stability in Anglican and Catholic Churches of Bukoto - Nakawa Division* (Master's Dissertation, University of Kisubi, 2022). NJOROGE, P M. "Christ and The Church as a Paradigm for Marriage: An Evaluation of Christian Pre-Marital Counselling Programmes in Kenya." *Unpublished MA Thesis, South African Theological Seminary* (2009).

To expand this notion of pre-marital counselling, to potentially apply to all marriages, without laying out specific guidelines on the principles that should guide the process, is to place another moral barrier that is potentially detrimental to women.

iii) Polygamy

The bill sets out, in Clause 6(a), that Customary Marriages and, in Clause 4(2), that Civil marriages are potentially polygamous. Clause 4(1) of the Marriage Bill states that a Civil Marriage shall be potentially polygamous and celebrated in a designated marriage district. Furthermore, clause 39 of the bill, sets out that a marriage may be converted from a monogamous one to a potentially polygamous, or from potentially polygamous to monogamous, by a declaration made by the husband and the wife, that they each, of their own free, will agree to the conversion. Again, assuming that consent is often freely obtained in marriages that are often socio-economically imbalanced, is another example of the bill legislating out of the Ugandan context. Clause 4(2) further states that a civil marriage contracted before the coming into force of the Act, shall continue to subsist as a monogamous marriage. With the introduction of clause 4(1), polygamy is cleverly sneaked into Civil Marriages. Aside from sneaking polygamy into the Civil Marriage section, the bill doesn't bother to set out conditions under which this polygamous union can be permitted to occur. Furthermore, in the interpretation section, polygamous marriage is defined as the 'one in which the man is married to more than one wife'. This, is a literal misinterpretation of Polygamy which is a broad term encompassing polygyny (one man being married to two or several women) and polyandry (one woman is married to two or several men).²⁸

28 Available at <https://sociologydictionary.org/polygamy/>. Available at <https://study.com/academy/lesson/plural-marriages.html#:~:text=Polygamy%20is%20defined%20as%20being,is%20married%20to%20multiple%20women> (Accessed 18 October 2024).

More importantly, polygamy (as defined in the context of the bill), has been documented to be a potential basis for the violation and denial of women's and children's rights especially, if not well regulated.²⁹ Uganda ratified the Convention on Elimination of all forms of Discrimination against Women (CEDAW) and Maputo Protocol especially the provisions that cater to marriage rights. In fact, clause (2) of the Bill, is on equality and non-discrimination against women and quotes CEDAW's provision that lays out the state's obligations to eliminate all forms of discrimination against women by putting in place all appropriate measures, such as; modifying or abolishing existing laws, customs, regulations, practices which infringe on women's right. Article 6(c) of the Maputo Protocol encourages monogamous marriages as the preferred form of marriage and that the rights of women in marriage and family including in polygamous marital relationships are promoted and protected. The promotion and protection of such rights can only be guaranteed by setting clear guidelines for those intending to convert their marriages into polygamous ones. Thus, it is incumbent upon Uganda to ensure that the provisions of the bill are in line with these binding documents.

To this end, the ground breaking work of the coalition that put together the Domestic Relations Bill, identified Polygamy as one of the underlying factors for the perpetuation of gender inequality.³⁰ Based upon this, they advocated for the establishment of clear rules or conditions under which a polygamous marriage would be permitted which included; consent from the first wife or previous wives, proof of one's ability to cater for more than one spouse, and separate residences for the other wives.³¹

29 BO Ahinkorah, 'Polygyny and intimate partner violence in sub-Saharan Africa: Evidence from 16 cross-sectional demographic and Health surveys', *SSM - Population Health*, Volume 13, March 2021, 100729. C P Iloka and B E. Ewulum, 'Polygamy: Violation of Sexual and Reproductive Rights of Women', *Journal of Public and Private Law*, UNIZIK, Vol. 13, 2023. Nakitto S, *Polygamy in the Domestic Relations Bill 2003: A Barrier to the Women's Human Rights in Uganda?* (LLM Dissertation, University of Nottingham, 2007-08).

30 The Domestic Relations Bill, 2003, Part IX — Matrimonial Rights and Obligations, Section 64.

31 The Domestic Relations Bill, 2003, Part VI, Section 31-32.

This was aimed at curbing the various violations that occur in the instance of polygamous unions including; the abandonment of families, failure to take care of the children, leading to child neglect, property wrangles upon the passing of the man, as well as the lack of clarity, regarding property sharing upon the death of the man.³² Furthermore, in keeping with the bill's norm of being vague, the provisions on polygamous unions, both under civil marriages and customary marriages, do not stipulate the procedure for property sharing for these 'potentially polygamous' unions both during the marriage and its dissolution. In this regard, other related clauses such as on property rights must make provision for property sharing in polygamous unions borrowing from existing legislation.

iv) Holding out as if you are married

A Critical reading of clause 89 reveals the bill's attempt to criminalize cohabitation. Clause 89(1) stipulates that a person commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both for anyone holding out as a husband or wife. Clause 89(2) further asserts that holding out means living together as husband and wife, acquiring or owning property, jointly bearing children together, and taking on the man's surname by the woman.

This clause is a testament to the bill's shortcomings in taking into consideration the family context in Uganda. Uganda, a low developed country, with a substantial percentage of the population residing in rural areas and barely able to make ends meet, implies that majority of Ugandans are living in unions that are not formally recognized, or simply put 'cohabiting'.³³ These stay together for years on end, and bear children, without officiating their unions for a couple of reasons, top of which is the financial and systemic or structural impediment when it comes to officiating those marriages.

32 Susan von Struensee, 'The Domestic Relations Bill in Uganda: Potentially Addressing Polygamy, Bride Price, Cohabitation, Marital Rape, Widow Inheritance and Female Genital Mutilation', Global Research Initiative, 17 April 2005.

33 Nile Post, 'Cohabitation in Uganda: Understanding the Legal Implications and Protecting Yourself'. Available at: <https://nilepost.co.ug/lifestyle/166123/cohabitation-in-uganda-understanding-the-legal-implications-and-protecting-yourself> (Accessed: 18 October 2024).

Some of these legal impediments include; the inability to afford the costs that need to be incurred to make their unions legally recognizable, and high ignorance levels about the marriage laws and procedures to be undertaken, compounded by the very complicated and sometimes confusing legal procedures as demonstrated by this bill.³⁴ To exclude, this significant part of the population is to enact a statute that caters to a significantly limited part of the population, which is usually more educated (literate), and has the financial capacity to officiate their union. This kind of legislation feeds into the often-lauded critique of the law being removed from the daily lives of *Wanainchi* and thus not being adhered to. From a gender perspective, the refusal to recognize cohabitation in the bill inadvertently exposes women and children to gross violations both in the union and in case the union comes to an end.³⁵ Another procedural question on the clause of holding out as married is that, who would enforce it? Would it be the two people deemed to be holding out because it's unlikely that they would be eager to do so.

v) Sharing Liability of Debt

On the surface, clauses 51 and 55 on liability and debt respectively, paints a picture of well-formulated provisions. However, once one applies a critical gender lens to both clauses, they present potential contextual challenges. Clause 51 outlines that, debts incurred before the marriage remain the sole responsibility of the individual who incurred them. However, if the property becomes matrimonial, the spouses may share liability whether their contributions are financial or non-financial. While clause 55 (b) states that, with the consent of the other, spouse, the debt shall become a family liability to be borne by both spouses equally.

³⁴ URSB: The Number of Cohabiting Couples is Extremely Higher than That Legally Registered," *Watchdog Uganda*, February 15, 2024,

³⁵ Dr. Atuki Turner, "Not Recognising Cohabitation Discriminates Against Women Facing GBV," *New Vision*, February 15, 2022, <https://www.newvision.co.ug>. UNICEF Uganda, 'Kitgum targets a clean record on violence against women and children with new social welfare model'. Available at: <https://www.unicef.org/uganda/stories/kitgum-targets-clean-record-violence-against-women-and-children-new-social-welfare-model> (Accessed: 18 October 2024). Dr. Atuki Turner, "Not Recognising Cohabitation Discriminates Against Women Facing GBV," *New Vision*, February 15, 2022, <https://www.newvision.co.ug>.

This provision greatly underplays the power dynamics, that are often at play, at the family level, by assuming that, spouses disclose to each other their financial liability and also that women often understand the documents that their husbands sign on, especially when they are not the providers in the home, which is most often not the case.³⁶ The financial landscape in Uganda especially at the family level, is still heavily skewed towards men, despite more women joining productive employment.³⁷ These women are still predominantly in low-ranked positions and still struggle with balancing reproductive, productive roles with their career responsibilities. As women have increasingly started getting well-paying jobs, there's been more pushback from the patriarchal machinery, including some becoming the sole providers in their homes.³⁸ To this end, adopting legislation that directly or indirectly transfers financial liability or debt to another spouse, may have the unintended consequence of leaving them, with abnormal debts that were incurred by their husbands, with the partial often uninformed consent from their wives. This is more detrimental in the event of the husband passing away.

vi) Archaic Colonial Laws

To compound the issue of non-contextualization of the bill is the maintenance of some provisions directly derived from Uganda's colonial legal regime. A prime example of this is, clause 88 titled 'Jactitation of Marriage' which speaks to the issue of falsely claiming to be married to someone. The word 'jactitation' has its origin in the Latin '*Jactitare*' which means to boast.³⁹

36 Simone's Kids, 'Family Dynamics in Uganda'. Available at: <https://www.simoneskids.org/family-dynamics-in-uganda/>. 9.2 Million Ugandans Can't Read, Write - UBOS," *Daily Monitor*, October 11, 2023, <https://www.monitor.co.ug/uganda/news/national/9-2-million-ugandans-can-t-read-write-ubos-4567760>.

37 UN Women Uganda, *Gender Pay Gap Brief* (March 2024). Pg. 3 Available at: https://africa.unwomen.org/sites/default/files/2024-03/un_women_uganda_gender_pay_gap_brief.pdf

38 Mubiru, M. B., Nuhu, S., Kombe, W., & Mtwangi Limbumba, T. (2022). Housing pathways of female-headed households in the informal settlements of Kampala: a qualitative study. *Housing Studies*, 39(1), 1–28. Awino G. "It Is Because of Mummy," CPAR Uganda, 2020, <https://cparuganda.com/2020/03/08/it-is-because-of-mummy/>

39 Family Law, 'Jactitation of Marriage' 22 January 1971. The Law Commission, Published Working Paper, No.34.

The bill further asserts that such a person is liable to being convicted to a fine not exceeding five hundred currency points or to be imprisoned for not more than three years or both.⁴⁰

This provision can be traced back to the principles of English common law, which significantly influenced Uganda's legal framework during the colonial period.⁴¹ The concept of "jactitation of marriage" in British law emerged as a means to protect individuals from false claims of marriage. Historically, this legal doctrine allowed an aggrieved party to seek redress in court when another person falsely asserted a marital relationship.⁴² The principle aimed to prevent social and legal repercussions that can arise from such unfounded claims, including damage to reputation and the potential for fraudulent benefits.⁴³ The action was abolished in England in 1986, by the Family Law Act, 1986.⁴⁴

The introduction of a provision addressing jactitation in Uganda's Marriage Bill 2024 reflects the retention of colonial legal principles that continue to shape the country's law and family law, in this case.⁴⁵ The penalties outlined in the Bill, including fines and potential imprisonment, echo the punitive measures that were often part of colonial legal frameworks, emphasizing the need for accountability in marital declarations. The maintenance of such archaic colonial clauses even when the colonial masters have struck them from their legal texts, demonstrates the drafters lack of intentionality in decolonising the law to allow it to directly reflect the daily lived circumstances and conditions of all Ugandans.

⁴⁰ Section 88 of the Marriage Bill, 2024.

⁴¹ Helmholz, R H. "The English Law of Marriage and the Family (1500-1640)." *Family Law and Society in Europe from the Middle Ages to the Contemporary Era* (2016): 135-154.

⁴² As Above

⁴³ As above

⁴⁴ Available at <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100016130> (Accessed 18 October 2024).

⁴⁵ Kodiyo, K "Historical Analysis of Women's Inheritance Rights in East Africa (Kenya, Uganda, and Tanzania) and the Influence of Colonialism." *Diké-A Márkus Dezső Összehasonlító Jogtörténeti Kutatócsoport folyóirata* 6.2 (2022): 116-140.

GENERAL RECOMMENDATIONS

The prioritization of a comprehensive marriage law is a commendable step towards having a transformative regulatory framework governing family relations in Uganda. As set out above, the bill proposes some progressive provisions that are vital for promoting equality and addressing the various forms of discrimination that often work against those in marriages, especially women and children. However, the bill contains some contentious sections and clauses that overlook the various nuances and contextual challenges in Uganda's family environment. These include; deeply embedded patriarchal, socio-economic, cultural, and religious norms that often work against women.

When it comes to the regulatory environment, the continued adoption of laws that are removed from the daily lived realities of the majority of the communities of Uganda perpetuates a cycle of adoption of laws that are un-implementable. Some of these contentious provisions include; those that provide for polygamy, liability of debt, outlawing cohabitation (which in the bill is cleverly couched as holding out as married), parental consent, and pre-marital counselling. The inclusion of such provisions in the bill essentially underplays or overlooks the prevalent power imbalances in the Ugandan family environment imbued with patriarchal norms, pervasive socio-cultural norms, and religious beliefs, all of which compound to keep many women in subordinated and marginalized positions.

A transformative marriage law should directly tackle pervasive socio-cultural and religious, gender norms that allow for women's multi-sectoral discrimination and continued oppression. The adoption and enactment of a comprehensive marriage law is also vital in ensuring the enjoyment of a series of interrelated rights that have an implication on the realization of gender equality. These include; economic, social, and cultural rights, property and land rights, and sexual and reproductive health and rights. It is also vital in curbing sexual and gender-based violence, especially intimate partner violence.

To this end, the following recommendations are made to the drafting committee of the bill;

- a) Consider removing the polygamous clause from the Civil Marriage provision. Furthermore, provide clear stipulations under Customary marriages of the conditions under which polygamous unions should be undertaken. Additionally, provide for property allocation both during the marriage and its dissolution for those in polygamous unions. Furthermore, cross-check the definition of 'Polygamy' to ensure that what is in the bill is conceptually accurate.
- b) Make pre-marital counselling optional rather than a pre-requisite for marriage to provide the parties intending to marry, the option and free will to decide whether or not they want to participate in it.
- c) Do away with the provision requiring parental consent as a requirement for Christian marriages. This is in keeping in line with article 31(3) of the Constitution which provides that marriage shall be entered into with the free consent of the man and woman intending to marry.
- d) Provide guidelines for cohabiting couples in order to safeguard the rights of women and children. This is in recognition of the fact that a substantial portion of the population is currently living in non-formalized unions. By excluding them, as implicitly set out in clause 89, the bill risks having a law that is removed from the daily lived experiences and circumstances of the majority of Ugandan, men, women and children.
- e) Contextualize and rid the bill of its archaic colonial provisions such as the jactitation of marriage which are not directly related to the Ugandan context.
- f) Consider doing away with provisions on sharing liability of debt. Take into consideration, the un-equal socio-economic terrain of marriage and the unintended consequence of economic violence

that might occur from transferring the economic mis-conduct of one or more of the parties in a marriage to another less economically empowered party.

- g) Reviewing and harmonizing the bill with existing laws such as the Children Act, Succession Act, and Land Act especially on issues around property rights, an example of which being regulations for those in polygamous unions. Ensure that provisions related to property distribution, children's rights, and spousal support are clear and do not conflict with the provisions in the existing laws.
- h) The bill sets out in Section 106, that the coming into force of the Act will lead to the repealing of several enactments including; the Customary Marriage (Registration) Act, (Cap. 248), Divorce Act, (Cap.249), Hindu Marriage and Divorce Act, (Cap. 250), Marriage Act, (Cap. 251), Marriage of Africans Act, (Cap. 253), The Marriage and Divorce of Mohammedans Act, (Cap. 252). A thorough analysis of these Acts should be undertaken to ensure that the coming into force of the Marriage Act, doesn't lead to the loss of certain vital provisions, in line with the issues and forms of marriages catered for, by those pieces of legislation, especially those aimed at expanding rather than limiting gendered rights.
- i) Adopt gender-neutral language in the Bill. The use of gender-neutral language is grounded in the principles of equality, inclusivity, and respect for human rights. This helps to ensure that the Bill is fair and applicable to all persons regardless of their gender.

SPECIFIC RECOMMENDATIONS ON CLAUSES OF THE BILL

No.	CLAUSE IN THE BILL	RECOMMENDED CHANGE
1.	<p>Clause 2 Interpretation</p> <p>"Irretrievable breakdown of marriage" means a situation where the petitioner proves to court that he or she can no longer live together with his or her spouse as husband or wife.</p> <p>"polygamous marriage" means a marriage in which the man is married to more than one wife.</p>	<p>"Irretrievable breakdown of marriage" means a situation where the petitioner proves to court that he or she can no longer live together with his or her spouse as husband or wife due to among others dissipation, cruelty, domestic violence, adultery and any other reason deemed fit by court.</p> <p>"Polygamous marriage" means a marriage in which an individual is married to more than one spouse</p> <p><i>Justification:</i></p> <p>Article 31(1) grants women and men equal rights before, during and upon dissolution of a marriage. Allowing multiple spouses for men and not women creates different rights for both parties which is unconstitutional.</p>

2.

Clause 4(1) A civil marriage shall be potentially polygamous and celebrated in a designated marriage district.

Clause 4(1) A civil marriage shall be monogamous and celebrated in a designated marriage district.

Justification:

Civil marriages have historically been monogamous. Also international instruments such as the CEDAW and the Maputo protocol among others critique and discourage polygamy due to its incompatibility with gender equality, non-discrimination, and human rights standards. These instruments recommend that monogamous marriage better upholds the rights of individuals, particularly women in marital relations.

While a significant portion of the Ugandan population identifies as Christian, there should still be provisions for more than one form of monogamous marriage, particularly for individuals who do not adhere to any religion.

Civil marriages, being secular, must prioritize the protection of women by ensuring they remain strictly monogamous.

While we note that there is a requirement of consent from the wife, such consent may not be freely given in many contexts where women often have less decision-making power within the marriage and are unable to reject such an idea from the husband.

In any case, the law provides for amicable and non-amicable ways to dissolve a marriage and so this option is available to a man who wants to marry again. Each marriage regime has specific rules and the civil marriage has always been monogamous, and so it should remain this way.

NOTE: Other marriages in Uganda that are not catered for under the Bill can be cured by Clause 3(g). The minister shall make a statutory instrument recognising the marriage of that particular religion.

4.	<p>Clause 15(1)(b) A marriage shall not be celebrated in Uganda without both parties to the intended marriage undergoing pre-marital counselling as recognised under the specific type of marriage which the parties intend to contract.</p>	<p>Delete clause 15(1)(b)</p> <p><i>Justification</i></p> <p>Such pre-marital counselling is often based on the reading of religious texts and principles which often favour those who hold power in those religious denominations, most often the men.</p> <p>For instance, the verses that push for women's complete submission to men, while underplaying men's accountability, place an inordinate amount of pressure on women to uphold marriages and subsequently often place disproportionate blame on women for the failure of such marriages</p> <p>In the Alternative</p> <p>Replace Clause 15 (1) (b) A marriage may not be celebrated in Uganda without both parties to the intended marriage undergoing pre-marital counselling as recognised under the specific type of marriage which the parties intend to contract.</p> <p><i>Justification:</i></p> <p>The use of the word "may" makes it optional while the use of the word "shall" (which is currently used) makes it mandatory.</p>
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5.	<p>Clause 39 on Conversion of marriage</p>	<p>Delete 39</p> <p>Justification:</p> <p>The provision potentially reinforces the notion that all marriages can be polygamous, with the Bill recognizing only Christian marriages as monogamous. Additionally, issues of consent and power imbalances may undermine women’s agency regarding their spouse’s potential remarriage.</p> <p>The current Marriage Bill recognizes polygamous marriages as lawful in Uganda. We must be reminded that the interpretation section defines a ‘polygamous marriage’ as “a marriage in which the man is married to more than one wife,” and it goes on to define a potentially polygamous marriage as a marriage between a man and a woman in which the man has the capacity to contract another marriage during the subsistence of the first marriage, but has not yet done so.</p> <p>From the above definitions it is clear that the polygamous marriage envisioned by the drafters of the Bill is one in which one man is married to, or is allowed to legally marry more than one woman.</p> <p>Our argument grounded on the principle of equality of men and women arises against this provision.</p> <p>In the alternative:</p> <p>The parliament of Uganda should adopt the contents of the Marriage Act of 2014 of the Republic of Kenya:</p> <p>(1) A marriage may be converted from being a potentially polygamous marriage to a monogamous marriage if each spouse voluntarily declares the intent to make such a conversion.</p>
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		<p>(2) A polygamous marriage may not be converted to a monogamous marriage unless at the time of the conversion the husband has only one wife.</p> <p>(3) A declaration under subsection (1) shall be made in the presence of a marriage officer and shall be recorded in writing and signed by each spouse.</p> <p>(4) A marriage officer before whom a declaration is made under subsection (3) shall forthwith transmit a copy thereof to the Registrar.”</p> <p>NOTE: Like in the Kenyan Marriage Act, of 2014, the Marriage Bill should not convert a monogamous marriage into a polygamous one to align with the principles of CEDAW to advance monogamous marriages as a way of ensuring equality within marriage.</p>
6.	<p>Clause 40(1)(f) A marriage shall be null and void where at the time of contraction of marriage a party suffers from permanent impotence or vaginismus and the fact is not known to the other party at the time of contracting the marriage</p>	<p>Place clause 40(1)(f) under the clause 14 for voidable marriages.</p> <p><i>Justification</i></p> <p>In cases of voidable marriages, the individual retains the option to continue or annul the marriage. A person may choose to remain in a marriage despite someone’s impotence or vaginismus which can often be cured with treatment.</p> <p>This respects the autonomy and consent of the parties involved, allowing them to decide whether the inability to consummate the marriage is a sufficient ground for dissolution.</p> <p>In contrast, if the marriage were automatically void, the couple would have no say in whether they want to stay married, regardless of how the condition affects their relationship hence a violation of Article 31 of the 1995 Constitution which provides for the right to marriage and create a family.</p>

7.

Clause 43(2) A wife shall be entitled to either retain her maiden name or to use both her maiden name and her husband's surname, during the subsistence of the marriage.

Clause 43(3) A wife shall not be entitled to the continued use of her husband's surname upon dissolution of marriage, unless both parties mutually agree to the wife's continued use of the name.

Delete Clause 43(2)

In the alternative

Clause 43(2) A person shall be entitled to either retain their name or to use both their name and spouse's surname, during the subsistence of the marriage.

Delete Clause 43(3)

In the alternative

Clause 43(3) A person shall not be entitled to the continued use of their spouse's surname upon dissolution of marriage, unless both parties mutually agree to the continued use of the name.

Justification:

Article 31(1) of the Constitution states that men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution. The above provisions create different rights for women and men in marriage which is discriminatory.

Someone can lose his or her identity when they are forced to lose the name. This might make people be left in marriages they do not want to keep for the sake of not losing their identities.

8.	<p>Clause 51 on Liability incurred before marriage</p> <p>Subclause (2) Where the property in subsection (1) becomes matrimonial property, the liability may be shared by the spouses.</p>	<p>Clause 51(2) Where the property in subsection (1) becomes matrimonial property, the liability may be shared by the spouses if there has been express agreement to this by both parties.</p> <p><i>Justification:</i> This clause ought to clearly state that when such property becomes matrimonial property, it should only become a liability of both parties if there was express agreement to this by both parties. Whichever party that incurred this liability should be charged with the responsibility of informing the other party about such liability before. This prevents spouses from becoming liable for debts that they did not participate in getting and also did not benefit from.</p>
9.	<p>Clause 55 Where during the subsistence of a marriage, a debt is incurred for the necessities of life for the immediate family</p> <p>(a) With the consent of the other spouse, the debt shall become a family liability to be borne by both spouses equally; or</p> <p>(b) Without consent of the other spouse, the debt shall be borne by the spouse who incurred the debt, unless agreed otherwise by the spouses.</p>	<p>Delete clause 55 entirely</p> <p><i>Justification:</i> This provision greatly underplays the power dynamics, that are often at play, at the family level, by assuming that, spouses disclose to each other their financial liability and also that women often understand the documents that their husbands sign on, especially when they are not the providers in the home, which is most often not the case and may led to financial abuse.</p>

10.	<p>Clause 88 Jactitation of marriage</p> <p>A person who falsely claims or asserts that he or she is married to a particular person commits an offence known as jactitation of marriage and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.</p>	<p>Delete clause 88 entirely</p> <p>Justification:</p> <p>The concept of “jactitation of marriage” in British law was abolished in England in 1986, by the Family Law Act, 1986. The introduction of a provision addressing jactitation in Uganda’s Marriage Bill 2024 reflects the retention of colonial legal principles that continue to shape the country family law even where the colonialists have abandoned the same.</p>
11.	<p>Clause 89 on Holding out as though married.</p> <p>(1) A person who holds out as a husband or wife under this Act, commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.</p> <p>(2) Holding out under this part means living together as husband and wife, acquiring or owing property jointly, bearing children together, and taking on the man’s surname by the woman.</p>	<p>Delete clause 89 entirely</p> <p>Justification:</p> <p>Clause 89 amounts to criminalising cohabitation and may amount to a miscarriage of justice since the majority of Uganda familial unions are cohabiting see Table B above.</p> <p>It is also inconsistent with Article 21 of the Ugandan Constitution on equality and non-discrimination because it only criminalises a woman taking on the man’s name and not the other way round.</p> <p>It also conflicts with Article 31 of the Constitution on the right to marry and found a family. Which is both positive and negative since a person may opt out of marriage but still choose to live with a partner.</p> <p>It violates Article 26 which gives people a right to own property together or in association with others</p> <p>NOTE: The above-mentioned provision should be modified to be gender-neutral.</p>

CONCLUSION

The Marriage Bill must reflect the will and aspirations of the people of Uganda, as it emerges from the dedicated efforts of legislators and activists. As the analysis highlights, this Bill is grounded in extensive studies and recommendations from various stakeholders who have worked within communities over the past 50 years.

Uganda must seize this opportunity to implement meaningful reform, particularly after years of advocacy and deliberation. Such reform is essential to fulfill our obligations as a party to international and regional human rights agreements and to ensure compliance with the Constitution of the Republic of Uganda, 1995, as well as recent court pronouncements concerning family matters.

By aligning the Marriage Bill with these principles, Uganda can promote gender equality, protect individual rights, and advance the overall well-being of its citizens. This commitment to reform will enhance the legal framework surrounding marriage and contribute to a more just and equitable society for Ugandans.

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ANNEXES

BILLS**SUPPLEMENT No. 7****16th August, 2024****BILLS SUPPLEMENT***to The Uganda Gazette No. 53 Volume CXVII, dated 16th August, 2024*

Printed by UPPC, Entebbe, by Order of the Government.

Bill No. 73*Marriage Bill***2024****THE MARRIAGE BILL, 2024****MEMORANDUM****1. Principles of the Bill**

The object of the Bill is reform, repeal and consolidate the legal framework governing marriage in Uganda; to provide for recognized marriages in Uganda, registration of marriage, marital rights and obligations, conversion from one form of marriage to another form of marriage, property rights, separation and dissolution of marriage, among others.

The Bill takes stock of the several studies done on marriage and dissolution of marriage in Uganda including the Report on the Commission of Inquiry into Marriage, Divorce and Status of Women (Kalema Report) 1965, The FIDA –U Report on the draft Domestic Relations Bill, 1980, the Marriage and Divorce Bill 2009, and the Ministry of Women in Development, Culture and Youth Report on the draft 1980 Domestic Relations Bill, (W.I.D Working paper and Tororo Report) 1993, as well as the numerous consultations undertaken overtime from various stakeholders.

2. Defects in existing legislation

Courts have declared various provisions in existing legislation unconstitutional including sections of the Marriage Act under which the recognized age of marriage is twenty-one years, the superiority of

civil marriage over customary marriage and the variation in grounds for divorce between men and women under the Divorce Act. Courts have further outlawed various practices against—

(a) equality and nondiscrimination against women

The Supreme Court in *Mifumi (U) Ltd & Anor v Attorney General & Anor* (Constitutional Appeal No. 2 of 2014) [2015] UGSC 13 (6 August 2015) declared as unconstitutional the demand for the refund of bride price wherein it explained that;

“...the customary practice of the husband demanding a refund of the bride price in the event of dissolution of the marriage demeans and undermines the dignity of a woman.... Moreover, the demand of a refund violates a woman’s entitlement to equal rights with the man in marriage, during marriage and at its dissolution.

Further, a refund demand fails to honour the wife’s unique and valuable contribution to a marriage. A woman’s contribution in a marriage cannot be equated to any sum of money or property, and any refund violates a woman’s constitutional right to be an equal co-partner to the man”. The court further explained that Uganda is signatory to numerous international conventions against all forms of discrimination against persons including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in which party states agreed to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”

(b) Matrimonial property rights

The court has set the grounds for entitlement to matrimonial property at dissolution of marriage in *Ambayo v Aserua* (Civil Appeal No. 100 of 2015) [2022] UGCA 272 (15 November 2022) that a spouse's entitlement to matrimonial property is dependent on the spouse's contribution to the property which may be monetary or non-monetary.

Court ruled that Marriage is not an entitlement to a fifty percent interest in matrimonial property.

The current licensing regime which requires permanent church premises for a church to be licensed as a marriage celebration point which is discriminatory as it applies only to Christian marriages and not to other forms of marriage which limits the celebration of Christian marriage to only those licensed places.

REMEDIES PROPOSED TO DEAL WITH THE DEFECTS

The object of the Bill is to repeal and consolidate current legal framework in order to address the gaps that have been identified therein—

1. The bill provides for;

- (a) Christian marriages, civil marriages, customary marriages, Hindu marriages, Islamic marriages and Bahai marriages as the legally recognized marriages in Uganda;
- (b) general conditions which will apply to marriages, i.e.;
 - (i) nature and solemnization of marriage;
 - (ii) requirements and preliminaries to marriage;
 - (iii) restrictions to marriage
 - (iv) rights in, during and at its dissolution of marriage;
 - (v) prohibition of same sex marriages;

- (vi) Constitutional age of marriage;
 - (vii) prohibited degrees of relationship for marriage;
 - (viii) registration of marriage;
 - (ix) objections to marriage;
 - (x) void and voidable marriages;
 - (xi) conversion of marriage;
 - (xii) matrimonial rights and obligations;
 - (xiii) separation and dissolution of marriage;
 - (xiv) property rights; and
 - (xv) offences relating to marriage.
2. The Bill further recognizes the distinct nature of each type of marriage as well as their divergent circumstances.

SARAH ACHIENG OPENDI
Member of Parliament; Tororo District

THE MARRIAGE BILL, 2024
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A BILL for an Act

ENTITLED

THE MARRIAGE ACT, 2024

An act to reform and consolidate the law relating to Civil, Christian, Islamic, Hindu, and customary marriages; to regulate Bahai marriage to; provide for the types of recognized marriages in Uganda; to provide for marital rights and duties; to provide for separation and dissolution of marriage and for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARIES

1. Commencement

This Act shall come into force on a date appointed by the Minister by statutory instrument.

2. Interpretation

In this Act, unless the context otherwise requires—

“Bahai marriage” means a voluntary union between a man and a woman contracted and celebrated in accordance with the

teachings, rites and observances of the Bahai faith;

“consortium” means the benefits a spouse is entitled to receive from his or her partner and includes the fact of a husband and wife living together, the mutual rights to sex, companionship, comfort, affection, care, and all rights and obligations commensurate with the marriage status;

“currency point” has the value assigned to it in the First Schedule;

“custom” means a rule which, having been continuously observed for a long time, has attained the force of law among a community or group, being a rule that is certain and not unreasonable or opposed to the Constitution or public policy and, in case of a rule applicable only to a family, has not been discontinued by the family;

“district” means a marriage district constituted under section 30;

“District Registrar of marriage” means a public officer designated as such under section 31, to perform functions relating to marriage under this Act;

“domicile” means a permanent home where a person stays by reason of origin, choice or dependence;

“Hindu” means a person who is a Hindu by religion in any form, including a Virashaiva, a Lingayat and a follower of the Brahmo, Prarthana or Arya Samaj, or a person who is a Buddhist of Indian origin, a Jain or a Sikh by religion.

“individual property” means the property which a spouse has individually acquired either before or during a marriage;

“irretrievable breakdown of marriage” means a situation where the petitioner proves to court that he or she can no longer live together with his or her spouse as husband or wife;

“Islamic marriage” means a voluntary union between a man and a woman contracted and celebrated in accordance with the teachings, rites and observances of the Islamic religion.

- “judicial separation” means the separation of a husband and wife by court;
- “Local Spiritual Assembly” means the local governing council of the Bahai Faith and in this Act, the authority responsible for solemnizing Bahai marriage;
- “marriage” means the voluntary union between a man and a woman, celebrated in a manner recognised under this Act;
- “marriage gift” means a gift, by whatever name known, in cash or in kind given by either party to a marriage at the time of celebration of marriage;
- “matrimonial home” means the principal residence where the spouses stay of any other residence where the spouses ordinarily reside;
- “matrimonial property” has the meaning given to it by section 45;
- “Minister” means the Minister responsible for justice;
- “mental illness” means a diagnosis of a mental health condition in terms of accepted diagnostic criteria made by a mental health practitioner or medical practitioner authorized to make such diagnosis, mental health conditions include but are not are limited to depression, bipolar, anxiety disorders, schizophrenia and addictive behavior due to alcohol or substance abuse among others;
- “monogamous marriage” means a marriage between a man and a woman neither of whom, during the subsistence of such marriage, shall be at liberty to contract any other form marriage;
- “non-monetary contribution” means the contribution made by a spouse for the acquisition or maintenance of matrimonial property other than by way of money;
- “polygamous marriage” means a marriage in which the man is married to more than one wife;

“postnuptial agreement” means an agreement made between parties to a marriage, providing for specification regarding the division of matrimonial property, in case of dissolution of marriage;

“prenuptial agreement” means an agreement made between parties to an intended marriage before contracting marriage, that establishes rights to property in the event of separation, dissolution of marriage or death of either spouse;

“potentially polygamous marriage” means a marriage between a man a woman, during the subsistence of which the man may contract another valid marriage;

“Registrar General” means an officer appointed to act as Registrar General of marriages under this Act;

“Registrar of marriage” means a celebrant a registrar of marriage appointed under section 31;

“spouse” means a husband or a wife in a marriage recognised under this Act;

PART II—NATURE, REQUIREMENTS, RESTRICTIONS AND PRELIMINARIES TO MARRIAGE

3. **Recognised marriages**

(1) Marriages recognised under this Act—

- (a) Bahai marriage;
- (b) Christian marriage;
- (c) Civil marriage;
- (d) Hindu marriage;
- (e) Customary marriage;
- (f) Islamic marriage;

- (g) any other type of marriage as may be recognised by the Minister by statutory instrument; and
- (h) a marriage conducted in accordance with the laws of another country, where the laws of the country are in conformity with the laws of Uganda.

(2) All marriages recognized under this section have the same legal status.

NATURE OF MARRIAGE

4. Civil marriage

(1) A civil marriage shall be potentially polygamous and celebrated in a designated marriage district.

(2) Notwithstanding subsection (1), a civil marriage contracted before the coming into force of this Act, shall continue to subsist as a monogamous marriage.

(3) A civil marriage may be solemnized in the office of the District Registrar to whom a notice of marriage shall have been given or, at the place approved by the Registrar General.

(4) A District Registrar shall, at the time of celebration of marriage, require the parties to the intended marriage to make declarations as prescribed in schedule 3 of this Act.

5. Christian marriage

A Christian marriage shall be—

- (a) monogamous;
- (b) contracted between one Christian man and one Christian woman for life, to the exclusion of others;
- (c) celebrated with open doors;

- (d) with the consent of the parents to the parties; and
- (d) solemnized by a licensed registrar of marriage in a public place of worship or in a place approved by the Registrar General,

in accordance with the observed customs, rites and practices of the Church, organisation or denomination to which the public place of worship or parties to the marriage belong.

6. Customary marriage

A customary marriage shall be—

- (a) potentially polygamous;
- (b) solemnized in accordance with the customs, traditions and rites observed among any of the indigenous communities recognised under the Constitution of the Republic of Uganda; and
- (c) solemnized within the locality of the sub county where notice of marriage was issued.

7. Hindu marriage

(1) A Hindu marriage shall be solemnized in accordance with the customs and rites observed among the religious sect of one or both of the parties to the marriage.

(2) Where the customary rites and ceremonies include the Saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step has been taken.

(3) Where the marriage is solemnised in the form of Anand Karaj, that is, the going round the Granth Sahib by the bride and bridegroom together, the marriage becomes complete and binding as soon as the fourth round has been completed.

(4) The parties to the intended marriage are not within the prohibited degrees of relationship as provided for under part B of the fifth schedule to this Act.

8. Nature of Bahai marriage

(1) A Bahai marriage shall be solemnized in accordance with the customs and rites observed among the members of the Bahai faith.

(2) Notwithstanding subsection (1), a marriage shall be celebrated upon the parties reciting a specifically revealed verse namely—

“We will all verily abide by the will of God.”

9. Islamic marriage

An Islamic marriage—

- (a) is potentially polygamous; and
- (b) shall be celebrated upon fulfillment of the conditions specified in the fourth schedule to this Act;

SOLEMNIZATION OF MARRIAGE *Requirements for valid Marriage*

10. Notice of intention to marry

(1) Parties to an intended marriage shall give a notice of intention to marry, at least twenty one days before their intended date of marriage, to a registrar of marriage.

(2) A notice of intention to marry under subsection (1) shall include the details set out in schedule 2 to this Act.

(3) Notwithstanding subsection (1), the Registrar General may upon proof being given to him or her, that there is no lawful impediment to a proposed marriage, dispense with the requirement of giving notice of intention to marry and, authorise the solemnization of marriage between parties.

11. Publication of notice of intention to marry

A registrar of marriage shall, upon receipt of a notice under section 10, cause the notice to be published in a manner specified by the Minister in Regulations.

12. Marriage to take place within three months of lapse of notice

(1) A marriage shall be celebrated within three months, of the lapse of the twenty-one days' notice published by the registrar of marriage under section 11 of this Act.

(2) Notwithstanding (1), a party to an intended marriage, may upon payment of a prescribed fee, apply to the registrar of marriage for extension of time within which to celebrate marriage.

(3) Where the marriage does not take place within the period allowed under subsections (1) and (2), any subsequent proceedings of celebration of marriage shall be void, and fresh notice under section 10 shall be given before the parties can lawfully contract a marriage.

13. Time of celebration of marriage

(1) A marriage shall be celebrated between the hours of nine o'clock in the morning and five o'clock in the afternoon.

(2) Subsection (1) shall not apply to celebration of a customary marriage where the solemnization of marriage occurs beyond the hour of five o'clock in the afternoon.

14. Age of marriage

A person below the age of eighteen years shall not have capacity to contract a marriage.

15. Consent and premarital counseling

(1) A marriage shall not be celebrated, in Uganda without—

(a) the voluntary consent of both parties to the intended marriage; and

- (b) both parties to the intended marriage undergoing premarital counseling as recognized under the specific type of marriage which the parties intend to contract.

(2) The Minister shall, through regulations prescribe premarital counseling guidelines.

16. Presence of parties at contraction of marriage

(1) A party to an intended marriage shall be physically present at the time of contraction of marriage.

(2) Notwithstanding subsection (1), a party to a marriage may with leave of the Registrar General and through a prescribed digital platform, be virtually present at the time of contraction of marriage.

(3) The Minister shall by statutory instrument prescribe eligibility guidelines for virtual presence of parties to a marriage.

17. Mental capacity to contract marriage

(1) A party, shall at the time of contracting marriage, have the mental capacity to contract marriage.

(2) For purposes of subsection (1), “mental capacity” means the independent and informed cognitive ability to understand the nature and effects of one’s decisions and actions.

18. Place of celebration of marriage

A marriage shall be celebrated in an open place, by a licensed registrar of marriages, in accordance with the rites, customs, and practices of a specific type of religion, custom or belief under which the marriage is being contracted.

19. Celebration of marriage by licensed registrar of marriage

Subject to section 32, a marriage shall be celebrated by a registrar of marriages licenced under this Act.

20. Duty of registrar of marriage to attend marriage ceremony

It shall be the duty of a registrar of marriage to whom a notice of intention of marriage was given, to attend and celebrate or oversee the celebration of a marriage in accordance with the rites, customs, beliefs and practices of a religion, custom or belief under which the marriage is being contracted.

21. Marriage in Ugandan Embassies, High commissions or Consulates

(1) A marriage may be contracted in a Ugandan embassy, high commission or consulate in any country which shall be designated by the Minister.

(2) The Minister shall designate a Foreign Service Officer as registrar of marriages in a Ugandan embassy, high commission or consulate for purposes of celebration of marriage under this section.

(3) The celebration of a marriage under subsection (1) shall be subject to the following conditions—

- (a) at least one of the parties to the marriage is a citizen of Uganda;
- (b) each party has capacity to contract a valid marriage according to the provisions of this Act;
- (c) notice of the proposed marriage has been given in accordance with this Act and that no notice of objection to the proposed marriage has been received; and
- (d) there is no impediment to the marriage.

(4) The procedure for contracting a marriage in a Ugandan Embassy, High Commission or consulate shall be similar to that of contracting a civil marriage under this Act.

(5) A marriage celebrated under this section shall be a valid marriage under this Act and reference in this Act or any other law to a marriage contracted in Uganda shall, unless the context otherwise requires, include a marriage contracted in accordance with this section.

22. Certificate of no impediment

(1) The Registrar General may, upon application, and payment of a prescribed fee, issue a certificate of no impediment to marry to an applicant who intends to marry outside Uganda.

(2) The certificate issued under subsection (1) shall be prima facie evidence that the party whose details are contained therein is not legally married under the laws of Uganda.

OBJECTIONS TO MARRIAGE

23. Objection to marriage

A person who knows of any impediment to an intended marriage may raise an objection to the registrar of marriage or Registrar General—

- (a) upon publication of the notice of intention of marriage but before contraction of marriage; or
- (b) at the time of contraction of marriage.

24. Objection by person outside Uganda

Where a person who knows of any reasonable ground why a marriage should not take place resides outside Uganda, he or she may send his or her objection, signed and authenticated in accordance with the law of his or her country of residence, to the marriage celebrant concerned or the Registrar General, which ever would be best placed to ensure receipt of the objection.

25. Grounds for objection to marriage

A person may make an objection to a marriage where—

- (a) either party is under the age of eighteen years;

- (b) the parties are within the prohibited degrees of relationship, whether natural, legal or by marriage;
- (c) either party is suffering from a mental illness, rendering the party incapable of forming rational judgment as to the effect of the marriage upon his or her interests, at the time of celebration of marriage;
- (d) either party is in a subsisting monogamous marriage;
- (d) the consent of either party to the intended marriage was obtained by force, misrepresentation or fraud; or
- (e) the intended marriage is in contravention of any of the provisions of this Act.

26. Procedure on notice of objection

(1) Where an objection is made in accordance with this Act, the registrar of marriage shall be the first point of instance in handling the issues raised in the objection.

(2) Where a party is dissatisfied with the decision of the registrar of marriage, the party may apply to a magistrate's court for review of the marriage registrars' decision.

Restrictions to marriage

27. Prohibited degrees of relationship

A person shall not be a party to a marriage where the parties are within the prohibited degrees of relationship, whether natural, legal, or by clan as set out in Schedule 5 to this Act.

28. Prohibition of same sex marriage

Marriage between persons of the same sex is prohibited.

29. Subsisting marriage

A person, shall not contract marriage while the person is still in a subsisting monogamous marriage.

PART III—REGISTRATION OF MARRIAGE

30. Marriage Districts

The Minister shall, by statutory instrument, divide Uganda into marriage districts for purposes of this Act and may alter, amalgamate or sub-divide the districts as he or she may deem fit.

31. District Registrar of marriage

A Chief Administrative Officer shall be the district registrar of marriages for all types of marriage celebrated in the district and the Chief Administrative Officer shall handle any other matters as may be prescribed by law in relation to marriage celebrated in the district.

32. Registrars of marriage

(1) A celebrant of marriage in a place of worship shall be the registrar of marriage in respect of marriage solemnized in that place of worship.

(2) A Sub-county chief, shall be the registrar of marriage in respect of a customary marriage celebrated in his or her sub-county.

(3) A town clerk shall be the registrar of marriage in respect of a marriage celebrated in a city or a municipality.

(4) A Local Spiritual Assembly of the Bahai faith shall be the registrar of marriage in respect of marriages celebrated under the Bahai faith.

(5) An Imam shall be the registrar of marriage in respect of marriages celebrated under the Islamic faith.

(6) A Hindu Priest shall be the registrar of marriage in respect of marriages celebrated under the Hindu faith.

(7) A district registrar shall be the registrar of marriage in respect of civil marriages celebrated in a district.

(8) Any other registrar of marriage as the Minister may by statutory instrument determine.

(9) A registrar of marriage may nominate a person, knowledgeable in the custom, practice or rites of a particular type of marriage to officiate at a marriage ceremony.

33. Marriage certificate

(1) A registrar of marriage shall upon celebration of marriage, fill in quintuplicate the marriage certificate specified in the second Schedule to this Act and enter in the counterfoil, the serial number of the marriage, the names of the parties and the names of the witnesses.

(2) The marriage certificate shall be signed in quintuplicate by the marriage registrar, the parties to the marriage and at least two witnesses to the marriage.

(3) The registrar of marriage shall, upon receipt of proof of payment of a fee of three currency points, issue one copy of the certificate of marriage to the parties to the marriage, retain one copy and transmit one copy to the district registrar.

34. Submission of Marriage Particulars

(1) A registrar of marriage shall submit to the district registrar, all particulars of marriages he or she has celebrated.

(2) The submissions in subsection (1) shall be made every three months.

(3) The district registrar shall, within ten days of receipt of the submissions in subsection (2), transmit the submissions to the Registrar General for entry into the national marriage register.

35. District Marriage Register

(1) A district registrar shall register all particulars of certificates of marriage filled in his or her office in a district marriage register.

(2) Every entry made under subsection (1) shall be—

- (a) made in chronological order; and
- (b) signed by the District Registrar.

(3) The District Marriage Register shall be open for inspection by the public during office hours on payment of the prescribed fee.

(4) The District Marriage Register shall be in the form prescribed by the Minister in regulations.

36. Establishment of National Marriage Register

(1) There is established a National Marriage Register, which may be maintained as an electronic database or in any other form.

(2) The Registrar General shall register all the information received under section 34 in the National Marriage register.

(3) The Registrar General shall update the information contained in the register on a continuous basis.

(4) A person whose details have been entered in the National Marriage Register, may at any given time, notify the Registrar General of any change or error in the information recorded about that person in the register.

37. Access to National Marriage Register

(1) The National Identification and Registration Authority established under the Registration of Persons Act shall upon payment of a prescribed fee, grant electronic access to a person into the National Marriage Register or furnish the person with a certified copy of any entry into the register under the hand of an authorized personnel of the Bureau.

(2) A certified copy of any entry into the register granted under subsection (1) shall be prima facie evidence of the facts contained in the copy.

38. Non registration not to invalidate marriage

The non-registration of a marriage celebrated under this Act shall not invalidate a marriage which would otherwise be valid.

CONVERSION OF MARRIAGE**39. Conversion of marriage**

(1) A marriage contracted under this Act may be converted—

- (a) from monogamous to potentially polygamous; or
- (b) from potentially polygamous to monogamous, if the husband has only one wife,

by a declaration made by the husband and the wife, that they each, of their own free will, agree to the conversion.

(2) A declaration under subsection (1) shall be made in the presence of a magistrate, or a registrar of marriage and shall be recorded in writing, signed by the husband and the wife and witnessed by the person before whom it is made, at the time of its making.

(3) A magistrate or registrar of marriage before whom a declaration is made under this section shall forthwith transmit a copy of the declaration to the District Registrar of marriage.

(4) A marriage shall not be converted from monogamous to potentially polygamous or from potentially polygamous to monogamous otherwise than by a declaration made under this section.

(5) The Minister shall, through regulations prescribe any other conditions for conversion of marriage.

VOID AND VOIDABLE MARRIAGES**40. Void marriage**

(1) A marriage shall be null and void where at the time of contraction of marriage—

- (a) either party was under the age of eighteen years;
- (b) the parties are within the prohibited degrees of relationship, whether natural or legal or by marriage;
- (c) either party was suffering from a mental illness which affected the party's ability to consent to the marriage;
- (d) the celebration of the marriage is contrary to the rites, customs and beliefs of a particular type of marriage under this Act;
- (e) the consent of either party to the marriage was obtained by duress, fraud or misrepresentation;
- (f) a party suffers from permanent impotence or vaginismus and the fact is not known to the other party at the time of contracting the marriage;
- (g) the marriage was contracted in contravention of any of the provisions of this Act; and
- (h) either party has not fulfilled an essential marriage requirement in accordance with the practice of a particular type of marriage.

(2) An aggrieved party may petition the court for a declaration that his or her marriage is void.

41. Voidable marriage

(1) A marriage is voidable where one of the parties to the marriage—

- (a) is unable to consummate the marriage within six months of celebration of marriage;
- (b) willfully refuses to consummate the marriage within a period of three months from the time of celebration of the marriage; or

- (c) conceals a material fact which would otherwise vitiate the other party's consent to the marriage;

(2) The aggrieved party may, at his or her option, apply to a competent court on any of the grounds in subsection (1), to nullify the marriage.

42. Voidable marriage valid until annulled

A voidable marriage is, for all purposes, a valid marriage until it is annulled by a decree of a competent court at the instance of the innocent party.

PART IV—MATRIMONIAL RIGHTS AND OBLIGATIONS

43. Consortium in marriage

(1) Parties to a marriage shall be entitled to equal rights to consortium during the subsistence of the marriage.

(2) A wife shall be entitled to either retain her maiden name or to use both her maiden name and her husband's surname, during the subsistence of the marriage.

(3) A wife shall not be entitled to the continued use of her husband's surname upon dissolution of marriage, unless both parties mutually agree to the wife's continued use of the name.

(4) Parties to a marriage shall jointly exercise responsibility towards the upbringing, nurturing and maintenance of children of a marriage.

44. Presumption of parentage

(1) There shall be a rebuttable presumption that a child born during the subsistence of a marriage is the biological child of the parties to the marriage.

(2) A person shall not subject a child born during the subsistence of a marriage to Deoxyribonucleic Acid (DNA) testing without an order of court.

(3) The order in subsection (2) shall only be granted to either party to a marriage, his or her legal representative or a duly authorised next of kin.

PROPERTY RIGHTS

45. Types of matrimonial property

Matrimonial property shall include—

- (a) the matrimonial home;
- (b) household property in the matrimonial home;
- (c) any other property either immovable or movable acquired before or during the subsistence of a marriage, deemed to be matrimonial property by express agreement of the parties to the marriage;
- (d) property which was individual property but which a spouse has made a contribution towards, except where the property relates to the sale of family land; and
- (e) seed funding provided by a spouse for the establishment of a business.

46. Matrimonial property to be owned in common

Matrimonial property, as defined in section 45, shall be owned in common by the spouses.

47. Prenuptial and postnuptial agreements

(1) Two persons in contemplation of a marriage may, before or during the subsistence of a marriage, execute a prenuptial or postnuptial agreement to provide for ownership of property—

- (a) Individually acquired before or during marriage;
- (b) jointly acquired during marriage; or
- (c) the distribution of matrimonial property.

(2) The agreement in subsection (1) may make provision for the settlement of any differences that may arise regarding property acquisition, development and ownership by the persons before or during marriage.

(3) The agreement in subsection (1) shall be witnessed by not less than two people chosen by the persons contemplating marriage.

48. Capacity to acquire individual property

(1) A spouse in any form of marriage recognized under this Act shall have the capacity to acquire his or her own individual property during the subsistence of the marriage.

(2) Individually owned property shall not be taken into account for the purpose of the distribution of matrimonial property under this Act, unless there is an agreement to the contrary.

(3) Subsection (2) shall not apply where a spouse proves that he or she made a contribution to the acquisition, development or maintenance of the individually owned property.

- (4) Individual property shall include—
 - (a) independently acquired property and the proceeds and profits from that property;
 - (b) property acquired before marriage or property acquired by bequest, inheritance or gift from a person other than the spouse;
 - (c) property that was acquired by gift or inheritance from a third party after the date of the marriage;

- (d) income from property referred to in paragraph (c) where the giver or testator has expressly stated that it is to be excluded from the spouse's matrimonial property;
- (e) damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages;
- (f) proceeds or right to proceeds of an insurance policy payable on the death of the insured person;
- (g) property which the spouses by agreement regard as individual property;
- (h) trust property; and
- (i) any other property that a spouse can prove is individual property.

49. Equal access

(1) Spouses shall be entitled to equal access to matrimonial property.

(2) Equal access includes the right to use, occupy, benefit from, enter the property and to dispose of the property unless there is an agreement between the spouses to the contrary.

50. Property acquired before marriage

Notwithstanding section 45, the interest of a person in any property acquired before a marriage shall not be affected by the marriage.

51. Liability incurred before marriage

(1) Liability incurred by a spouse before marriage relating to property shall after the marriage remain the liability of the spouse who incurred it.

(2) Where the property in subsection (1) becomes matrimonial property, the liability may be shared by the spouses.

52. Contribution to property acquired before and during marriage

(1) Where a spouse acquires property before or during the marriage and the property does not fall within matrimonial property as defined in section 45, but his or her spouse makes a contribution towards the improvement of that property, be it monetary or in kind, the spouse without the interest shall acquire a beneficial interest equivalent to the contribution she or he made.

(2) The property referred to in subsection (1), excludes ancestral property.

53. Transactions related to the matrimonial property

(1) A transaction shall not be entered into in respect of any matrimonial property except with the prior written consent of either spouse to the marriage.

(2) Consent referred to in subsection (1) shall not be unreasonably withheld.

(3) Subject to subsection (2), where a spouse enters into a transaction that relates to the matrimonial home without the consent of the other spouse, that transaction shall be set aside by the court on application by the other spouse.

(4) When a transfer of the matrimonial property is ordered by the court and a spouse ordered to make the transfer or conveyance is either unable or unwilling to do so, the court may order for the transfer or conveyance on behalf of that spouse.

(5) The court may—

(a) by order, restrain a spouse or a third party from permitting the disposition of matrimonial property; or

(b) rescind a disposition of the property made with the intention of defeating the financial provision of a spouse, except to a purchaser for value in good faith.

(6) The court may make an order to preserve or maintain matrimonial property while a case relating to the property is pending before the court.

54. Spousal gift

Where a spouse gifts property to the other spouse during the subsistence of a marriage, there is a rebuttable presumption that the property belongs to the receiving spouse.

55. Debt of spouse incurred during marriage

Where during the subsistence of a marriage, a debt is incurred for the necessities of life for the immediate family;

- (a) with the consent of the other spouse, the debt shall become a family liability to be borne by both spouses equally; or
- (b) without the consent of the other spouse, the debt shall be borne by the spouse who incurred the debt, unless agreed otherwise by the spouses.

56. Presumptions as to property acquired during marriage

Where, during the subsistence of a marriage, any property is acquired in the names of the spouses jointly, there shall be a rebuttable presumption that the beneficial interests of the spouses are equal.

57. Court to set aside prenuptial and postnuptial agreement

Where a party to an agreement alleges that a prenuptial or postnuptial agreement was entered into under—

- (a) duress;
- (b) undue influence;
- (c) fraud;
- (d) misrepresentation;
- (e) illegality;
- (f) mistake; or

(g) any other factors that would vitiate a contract
the court may set aside the agreement and make another order for the distribution of the matrimonial property.

58. Court's powers to divide matrimonial property

(1) Where a decree absolute has been granted dissolving a marriage, the court may proceed to divide any matrimonial property between the parties to the dissolved marriage, subject to any pre or post nuptial agreements the parties may have made relating to division of property.

(2) The court may, instead of dividing the matrimonial property between the parties, require one party to compensate the other party for the value of that party's interest in the matrimonial property.

59. Distribution of property

(1) Where a marriage is in the process of being dissolved, the court that determines the property rights of the spouses may make an order as to the distribution of property acquired during the marriage without regard to the reasons for the breakdown of the marriage.

(2) In distributing matrimonial property, the court shall take into account the following—

- (a) the length of marriage;
- (b) age of spouses;
- (c) the best interest of a child of the spouses if any;
- (d) the contribution of each spouse to the acquisition, maintenance or improvement of the property including the contribution of a spouse towards the upkeep or maintenance of the property in cash or kind;
- (e) domestic work and management of the home;

- (f) the contribution of the immediate family or any contribution to the maintenance of the matrimonial home or which facilitates the acquisition of the property or matrimonial home by a spouse;
- (g) the economic circumstances of each spouse at the time of the distribution of the property, including the desirability to award the matrimonial home to a particular spouse or the right of a spouse who has custody of a child to live in the matrimonial home for a reasonable period of time;
- (h) the need to make reasonable provision for other spouses and their children as regards matrimonial property where the marriage is polygamous;
- (i) whether there is an agreement related to the ownership and distribution of the property in the best interest of the vulnerable spouse;
- (j) financial misconduct or the wasting of assets; and
- (k) any other fact which, in the opinion of the court, requires consideration.

(3) For the purpose of this section, a monetary contribution shall not be presumed to be of greater value than a non-monetary contribution.

(4) The non-monetary contribution shall not be proved in monetary terms.

60. Property settlement

(1) In proceedings related to property, the court may make an order to alter the interest of either spouse in the property including an order—

- (a) for settlement of property in substitution for an interest in the property; and

- (b) requiring either or both spouses to make, for the benefit of either or both spouses, settlement or transfer of property determined by the court.

(3) Where the court makes an order under subsection (1), it shall have regard to—

- (a) the effect of the proposed order on the earning capacity of either spouse; and
- (b) any other order that has been made under this Act in respect of a spouse.

61. Presumption of marriage for maintenance of children and property rights

(1) The court shall, upon application by either a man or a woman, presume a marriage under this Act, for purposes of determination of maintenance of children and property rights accruing to the parties from a relationship.

(2) A court, in determining the property rights of parties under subsection (1), shall have regard to—

- (a) the nature and extent of their common residence;
- (b) whether there was sexual relationship between the parties;
- (c) the degree of financial dependence or interdependence and any agreement or arrangement for financial support between the parties;
- (d) the mode of ownership, use and acquisition of property;
- (e) the existence and number of children of the relationship; and
- (f) the reputation and public view of the relationship.

(3) The court, in determining the rights of a child under subsection (1), shall follow the principle of the best interest of a child under the Children Act.

(5) For the avoidance of doubt, the relationship under this part shall not be categorized as a marriage under this Act.

PART V—MATRIMONIAL PROCEEDINGS

Jurisdiction of court

62. Jurisdiction in matrimonial proceedings

(1) A registrar of marriage or an institution which traditionally facilitates marriage and is not inconsistent with this Act or any written law shall be the first point of reference in matrimonial proceedings.

(2) Subject to subsection (1), the powers exercised by the institutions in matrimonial causes shall be limited to seeking reconciliation of the parties to the marriage.

(3) Subsection (1) shall not prejudice either party's right to seek redress from court in matrimonial proceedings.

63. Recognition of extraterritorial dissolution of marriage

Where a person has obtained a dissolution of marriage, otherwise than by decree of a court in Uganda, in any foreign country, the divorce shall be recognised as effective for all purposes of the law of Uganda, if—

- (a) it was effective according to the law of the country of domicile of each of the parties at the time of the dissolution of marriage; or
- (b) it has been recognised as effective in a declaratory decree of a court of competent jurisdiction in the country of domicile of the parties or either of them.

64. Recognition of decrees of foreign courts

Where a court of competent jurisdiction in any foreign country has passed a decree in any matrimonial proceeding, whether arising out of a marriage contracted in Uganda or elsewhere, such decree shall be recognised as effective for all purposes of the law of Uganda—

- (a) if the petitioning party was domiciled in that country or had been resident there for at least two years prior to the filing of the petition; or
- (b) being a decree of annulment or divorce, it has been recognized as effective in a declaratory decree of a court of competent jurisdiction in the country of domicile of the parties or either of them.

65. Matrimonial causes proceedings to be in open court

Proceedings in a matrimonial cause shall be held in open court, except where where the court considers that the parties to the proceedings or their children if any may be unduly prejudiced, the court may hold the proceedings in camera.

SEPARATION IN MARRIAGE**66. Separation of parties to marriage**

(1) Separation of parties to a marriage may either be—

- (a) by mutual consent, where the parties enter into an agreement to suspend their marriage, and the agreement is witnessed by at least one representative of each party; or
- (b) by judicial separation, where a party petitions court for separation.

(2) Separation in marriage may occur at any time during the subsistence of a marriage.

(3) The agreement in subsection (1) (a), shall be registered with the Registration of Persons Authority established under the Registration of Persons Act and deposited with the district marriage registrar.

(4) "Mutual separation" under this section means the agreement by the spouses to live separately as husband and wife whether they live under the same roof or not.

67. Effect of separation

A decree of judicial separation or separation agreement shall relieve the parties of the duty to render each other consortium, except that the duty to maintain the spouse shall continue unless otherwise provided under the decree of separation.

68. Power of court to set aside, reverse or vary a separation agreement or decree of judicial separation

(1) A court shall set aside, vary the terms or reverse a separation agreement or a decree of judicial separation on the application of either or both spouses to a marriage if the spouses have consented to either action by court.

(2) A court may vary the terms of the decree of separation on the application of both spouses or either spouse where there has been any material change in the circumstances of either or both the spouses.

(3) A court may rescind a decree of separation on the application of either spouse where the court is satisfied that the decree was obtained as a result of misrepresentation or mistake of fact.

(4) A party may at any time present a petition praying for the reversal of the decree on the ground that it was obtained in his or her absence and that where desertion was the ground of the decree there was reasonable excuse for the alleged desertion.

69. No division of matrimonial property on separation

(1) There shall be no division of matrimonial property upon separation of the spouses, except that court may order the sharing of any income that may accrue from the property.

(2) Property that is individually acquired by either spouse during the period of separation shall remain the property of the spouse who acquired it unless the parties agree to jointly own it.

DISSOLUTION OF MARRIAGE**70. Right to petition for dissolution marriage**

Parties to a marriage shall have equal rights to petition for dissolution of the marriage.

71. Modes of dissolution of marriage

A petition for dissolution of marriage may be made to court by—

- (a) either party to the marriage; or
- (b) both parties upon mutual consent.

72. Contents of a petition for dissolution of marriage

A petition for dissolution of marriage shall contain the following particulars—

- (a) form of marriage;
- (b) the names of the parties to the marriage;
- (c) the age of the petitioner;
- (d) the name, age and sex of the child, if any, of the marriage;
- (e) particulars of the facts giving the court jurisdiction;
- (f) where applicable, particulars of any previous efforts to resolve the dispute, and that there is no hope of reconciliation;

- (g) a statement of the evidence to be relied on to establish the irretrievable breakdown of the marriage where applicable;
- (h) the terms of any related agreement made between the parties;
- (i) the orders being prayed for; and
- (j) a verification sworn by the petitioner before a Commissioner for Oaths that what is stated in the petition is correct.

73. Dissolution of marriage by mutual consent

(1) Parties to a marriage celebrated under this Act may jointly petition court for a decree of dissolution of marriage, by mutual consent on grounds that—

- (a) the parties have mutually agreed to dissolve the marriage; and
- (b) the parties have mutually separated for at least one year immediately preceding the date of presentation of the petition.

(2) Court may grant a decree for dissolution of marriage by mutual consent under subsection (1) where—

- (a) the petition is made, at least one year after the separation in subsection 1(b);
- (b) the parties jointly present the petition;
- (c) both parties consent to the dissolution of marriage in writing; and
- (d) both parties or their legal representatives are present in person at the hearing of the petition.

(3) Upon satisfaction of court that the averments made in the petition are true, the court shall grant a decree nisi of dissolution of marriage.

(4) Either party to the petition may at any time before the grant of the decree absolute of dissolution of marriage may apply to court for withdrawal of the petition.

(5) The court may, on application of either party, nullify the decree of dissolution of marriage under subsection (1) on the ground that his or her consent was obtained by—

- (a) coercion;
- (b) fraud;
- (c) undue influence; or
- (d) misrepresentation.

74. Irretrievable breakdown of marriage to be sole ground for dissolution of marriage for sole petitioner

A petition for dissolution of marriage brought by either party to a marriage, shall be on the sole ground that the marriage has irretrievably broken down.

75. Evidence of breakdown of marriage

The court shall, in deciding whether or not a marriage has irretrievably broken down, have regard to all relevant facts regarding the conduct and circumstances of the parties.

76. Separation not a bar to dissolution of marriage

A grant of a decree of judicial separation shall not bar a person from presenting a petition for dissolution of marriage.

77. Grant of decree nisi and decree absolute

(1) Where court is satisfied that a marriage has irretrievably broken down or the parties to the marriage have mutually agreed to dissolve the marriage, the court shall grant, a decree nisi for the dissolution of marriage.

(2) A decree nisi for dissolution of marriage shall not be made absolute until after the expiration of six months from the date of the decree nisi.

78. Cross-petition

Where a petition has been filed for dissolution of marriage under section 70, and the respondent has grounds for dissolution of marriage against the petitioner, the respondent shall have a right to file a cross petition.

79. Right of appeal

A party that is dissatisfied with the decision of court may appeal against the decision.

80. Competence of husband and wife as witness in matrimonial proceedings

In a matrimonial proceeding, a husband or wife of a party to the suit, shall be a competent and compellable witness.

81. Court to set aside order

Where the court is satisfied on an application made by a person affected by an order, that the order in a marriage cause was obtained by fraud, duress, undue influence or misrepresentation, the giving of false evidence or the suppression of evidence, the court may set aside the order and make another order.

82. Orders relating to children on dissolution of marriage

The court shall be guided by the provisions of the Children Act and in particular, the welfare principle, when making orders relating to maintenance and custody of children on dissolution of marriage.

83. Maintenance to cease on re-marriage

Where, at dissolution of marriage, court orders for payment of maintenance to a spouse, the payment of maintenance shall cease upon the remarriage of that spouse.

84. Power of court to vary maintenance order

The court may vary or rescind any subsisting order of maintenance on the application of the party in whose favor or against whom the order was made on being satisfied that the order was based on;

- (a) misrepresentation;
- (b) mistake of fact; or
- (c) any material change in the circumstances of the parties.

85. Remarriage of parties

When the time limit for appealing against a decree of dissolution of marriage or nullity of marriage has expired and no appeal has been presented or when, in the result of any such appeal, a marriage is declared to be dissolved or annulled, the parties to the marriage may marry again as if the prior marriage had been dissolved by death.

86. Registration of dissolved marriages

(1) A magistrate under whose jurisdiction a dissolution of marriage is conducted, shall transmit monthly returns of all dissolutions of marriage to a high court under whose territorial jurisdiction it lies.

(2) A registrar of the high court, shall transmit the returns in subsection (1) as well the returns of dissolutions of marriages under the high court to the Registrar General for registration.

PART VI—MISCELLANEOUS

OFFENCES AND PENALTIES

87. Demand for return of marriage Gift

(1) Where a marriage gift has been given by a party to a marriage under this Act, it is an offence to demand for the return of the gift.

(2) A person who demands for the return of a marriage gift is liable, upon conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.

(3) A court may award damages to an aggrieved party under subsection (1).

88. Jactitation of marriage

A person who falsely claims or asserts that he or she is married to a particular person commits an offence known as jactitation of marriage and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.

89. Holding out as though married

(1) A person who holds out as a husband or wife under this Act, commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding three years or both.

(2) Holding out under this part means living together as husband and wife, acquiring or owing property jointly, bearing children together, and taking on the man's surname by the woman.

90. Breach of Promise to marry

(1) A person who breaches a promise to marry is on conviction, liable to pay damages for the breach.

(2) A party may petition court for the return of a gift given in contemplation of marriage which, has not been contracted solely due to the other party's breach of promise to marry.

(3) Damages awarded in an action for breach of a promise to marry shall not be in excess of loss actually suffered as a result of any expenditure incurred based on the promise.

(3) Notwithstanding subsection (1), no award shall be granted for specific performance of a promise to marry.

(4) Notwithstanding the provisions of any other law regulating limitation of actions for the time being in force, no suit shall be brought for damages for the breach of a promise to marry more than one year after the date of knowledge of the breach of the promise to marry.

(5) In this part, "promise to marry" means a contract mutually entered into by a man and a woman capable of contracting marriage that they will at a promised time, marry each other, and premised on which, either party based his or her actions or omissions towards the other party.

(6) Notwithstanding subsection (6), a promise to marry may be expressly proved or implied from the conduct of both parties.

91. Making false statements

A person, who knowingly, or negligently makes a false oral or written statement, for purposes of fulfilling a requirement under this Act, commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

92. Contracting marriage with married person

A person who knowingly undergoes a ceremony of marriage, with another person in a subsisting monogamous marriage, commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

93. Making false declarations for marriage

A person who, in any declaration, certificate, licence, document or statement required by law to be made or issued for the purposes of a marriage, declares, enters, certifies or states any material matter which is false, without having taken reasonable means to ascertain the truth or falsity of that matter, commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

94. False pretence as impediment to marriage

A person who falsely, or through pretence, impedes the celebration of a marriage by doing or claiming that—

- (a) his or her consent to the marriage is required by law;
- (b) a person whose consent is required has not consented; or
- (c) there is any legal impediment to the celebration of the marriage

commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

95. Unlawfully performing marriage ceremony

A person who performs or witnesses a ceremony of marriage as a registrar of marriage knowing that;

- (a) he or she is not duly qualified to do so; or
- (b) any matter required by law for the validity of the marriage has not been complied with,

rendering the marriage void or voidable, commits an offence and is liable on conviction, to a fine not exceeding one hundred and twenty currency points or imprisonment for a term not exceeding five years or both.

96. When marriage may not be solemnized

(1) A person designated as a marriage celebrant shall not solemnize a marriage if he or she knows of any lawful impediment to the marriage.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

97. Neglect of duty to transmit certificate of marriage

A person who, being under a duty to complete a certificate of marriage celebrated by him or her or its counterfoil, or to transmit the certificate to the registrar, or Registrar General, willfully fails to perform that duty, commits an offence and is liable on conviction to a fine not exceeding two hundred currency points or imprisonment not exceeding five years, or both.

98. Impersonation in marriage

A person who impersonates another for the celebration, in the course of marriage, or marries under a false name or description with intent to deceive the other party to the marriage, commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment for a term not exceeding five years or both.

99. Fictitious marriage

A person who, knowingly undergoes a void ceremony of marriage, commits an offence and is liable on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding five years or both.

100. Performing, aiding or abetting void marriage

A person who aids, abets or performs a void marriage, commits an offence and is liable on conviction to a fine not exceeding five hundred currency points or imprisonment not exceeding ten years, or both.

101. Marriage involving a child

- (1) A person who—
- (a) conducts, presides over or witnesses a purported marriage involving a child;
 - (b) purportedly marries a child in a formal or informal ceremony of marriage, with or without the consent of a parent or guardian of the child;
 - (c) knowingly attends or participates in the preparation of a purported marriage involving a child; or
 - (d) involves a child in formal or informal marital rites or initiation practices;

commits an offence and is liable, on conviction, to imprisonment for ten years.

(2) In this section, “marriage involving a child” means the union, whether formal or informal, between a child and another person for the purpose of living as husband or wife.

102. Violation of decree of judicial separation or separation agreement

(1) Where a party violates a decree of judicial separation or a separation agreement, the party commits an offence and is liable on conviction, to a fine not exceeding five hundred and twenty currency points or imprisonment not exceeding five years or both.

(2) An aggrieved party shall not, if discovered that he or she participated the violation, be entitled to redress.

103. Celebration of void marriage

Subject to section 43, a person who—

- (a) knowingly contracts a marriage with another person within his or her prohibited degrees of relation;

- (b) purports to contract marriage while suffering from a mental illness affecting the party's ability to consent to the marriage;
- (c) celebrates marriage, contrary to the rites, customs and beliefs of a particular type of marriage under this Act;
- (d) fraudulently obtains a person's consent to marriage;
- (e) contracts marriage while suffering from permanent impotence or vaginismus without the knowledge of his or her spouse; or
- (f) has not fulfilled any of the essential requirements of marriage in accordance with the practice of a particular type of marriage,

commits an offence and is liable on conviction, to a fine not exceeding five hundred and twenty currency points or imprisonment not exceeding five years, or both.

General

104. Regulations

(1) The Minister shall, by statutory instrument make regulations for the better carrying into effect of the provisions of this Act.

(2) Subject to subsection (1), the Minister may, with the approval of Cabinet grant recognition to the solemnization of marriage and institutions of matrimonial causes, including petitions for separation or dissolution of marriage by any religious denomination other than those provided for in this Act.

(3) Without prejudice to the general effect of subsection (1), regulations made under this section may provide for—

- (a) forms to be used under this Act;
- (b) matters for which fees shall be paid; and

- (c) fees to be paid to the registrars for the several matters to which they apply.

105. Minister's power to amend Schedule

The Minister may, by statutory instrument, in consultation with the Minister responsible for finance and the approval of Cabinet, amend the First Schedule to this Act.

106. Repeals and savings

- (1) The following enactments are repealed—

- (a) Customary Marriage (Registration) Act, (Cap. 248)
- (b) Divorce Act, (Cap.249)
- (c) Hindu Marriage and Divorce Act, (Cap. 250)
- (d) Marriage Act, (Cap. 251)
- (e) Marriage of Africans Act, (Cap. 253)
- (f) The Marriage and Divorce of Mohammedans Act, (Cap. 252)

(2) Nothing in this Act shall affect any marriage, dissolution of marriage or other act or order made under any of the Acts repealed by subsection (1).

SCHEDULES

SCHEDULE 1

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings

SCHEDULE 2

SS. 33

CERTIFICATE OF MARRIAGE

No.	Certificate of Marriage-Uganda Marriage celebrated in district in Uganda
Date of marriage	
Name of Husband	
Name of Wife	
Married at	
Married by (or before) me	
Registrar of marriage	
This marriage was celebrated between us.....	
In the presence of us as witness	

PART B

Notice of Intention to marry

SS.10

THE REPUBLIC OF UGANDA

NOTICE OF INTENTION TO MARRY
THE MARRIAGE ACT

To the registrar of marriages for _____
_____ district of Uganda.

I give you notice that a marriage is intended to be celebrated within three months from the date of this notice between me, and the other party named in the notice.

<i>Name</i>	<i>Condition</i>	<i>Occupation or profession</i>	<i>Age</i>	<i>Place of residence</i>
Bridegroom	Bachelor, widower or married in portentously polygamous marriage			
Bride	Spinster or widow			

Signed this _____ day of _____, 20 ____.

Signature

SCHEDULE 3**SS.4****Marriage declarations****A. Civil marriage**

"I solemnly declare that I do not know of any lawful impediment why I, AB, may not enter into marriage with CD."

Each of the parties shall then say to each other—

"I call upon all persons here present to witness that I, AB take you, CD, to be my lawful wife/husband."

SCHEDULE 4**Ss 9****Conditions for marriage****B. Specific conditions for celebration of an Islamic marriage**

An Islamic marriage shall be solemnized where there is—

- (1) Consent of both parties obtained in accordance with the teachings of Islam.
- (2) Presence of a guardian “wali” at the time of celebration of marriage, “Nikah”.
- (3) Payment of bride’s gift “Mahr” at the time of celebration of marriage.
- (4) Presence of at least two witnesses.
- (5) Presence of an Imam at the time of celebration of marriage.

SCHEDULE 5

ss.27

A. Prohibited Degrees of Relationship

mother	- father
mother's daughter	- father's son
daughter	- son
father's mother	- father's father
mother's mother	- mother's father
son's daughter	- son's son daughter's daughter
	- daughter's son sister
	- brother
wife's mother	- husband's father
	- husband's son
father's sister	- father's brother
mother's sister	- mother's brother
brother's daughter	- brother's son
sister's daughter	- sister's son
father's brother's daughter	- father's brother's son mother's
sister's daughter	- mother's sister's son son's wife
	- daughter's husband
father's wife	- mother's husband

The relationships prescribed in this Schedule apply whether they occur naturally or legally, or by marriage.

B. Prohibited degrees of relationship for Hindu marriage

1) A Hindu marriage shall not be solemnized where the parties are within the following prohibited degrees of relationship, unless the custom governing each of them permits the contraction of a marriage between them.

2) Persons are within the prohibited degrees of relationship where—

- (a) one is a lineal ancestor of the other;
- (b) one was the wife or husband of a lineal ancestor or descendant of the other;
- (c) one was the wife of the father's or mother's brother or of the grandfather's or grandmother's brother of the other;
- (d) one was the husband of the father's or mother's sister or of the grandfather's or grandmother's sister of the other;
- (e) they are brother and sister, uncle and niece, aunt and nephew or children of brother and sister or of brothers or sisters; or
- (f) they have a common ancestor not more than two generations distant if ancestry is traced through the mother of the descendant or four generations distant if ancestry is traced through the father of the descendant.

3) The relationships referred to in subsection (2) include those of the half blood and of uterine blood as well as those of the full blood and the illegitimate child and adopted child of any person shall be deemed to be respectively the legitimate child and the child of the marriage of that person.

Cross References

1. Constitution of the Republic of Uganda, 1995
2. Customary Marriage (Registration) Act, (Cap 143)
3. Children Act, (Cap. 62)
4. Civil Procedure Act, (Cap. 282)
5. Divorce Act, (Cap.144)
6. Hindu Marriage and Divorce Act, (Cap. 145)
7. Marriage Act, (Cap. 146)
8. The Marriage and Divorce of Mohammedans Act, (Cap. 147)
9. Magistrate's Court Act, (Cap. 19)
10. The Registration of Persons Act, Cap 332

SCHEDULE 6

ss.39

Section _____

THE REPUBLIC OF UGANDA

NOTICE OF CONVERSION OF MARRIAGE

To the registrar of marriages for the _____ district of Uganda.
I give _____ you notice that I, and _____, being married to
each other under _____ marriage, intend to convert from this marriage
to _____ form of marriage within _____ district

<i>Name</i>	<i>Occupation or profession</i>	<i>Age</i>	<i>Place of Residence</i>
(Man)			
(Woman)			

Dated this _____ day of _____ 20____

Signature

(Man) _____

(Woman) _____



Women's Probono Initiative

Your rights, Your life

The Women's Probono Initiative
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P.O. Box 8052, Ntinda - Kampala, Uganda
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