

UGANDA LAW REFORM COMMISSION

MARRIAGE AND DIVORCE BILL ADVOCACY PROJECT

WORKSHOP REPORTS FOR WESTERN AND CENTRAL UGANDA

WORKSHOP REPORT FOR CONSULTATIONS IN THE WESTERN REGION

KALYA COURTS, FORT PORTAL, KABAROLE DISTRICT

12TH APRIL, 2013

1.0 Introduction and background

The Marriage and Divorce Bill is an attempt at having a comprehensive piece of legislation on matters pertaining to marriage that upholds international standards and constitutional guarantees. The bill also consolidates all the laws relating to the celebration and dissolution of marriage under one Law in order to increase accessibility to the law among its users.

The Marriage and Divorce Bill as it stands today is a product of several consultations over the years that have resulted in compromise and consensus positions as well as innovative solutions to the issues being tackled.

The purpose of this advocacy initiative is to create awareness on the proposed law among different stakeholders including civil society actors, Government actors, and the general public.

2.0 Welcome Remarks

The Commissioner welcomed the participants to the workshop and highlighted the various stages and processes the Commission has gone through to develop the proposals contained within the bill.

3.0 Opening ceremony

The opening ceremony was conducted by the Vice Chairperson- Kabarole District Local Government Mr. Ikagobya Moses on behalf of the LCV Chairperson who was in Mbarara on an official assignment. He expressed his gratitude to the Commission for selecting his district to host the workshop.

He emphasized that the advocacy workshop on the Marriage and Divorce Bill would contribute significantly to creating awareness and help clarify the actual position of the law in light of the negative publicity that had been created about the bill.

He expressed that the law has been long overdue and pointed out instances in his home village where women victims of domestic violence are being sent away from their homes without any form of compensation after having contributed significantly to the well being of the family's and to the creation of family wealth for a considerable period.

He pointed out that the consultations done earlier by the Members of Parliament had not allowed for elaborate discussions of the provisions of the Bill as such, the communities visited did not appreciate and understand the proposals.

He thanked the participants for their participation and requested for their cooperation. He thereafter declared the workshop open.

4.0 Objectives of the workshop

The key objectives of the workshop included:

- i) To share with stakeholders the provisions of the Bill; and
- ii) To build consensus on the way forward in terms of improving the Bill where necessary.

5.0 Target audience

Workshop participants included representatives from Civil Society organizations, Local government, teachers, representatives from the media (print and electronic), local council leaders, religious persons, civil servants, policy makers and representative from the Human Rights Commission among others.

Their selection was based on the key roles they play in community mobilization on matters of development.

6.0 Clause by clause presentation of the bill.

The Commissioner clarified that the workshop was not being held because of the ongoing debate in Parliament. He further pointed out that the advocacy was intended to discuss and enhance participants' clear understanding of the contents of the Bill.

He highlighted the fact that the advocacy initiative was representative in nature and also emphasized that the consultations were not political in nature.

7.0 Facilitation Methodology

1. The dissemination was conducted through a clause by clause presentation, followed by a general discussion.

The presenter highlighted some clauses in the bill that have been the subject of misinformation within the public as follows;

1. Cohabitation as a form of Marriage. It was clarified that the bill only provides for property rights in cohabitation.
2. Marital rape. It was highlighted that the Bill provides for conjugal rights and instances in which a spouse may not be able to participate in the performance of their conjugal obligations.
3. Sharing of property. It was clarified that the Bill does not provide for percentage ownership based on the time (years) that a marriage has lasted.

He informed the workshop participants that the clauses of this bill are based on researched facts. He pointed out that the proposals contained within the Bill are a product of information gathered from various studies that were conducted by Uganda Law Reform Commission and the civil society organizations.

During the workshop clarifications were made regarding the full participation of religious leaders through their umbrella organization UJCC (Uganda Joint Christian Council).

Participants were informed about the few areas introduced in the Bill which include;

- 1) Cohabitation
- 2) Return of Marriage gifts
- 3) Provisions on conjugal rights
- 4) Sharing of property at dissolution of marriage
- 5) Widow inheritance
- 6) Bahai Marriages; and
- 7) The review of the grounds for divorce.

He explained to the participants that the term cohabitation is well defined and it is intended for purposes of clause 117 especially with regard to sharing of property after separation

He also pointed out that Clause 155 - refers to circumstances of instances where two people have been staying together as wife and husband separate when it comes to distribution of property jointly acquired.

Whereas Clause 155 (a) - (k) gives the mandate the presiding judicial officer of the court the powers to determine the distribution of property in consideration of length of marriage, age of spouse, contribution of each spouse, domestic work and management of the home, economic circumstances, other spouses and children, period of cohabitation.

8.0 Reactions from participants

Cohabitation

It was pointed out that the use of the words “as husband and wife” for persons who are unmarried is erroneous and may cause confusion. He observed that this could be the point where the confusion originates and proposed to the Commission to look for suitable words for such people.

Other participants sought to know the difference between Clause 155 (3), (a) and (h) – especially regarding the period of cohabitation.

One participant expressed his supported for the issue of distribution of property and the provision on denial of conjugal rights.

Another participant thanked the Commission for the proposals and highlighted that it would be important to establish why the practice of cohabitation is rampant.

A majority of the participants stated that cohabitation is a common practice in their communities and that the majority who go for church weddings start off in cohabitation. Among the causes mentioned were; early pregnancies, commercialization of marriages, expensive marriage ceremonies etc. It was pointed out that the government could not do much to prevent cohabitation.

Another participant in support of the Bill pointed out that even where a man is to leave the home, he should be entitled to a share in the property.

It was proposed that separation between persons cohabiting and those married should be provided for differently.

It was also proposed that the name of the Bill be changed to read “Marriage Management”.

One of the participants pointed out that members of parliament should be sensitized because the information they had disseminated about the bill was totally different from what they had obtained at the workshop.

Another proposal for the change of the title of the bill as it would be viewed to promote both marriage and divorce.

It was pointed out that court discretion in the distribution of property is not good. It was proposed that clause 155 should provide for specifics detailing what one should be entitled to when it comes to separation or divorce, depending on the time spent in the marriage otherwise court may also be misled by intelligent people who know how to argue their cases well in court.

It was clarified that property cannot be divided on the premise of the time spent within the marriage alone; irrespective of the contribution made because it may be problematic. It was explained that what is important is that what property is available at the time of separation.

It was pointed out to the participants that court is considered to be the last resort after all avenues have failed.

The presenter clarified on the applicability of the terms “divorce” and “separation”. Divorce applies to officially married couples while separation applies to those cohabiting.

Participants were further informed that there is no need to worry that some women will use this proposed law to take property from men. The factors provided for under clause 155 would be able to ensure equitable distribution of property taking into account contribution and time spent in the marriage among other factors.

Conjugal Rights:

The presenter highlighted that denial of conjugal rights stems from clause 114 which provides for circumstances when a spouse may deny the husband/wife sex and these include poor health, surgery, and child birth among others.

Participants pointed out that in most cases spouses deny their colleagues' sex deliberately and this has resulted into a lot of domestic violence our communities. Some female participants pointed out that among the reasons why they do it is to punish their husbands especially when they start suspecting them of being involved in extra-marital affairs.

It was clarified that this phenomena is not tagged to women alone. It was highlighted that the bill provides that a spouse may deny – it may be a man or woman.

Regarding the provision of a sentence where a spouse forcefully engaged in a sexual encounter without the consent of the other spouse, it was clarified that the provisions are meant to deter would be offenders.

Marriage Gifts:

The presenter highlighted the following issues pertaining to marriage gifts;

- a) The Bill does not abolish bride price.
- b) The use of the word is what changed from bride price to marriage gifts.
- c) The use of bride price – implies you are buying a wife – this causes domestic violence.
- d) It is not a mandatory requirement for marriage. – [because one's daughter may decide to love/cohabit with a poor man)
- e) If forced to pay, it will promote cohabitation.

It was agreed by the majority of participants that if what was exchanged at marriage was to be considered as marriage gifts then no refund would be expected upon

separation, however, where the terminology of bride price is used then the bride price would be demanded back at separation. It was highlighted that this tendency bound women folk to stay in a abusive marriages because their parents could not refund the cows exchanged for their hand in marriage.

11.0 Recommendations and way forward

The workshop participants recommended the following actions for the way forward;

1. Uganda Law Reform Commission and other related institutions with a similar mandate should carryout out massive countrywide sensitization of the communities on all the laws of Uganda and particularly the Marriage and Divorce bill.
2. The media should be used to disseminate information about issues of national importance. In particular the local radio stations should be used.
3. The title of the bill changed to read “The Marriage and Family Bill instead of “the Marriage and Divorce Bill” which suggests and seems to promote breakup of families.
4. In future bills should first be simplified for ease of interpretation at the community level.
5. There is need to translate the Bill into the local languages
6. Cultural institutions wherever they exist should be used to help and sensitize their subjects on this Bill for instance in the Toro Kingdom
7. Members of Parliament should be sensitized on the Marriage and Divorce bill before conducting consultations in their constituencies.
8. The government should to try and discourage cohabitation for it will bring moral decay if protected under the laws.
9. On the definition of cohabitation, is need to revise the definition as it is misleading

12.0 Closing Remarks

The vice chairperson, Kabarole District Local Government thanked the various categories of participants for attending the advocacy and sensitization workshop. He applauded them for their effective contributions during the discussion. In particular, he thanked the workshop organizers for the elaborate presentation and explanation on this crucial Bill which was totally different as compared to what the honorable Members of Parliament were doing during their consultation processes on the same subject.

He noted with concern that much of what they heard is not what is in this bill and pointed out that there was a lot of miscommunication and misinterpretation of the bill. He further questioned why members of Parliament were given five million shillings to carry out consultations.

He remarked that the bill in its present state is good but requires improvements in some areas. For instance he proposed that a clause on the provision for re-marrying after separation should be included.

He concluded by stating that the participants were better versed with the provisions in the bill and could effectively disseminate to their people what they learnt during the workshop.

13.0 List of Participants.

1. Mr. Kyaligonza Edward	Life F.M
2. Ms. Musimenta Dorcus	UHRC-Fort Portal
3. Mr. Gumisiriza Stuart	Better F.M
4. Ms. Kebirungi B. Joanita	Life F.M-Manager
5. Mr. Mukonyezi Wilfred	Better F.M
6. Mr. Ampaire Sedrack	S/C Councillor-Mugusu
7. Mr. Nyakojjo William	Voice of Toro
8. Mr. Alituha Patrick	Gold F.M
9. Mr. Kyaligonza Adolf	Gold F.M
10. Mr. Nyanzi John	Life F.M
11. Mr. Ikagobyha Moses	Kabarole District Local Government
12. Mr. Rwamuhumbu Joshua	Journalist
13. Mr. Muhereza Isaiah	Hits F.M
14. Mr. Abbas Ruhweza	Hits F.M
15. Mr. Muhumuza Gordon	Voice of Kamwenge F.M
16. Mr. Ainganiza Steven	Voice of Toro
17. Mr. Rogers Sunday	Vision Group
18. Ms. Christine A. Tuhaise	Sec. gender- Kenjojjo district
19. Mr. Rugumayo.K. John	Sec. gender Kyegegwa district
20. Mr. Agaba Hillary	A/CAO Kyegegwa district
21. Mr. Lubega Elly	Kyenjojo F.M
22. Ms. Kitembo Henrietta	Councillor Kyenjoj T/C
23. Mr. Besigye F. Summary	LCIII C/P Kiga..
24. Mr. Kiiza Richard Polite	Acess to Justice
25. Ms. Bright Judith	Councillor Kagongi
26. Ms. Florence Twine	Teacher

27. Mr. Kitanywa Sowedi	PSWO- Kasese
28. Mr. Muhwezi Boaz	Youth Alive Rubirizi
29. Mr. Mugarama John	Youth Councillor Rubirizi
30. Mr. Mr. Byaruhanga Vincent	Head of Laity- Born Again Christain- Buhera
31. Mr. Nkaheebwa Lawrence	Grace F.M
32. Mr. Byarugaba Innocent	Town Agent -Rubirizi T.C
33. Pasor Mukkibi Baineomugisha	Igabiro Church
34. Mr. Beyeza Vicent	ICOB
35. Mr. Elly Mwanje	FHRI
36. Mr. Joramu Kigundu	Catechist
37. Mr. Kayemba Ponsiano	Head of Laity Kichwamba sub- Catholic Parish
38. Mr. Byamukama Allan Fred	Student
39. Mr. Atwiine Norbert	Copiange
40. Mr. Kasajja Kalya	District Community Development Officer.

DIALOGUE ON THE MARRIAGE AND DIVORCE BILL

HELD AT MOSA COURTS APARTMENTS, KAMPALA

WORKSHOP REPORT

18TH APRIL, 2013

Introduction

This report provides a summary of proceedings of the breakfast meeting to dialogue on the Marriage and Divorce Bill.

The dialogue was held with a view to obtain feedback from key stakeholders on the provisions of the Bill and to clarify on the myths about the bill.

The meeting was convened at Mosa Courts in Kampala on 18th April 2013 by the Uganda Law Reform Commission in partnership with the Justice Law and Order sector.

The meeting was attended by various participants from diverse entities and organizations. The participants included members of the media, civil society, government officials, and religious leaders among others.

Summary of Proceedings

Welcome Remarks

The welcome remarks were made by the Ag. Secretary/Commissioner Law Reform of Uganda Law Reform Commission.

He thanked participants for attendance and informed them that the meeting was intended to clarify certain contentious issues for public to understand the contents of the Marriage and Divorce Bill.

He informed participants that the Bill had become a cause for concern among members of the public owing to the negative publicity being given to the content. He also stated that the media had also sent out incorrect information in some cases. He highlighted the fact that the meeting was called to correct the information in the public and to give the media the correct provisions and substance contained in the Bill.

He emphasized that there is wrong information going around stating that the Uganda Law Reform Commission sat in their offices and came up with the Bill; noting that extensive consultations were carried out country wide to inform the drafting of the Bill.

He stated that there was no need for Members of Parliament to further consult their constituencies because the Commission and other partners had already done so. He noted that some Members of Parliament had disseminated their opinions instead of consulting their constituencies.

He further stated that the Marriage and Divorce Bill is a restatement of the existing laws on marriage including; the Marriage Act Cap. 251, the Divorce Act Cap.249, the Hindu Marriage and Divorce Act Cap. 250, and the Customary Marriages (Registration) Act Cap. 248. He added that these were all being consolidated into one piece of legislation for ease of access.

He highlighted that there were a few new areas being introduced into the Bill including; property rights in marriage, property rights in cohabiting relationships, irretrievable breakdown of Marriage as a sole ground for a divorce petition, abolition of widow inheritance, creation of a new offence pertaining to the demand for return of bride wealth and provisions pertaining to conjugal rights. He stated that some contention was being raised over these provisions.

Regarding cohabitation, he informed the participants that there is no proposal in the Bill that cohabitation should be a form of marriage. He informed participants that the Bill does not provide for the conversion of cohabitation to marriage after a certain length of time.

Participants were further informed that cohabitation appears in one clause of the Bill, which is clause 117; noting that this clause arose out of the fact that there are many people living in cohabitation. As such, there is need to protect women who walk away empty handed in most cases when these relationships end.

Regarding bride price, the Ag. Secretary informed participants that the clause is not intended to abolish bride price but change the word 'price' which has a negative connotation. He said that the word 'price' connotes a purchase. He stated that this would be achieved by replacing it with the word 'gift'.

Regarding conjugal rights, the Ag. Secretary informed participants that the misinformation is about the words 'marital rape'; which do not appear anywhere in the bill. He informed participants that the provision on conjugal rights defines the obligations spouses have towards each other and protects persons who have credible reasons not to engage sexually.

Regarding property rights he informed participants that the factors considered are already being used by the courts and only apply to matrimonial property.

The Ag. Secretary requested participants to appreciate the good intentions of the bill.

Reactions to the welcome remarks

A Participant highlighted that gender equality is a constitutional duty and Members of Parliament in their oath of Allegiance swore to preserve the Constitution.

Another participant noted that all is not lost because a lot of sensitization has been done; emphasizing that there is need to continue building consensus on the Bill; noting that consensus building should start with the 9th Parliament because a good number of Members of the 9th Parliament are new and may not be aware of the history of this Bill. The participant urged the Commission and the Attorney General's Chambers to dialogue with Members of the 9th Parliament.

The participants also highlighted the need to engage in advocacy for the quick passage of the Bill. More dialogues like the dialogue meeting should be conducted as an opportunity to sensitize members of public about the rationale and contents of the bill.

It was noted that culture is dynamic and not static; thus discussions of the Bill should take into account dynamism of culture further noting that there is need to separate policy issues from the bill as a way of refining it.

It was highlighted that from such dialogues on the bill, there should be proposed amendments to the bill if the meetings are to be regarded as relevant.

A participant from the religious community pointed out that the Commission did not consult widely especially in the religious community. He also stated that much as the words 'marital rape' are not explicitly spelt out in the bill, they are implied in clause 114 (3). He further stated that licensing by the minister of public places of worship for solemnization of marriages is giving too much power to the Minister which should be checked; noting that all churches should be registered in a marriage register.

The participant was informed that the religious community was consulted and in this regard Moslems were also consulted although their part is not covered in the Marriage and Divorce Bill but in a separate Bill that seeks to establish khadi courts.

It was highlighted that in order to understand the debate on the Bill, there is need for the public to be educated on and understand the history to the Bill; noting that there is need to debate the Bill with the proposed amendments in mind, and in this regard the balance should be between human rights, culture and the law.

Presentation on the Marriage and Divorce Bill

A presentation on the Marriage and Divorce Bill was made by Ms. Lillian Kiwanuka Kimuli, Senior Legal Officer, Uganda Law Reform Commission. She highlighted to the participants the history to the making of the Marriage and Divorce Bill and further explained the provisions contained in the Bill.

Plenary

Following the presentation on the Marriage and Divorce Bill, several issues were raised by the participants. These issues were captured as follows;

It was in contention as to whether the definition of 'marriage gifts' in the Bill takes care of 'bride wealth' as discussed in the Mifumi court case.

It was noted that the definition of 'marriage gifts' is inclusive of 'bride price'.

It was highlighted that Clause 16 of the Bill should reflect the spirit of the international covenants that Uganda has ratified including the Convention on the Elimination of all forms of Discrimination Against Women and the Universal Declaration of Human Rights; noting that instead of use of 'free consent' there should be 'full and free consent'.

It was also pointed out that some sections of the public still want return of marriage gifts especially those with many children. Therefore there is need to reconsider the issue of return of marriage gifts in case of a failed marriage.

A participant pointed out that under voidable marriages in the bill, the fact that one was of unsound mind at the time of marriage may makes persons with disabilities uncomfortable; suggesting that there should be use of other words. It was clarified that the unsoundness of mind arises only at the time of marriage and not before or after, and that people of unsound mind have lucid moments when they are in position to engage in any agreement or contract.

Another participant highlighted that under clause 39, 'clan' should be deleted from the clause as it is not applicable to Christian marriages.

Regarding the clause on conjugal rights (clause 114), a participant told the meeting that the 1736 position in England was that a husband cannot rape his wife but with the changes in times, this changed. The contemporary times treat a marriage as a

partnership of equals. He pointed out the case of *SW vs. UK* where it was stated that the idea that a man being convicted of rape of his wife was unacceptable had since been abandoned in light of respect for human dignity and human freedom.

It was also pointed out that pro-active judges have since made strides to punish errant spouses as was the case for Judge Kibuuka Musoke who convicted a man for rape of his wife because it was unconstitutional. He cited article 34 which prohibits subjecting a person to torture, degrading and inhuman treatment.

Another participant agreed with the need for a provision for marital rape but proposed that there is need to reconsider the five year jail term stating the relationship would be destroyed after the jail term. Another participant noted that by the time a spouse reports to the State they are ready for anything.

One participant noted that marital rape cannot arise in a Christian marriage because Christian marriages are biblical and there is total consent for the parties and parents; it is based on companionship and mutual affection, with no room for misbehavior as marriage is meant to last forever. However in the event that there are issues within that marriage that fail to be resolved, there should be divorce.

It was noted that the public should be sensitized on property rights; highlighting that the public has a misconception that when people are in a 'marital relationship' and after a few years separate, they have to equally share all property including what they may not have contributed to.

A participant noted that there should be proposed ecclesiastical courts for Christians the way khadi courts are proposed for Muslims. The participant was then informed that the law is not a manual for priests and sheikhs but for the State such that where wedded couples want to divorce, they should go to the State for a remedy. The meeting thus agreed that faith based institutions should encourage people to stick to their marriages and vows.

It was highlighted that since many people do not believe in divorce, the title of the Bill should be written as 'Marriage and Family Protection Bill'. The meeting was informed that in drafting bills, titles reflect the contents of the bill so for this matter, since the bill has an aspect on divorce, it should remain as the 'Marriage and Divorce Bill'.

Another participant proposed that there should be a separate law on cohabitation since the bill is on legally recognized marriages. The participant was informed that cohabitation had been covered in the Domestic Relations Bill and under the Marriage and Divorce Bill cohabitation is only in regard to property rights.

A participant suggested that the bill should provide for the prohibition of marriages of convenience (for example those entered into in order for one to a visa), pleasure marriages (made for a fixed period of time) and arranged marriages (arranged by parents or family members). The participant was informed that by listing recognized marriages in the bill, all other marriages are impliedly prohibited.

Closing remarks

The closing remarks were made by Pastor Joseph Sserwadda, the presiding Apostle of the Born Again Faith of Uganda.

He stated that for very many years marriages have been conducted under the system of colonialists. To him the Born Again Faith (Balokole) welcomes the Bill with the understanding that the nation is willing to sit down and make changes on how a marriage must stand.

He thanked the Commission and Government of Uganda for trying to bring about a law to that will cause order and societal reforms for all sections of the public especially the religious people. He stated that the law is egalitarian and thus it is not supposed to be penal but to bring about harmony.

He thanked the Commission for the opportunity given to them as participants to be heard and prayed that when the bill is brought back to Parliament, it will be considered.

He stated that it would make more sense if cohabiting relationships were referred to in the bill as just unions and the legal unions referred to as marriages. He also appealed to the authorities to allow religious bodies to make their regulations for example as Catholics want ecclesiastical courts, Muslims wanting khadis; other Christians should be allowed to make their regulations.

He thereafter prayed for the participants and organizers of the meeting, and declared the meeting officially closed.