

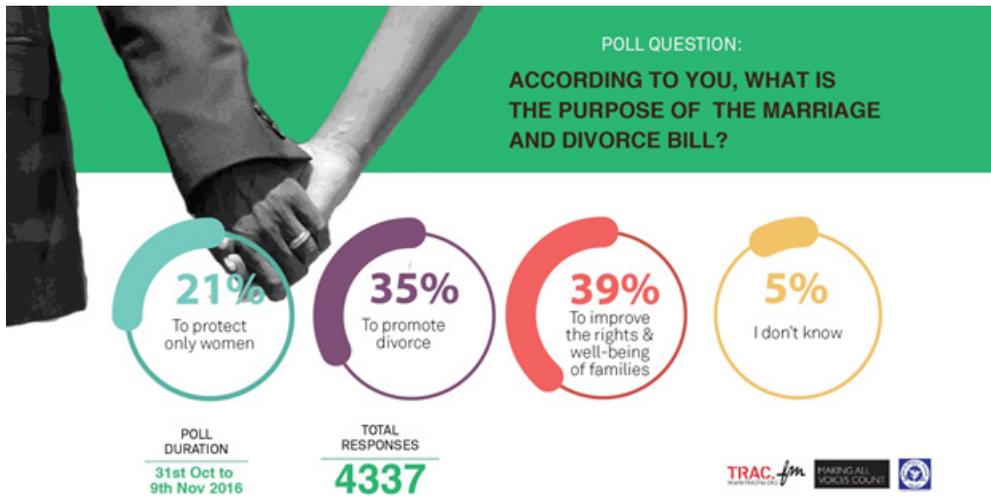


Gender Transformation & Empowerment

This document is an updated compilation by UWONET, of various authenticated documents published in relation to the Marriage and Divorce Bill

## A POLICY BRIEF ON THE MARRIAGE AND DIVORCE BILL; WHYS, HOWS, AND WHATS OF THE MARRIAGE AND DIVORCE BILL, 2009.

Developed by: UWONET on behalf of the coalition



To date, Uganda's efforts towards development have overlooked the need to address injustice and inequalities within the family as a driver to development. The Marriage and Divorce Bill seeks to address intimate partner violence,

unpaid care work, access and benefits to land, property ownership and discriminatory practices which collectively hamper family progress and contribute to under development.

### Introduction.

This is an information pack about the Marriage and Divorce Bill, 2009 for policy makers. The information pack provides a brief historical background about the Marriage and Divorce Bill, its content, and the linkage of the Bill towards national, regional and international obligations. It also provides justification for the Parliament to enact the Marriage Bill 2017 into law in the 10th Parliament.

The information pack will be disseminated among policy makers, Members of Parliament, Media, relevant ministries, departments and agencies, the members of the Marriage and Divorce Bill coalition and the public to increase their understanding on the Bill. It will also provide comprehensive information to increase their support for the Bill.

The information pack has been developed as an effort to build knowledge on a bill that seeks to address injustice and inequalities within the family unit.

### Background

Historically, the family has served as the fundamental social unit, producing and raising children, caring for the aged and disabled, and socializing its members in the basic values of character development and citizenship<sup>1</sup>. However despite being portrayed as the cornerstone of development, the family has received a limited amount of policy and legislative attention. Family issues in modern society are increasingly complex as such; there is need for reform and improvement in the existing laws and policies and processes to suit the changing times.

In Uganda, the initial attempts at a family law reform began with the nationwide Commission of Inquiry

<sup>1</sup> Steven K. Wisensale Family Law, Public Policy and New Federalism, Focus on Law Studies, Fall 1996, Vol XII, Number 1

into the Marriage, Divorce and Status of Women (popularly known as the Kalema Commission Report) that was put in place to male proposals for reform.

***“In 1964, a Commission on Marriage and Divorce was set up and charged with a duty “To consider the laws and customs regulating marriage, divorce and the status of women in Uganda, bearing in mind the need to ensure that those laws and customs, while preserving existing traditions and practices as far as possible, should be consistent with justice and morality and appropriate to the position of Uganda as an independent nation; and to make recommendations’.”***

Some of the proposals’ made resulted into recommendations that were taken up in the area of succession<sup>2</sup>. Subsequently, marriage reform initiatives initiated by the Ministry of Justice and Constitutional Affairs in 1994, resulted in the proposed Marriage and Divorce Bill.

The Marriage and Divorce Bill formerly the Domestic Relations Bill (DRB) has a long history that dates back to 1964. For over 50 years, the Government of Uganda endeavored to enact the Marriage and Divorce Bill. The Bill is a unifying and comprehensive law on domestic relations based on principles of non- discrimination and gender equality. According the Uganda’s current marriage and divorce laws, a plural legal system with different laws regulating the same institution of customary, Hindu, Civil, Bahai, Islamic and Christian marriage exists leading to a confusion of a state of affairs.

The Bill seeks to reform and consolidate the laws governing marriage, provide for the types of marriage, marital rights and duties arising from marriage, grounds for separation and divorce and other connected matters.

The Bill gives effect to Article 31(1) of the Constitution of Uganda which states that men and women are entitled to equal rights at and in marriage, during

marriage and at its dissolution. This human rights principle is also enshrined in all the other human rights instruments, to which Uganda is a signatory, e.g. Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).

The Marriage Bill, 2017 seeks to consolidate and repeal the following existing family laws;

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

In 1999, the Uganda Women’s Network (UWONET) and other women’s rights and human rights organizations and institutions picked interest in the Kalema and ULRC recommendations to push for a just family law. The Domestic Relations Coalition now the Marriage Bill coalition was formed in 1999, made up of more than 40 women and human rights organizations and institutions campaigning for a fair family law with UWONET as the coordinator. The coalition acknowledged that most provisions in the Bill are positive and forward-looking in the quest for a stable family unit based on equal principles.

Civil society, and particularly the Marriage Bill Coalition, has been very instrumental in advocating for the enactment of the Bill in an effort to conform all family laws to the Constitution of the Republic of Uganda. As part of the International community, and a signatory to a number of regional and International Human rights instruments such as CEDAW, the Maputo Protocol and the Universal Periodic Review Recommendations among others, Uganda is required to enact fair, equitable and just domestic relations legal systems among other key equity issues (Article 15, 16 CEDAW).

UWONET and the coalition believe that enactment of the Marriage Bill will promote gender equality and transformation, strengthen legislation to protect and promote women’s ownership and control of own and joint resources in marriage, leading to improved productivity and women’s economic

<sup>2</sup> Succession Ammendment Decree

stability. Women will receive more protection against marital rape and other human rights violations.

### **Current Status of the Bill.**

Since 1999, Advocacy efforts of the coalition under the leadership of UWONET have over the years resulted in several achievements. One of the major milestones was registered in 2013, when the Bill was presented on the floor of Parliament by the Minister of Justice and Constitutional Affairs and 20 clauses out of 178 clauses of the Bill were debated and passed by Parliament. This win was short lived, due to external pressure from the Executive and other social actors who demanded for further consultations conducted by members of parliament in their constituencies. This led to the suspension of the debates and legislative process pending the results of these consultations.

With limited or no understanding of the Bill, influenced by personal and peer biases, the consultation process created negative public perception of the Bill which to a great extent influenced the strong negative sentiments eventually resulted into the shelving of the nearly 50 year old Bill by the ninth Parliament. Debate on the Bill was suspended awaiting the report of the consultations by the members of Parliament, which was never published. The suspension of the debates coincided with a period when the 9th Parliament was nearly closing.

Following the controversies and negative propaganda that the Bill received from the legislators and the nation at large, premised on arguments like; the name of the bill automatically advocated for divorce among couples, the provision of rights to property for cohabiting spouses tainted the institution of marriage, the provision of distribution of matrimonial property promoted property theft by women in marriage, the argument that there was limited protection for the rights of children in the Bill among others, it received a negative response.

Since then, there have been a number of factors that have initiated a new discussion of a new Bill that is cognizant of the most recent progressive jurisprudence from the courts which is in conformity

with the human rights benchmarks set out in Uganda's international, regional and domestic legal frameworks, and the findings from the consultations. As a result, the Uganda Law Reform Commission (ULRC) undertook a review of the Bill in 2017 in an attempt to address the controversial aspects, hence its current rebirth as the Marriage Bill 2017.

The Marriage Bill of 2017, like its predecessors, seeks to, among other things, repeal the above mentioned existing laws on Marriage and Divorce and enact one consolidated legislation. This is partly in response to the CEDAW Committee Concluding Observations to Uganda's 10th periodic report (2010), where the Committee raised concern about the multiple marriage regimes that apply in the country and urged Uganda to complete its law reform in the area of marriage and family relations by having one uniform legislative framework on marriage. To this end, the Committee called upon the government to review and amend, as necessary, the current version of the Bill (now Marriage Bill) to make it compliant with Articles 15 and 16 of the CEDAW Convention.

It is in view of this, Uganda Women's Network (UWONET) and the Marriage and Divorce Bill Coalition undertook the process of analysing the current draft Marriage Bill of 2017 through a memorandum to the Uganda Law Reform Commission with a view to make proposals for amendment to ensure protection of the rights of parties in marriage. The Marriage Bill of 2017, is yet to be presented to the Ministry of Justice and Constitutional Affairs.

### **Linking the Marriage and Divorce Bill to the national, regional and international legal frameworks/ Instruments and an enabler to Uganda's attainment of vision 2040 and SDG's**

#### **The legal framework for a law on Marriage**

The legal framework for a law on Marriage is premised on key international, regional and national legal instruments underpinning the inalienable human rights of every woman and man. Among these are: the Universal Declaration of Human Rights

adopted by UN General Assembly Resolution 217 A (III) of 10th December 1948, the Convention on the Elimination of All forms of discrimination against women ratified by the Government of Uganda on 22nd July 1985; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa – ratified by the GoU in July 2010 and popularly referred to as the Maputo Protocol and the Constitution of the Republic of Uganda promulgated in October 1995.

## **The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights is agreed to be the foundation of international human rights law. In its preliminary article, it states that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a true spirit of brotherhood. Article 16 of the Declaration focuses on the right to Marry and form a family. It states in clause (1) that men and women of full age, without any limitation due to race, ethnicity, or religion have the right to marry and to found a family. They are entitled to equal rights at marriage, during marriage and at its dissolution. Clause (2) provides for free will in entering marriage stating that marriage shall be entered into only with the free and full consent of the intending spouses. While clause (3) states that the family is the natural and fundamental unit of society and is entitled to protection by society and the state.

## **The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in relation to rights under Marriage**

In its preamble, the Convention explicitly acknowledges that “extensive discrimination against women continues to exist”, and emphasizes that such discrimination “violates the principles of equality of rights and respect for human dignity”. As defined in article 1, discrimination is understood as “any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural, civil

or any other field”. The Convention gives positive affirmation to the principle of equality by requiring States parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”(article 3). The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

In article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.

The Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women.

## **Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa in relation to rights under Marriage**

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa derives its mandate from the African Charter on Human and People's Rights which provides for special protocols or agreements if necessary to supplement the provisions of the African Charter.

Article 18 of the African Charter on Human and People's Rights calls on all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions; a recommendation was therefore made by the African Commission on Human and People's Rights and endorsed by Heads of State and Government of the Organization of African Unity in June 1995, for the elaboration of a Protocol on the Rights of Women in Africa. Article 7 of the Protocol addresses itself to separation, divorce and annulment of marriage.

### **The Constitution of the Republic of Uganda in relation to rights under Marriage**

The Constitution of the Republic of Uganda was promulgated by the Constituent Assembly in October 1995. The Constitution gives positive affirmation to the Principle of Equality between women and men through several articles including article 21 which recognizes equality and freedom from discrimination in clause 1 that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy protection of the law. Article 31 on the Right of the Family states in clause 1 that women and men of the age of 18 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.

This constitutional provision provides the legal mandate for enactment of a law on marriage and divorce.

### **The Marriage and Divorce Bill: What are the Human rights fundamentals on the Contentious Articles?**

The process towards realization of consensus on the content of the Marriage and Divorce Bill has been rife with contention placing human rights at variance with ideological, cultural and religious arguments. While agreement was realized on several provisions within the Bill; other provisions deemed to be contentious are not fully resolved. Among these

are: co-habitation, co-ownership, abuse of conjugal rights and marriage gifts. UWONET together with members of the coalition believes that in order for a law on Marriage to fully respond to issues pertaining to the institution of marriage in society, these issues regarded as contentious by some, must be provided for within the law.

### **Co-habitation**

Co-habitation as defined by the Marriage Bill refers to "a man and woman living together as husband and wife." is relationship has however not been solemnized through the legal provisions for recognition of marriage. The existence of co-habitation is a social reality recognizing that many couples do not formally pursue the registration of their unions; however, there should be some form of protection to the parties and their children. Article 33 (3) of the Constitution of Uganda, with regard to the Rights of Women recognizes that the state shall protect women and their rights taking into account their unique status and natural maternal functions in society. While article 1 of CEDAW indicates that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. By inference then, some form of protection of women who find themselves in relationships based on cohabitation must be provided particularly in relation to property rights and rights over children. There is a legal basis for this in article 26 of the constitution which provides for protection from deprivation of property and article 21 (1) that states that All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

The Marriage Bill further provides for jactitation of marriage – where a person falsely claims or asserts that he or she is married to a particular person - as

an offence with criminal liability. The provision, however does not exclude co-habitation through which an individual may believe by all intents and purposes that they are the spouse of another party. The offence of jactitation should therefore include an explicit provision excluding cohabitation as an offence under the article.

### **Co-ownership of property**

Co-ownership of property as defined by the Marriage Bill means the concurrent ownership, possession and enjoyment of property by a person with his or her spouse. It is important that the law provides for co-ownership of property/ matrimonial property to protect the socio-economic rights of all parties, particularly women and children. Art. 33 (6) of the Constitution indicates that laws, cultures or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this constitution. The belief that women are not entitled to property is a culturally circumscribed belief that subjugates the equal rights of women as enshrined in the constitution. While, Art. 2(f) of CEDAW commits State parties to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Both provisions therefore prohibit discrimination on the basis of sex over property rights. In addition, Art. 16 (h) of CEDAW commits state parties to put in place measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Provisions for matrimonial property rights in the event of the breakdown of marriage are included in Art. 7 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa which addresses separation, divorce and annulment of marriage and in clause (d) states

that "... women and men shall have the right to an equitable sharing of the joint property deriving from the marriage." Further, to take cognizance of the inevitability of death, Art 31 (2) on the Right of the Family notes that "Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights.

### **Conjugal Rights**

Marital rape is a form of Sexual and Gender-based Violence in which one spouse has forceful sexual intercourse with the other spouse – usually the female – against their will. The Marriage Bill makes reference to marital rape through the provision on conjugal rights which enumerates grounds for which one spouse may deny the other the right to sexual intercourse including poor health, surgery that affects the capacity to engage in sexual intercourse, child birth or reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm. e penalties for contravening this provision include both civil and criminal liability.

Art 4 of the Maputo Protocol focuses on the Rights to Life, Integrity and Security of Person and in clause (a) commits state parties to enact and enforce laws prohibiting all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public. This article provides a legal basis for inclusion of the provision in the Marriage Bill.

### **Marriage Gifts**

Marriage gifts as defined by the Marriage Bill means a gift, by whatever name known, in cash or in kind given by either party to a marriage in respect of that marriage and includes bride price and bride wealth. The Bill recognizes that Marriage Gifts are not an essential requirement for marriage under this Act. This is consistent with Art 21 (1) of the Constitution on equality and freedom from discrimination which provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. e spirit of equality of persons in this

constitutional provision as well as in Art 1 of CEDAW reinforces the provision in the Marriage Bill placing marriage gifts as non-essential for marriage and criminalizing the offence of demanding return of marriage gifts. Marriage gifts place an unnecessary socio-cultural and economic burden on the female spouse in a marriage and can tend to commodify women. In addition, marriage gifts have led to non-consensual marriage arrangements, particularly in those instances where women and girls are viewed as a source of monetary value to their families.

Art 6 (a) of the Maputo Protocol provides that State Parties shall enact appropriate national legislative measures to guarantee that no marriage shall take place without the free and full consent of both parties. It derives from the social reality that marriage gifts are known to perpetuate the subjugation of women; and may lead to non-consensual marriages.

Similarly, the Constitution of the Republic of Uganda provides for free and full consent in relation to marriage. This provision is specifically, stated in article 31 on the Right of the family.

### Gaps addressed by Case Law and Statutory Law to Justify the Bill

**Widow Inheritance Abolished.** The provisions on the Bill on widow inheritance herein are largely in conformity with Article 2(2) 21, 24, 26, 31, 32 (2) and 33 of the Constitution. In addition they also reflect the strides by the courts to uphold women's rights and create safeguards against harmful cultural practices like wife inheritance, property grabbing by often male relations upon death or termination of marriage among others. These decisions include: *Alai V Uganda* in which the courts recognised the five forms of marriages recognised in Uganda<sup>3</sup>.

Notably, the decision in **Mifumi & Others V Attorney General & Anor**, is critical. In this case, the constitutional court recognised the significance of exchange of marriage gifts in the celebration of customary marriages but outlawed the practice of wife inheritance and demand of refund of bride

gifts upon termination of marriage<sup>4</sup>. The court also emphasized the need to use the term 'marriage gifts' as opposed to 'bride price' or 'bride wealth' that perpetuates the negative attitude towards the practice.

***By prohibiting widow inheritance under clause 14 and refund of marriage gifts under clause 15, the Bill is in line with current legal reform progresses in this area.***

### Question of conjugal rights

Although parties are entitled to the enjoyment of each other's consortium, this must not be exercised forcefully as held by the common law courts. In **R V Jackson** court held that spouse cannot however, be compelled against her/his will to stay with the husband or wife or to resume cohabitations<sup>5</sup>. Again **R V R** a husband was held to be capable of raping his wife<sup>6</sup>.

In Uganda's context, Article 24 guarantees the protection from cruel, inhumane and degrading treatment. Lessons can be taken from the holding in the case of **Uganda V Yiga Hamidu & 2 other**<sup>7</sup> where the accused were indicted for rape. In defense, the accused said he had paid dowry to the victim's father and therefore she was his wife. He agreed that he had sexual intercourse with the victim but stated that it was lawful because he was the husband of Nassuna. He added by virtue of being his wife, she had consented to the sexual intercourse. Court held that the law criminalizes rape and does not make an exception to married persons. In this regard therefore, the existence of a valid marriage between the accused person and the complainant can no longer constitute a good defense against a charge of rape after promulgation of the 1995 constitution. Court applied Art 31(1) which guarantees men and women equal rights in marriage. Court emphasized that a man and woman enjoy equal human dignity and that in this case the dignity of the victim had

3 [1967] EA 596

4 Supreme Court Constitutional Appeal No.2 of 2014 [1896] 1QB 671

6 [1991] 4 AER 481

7 Uganda V Yiga Hamidu & 3 Ors High Court Criminal Session Case No.5 of 2002

been trampled upon significantly because she was treated like a mere sexual instrument.

It is particularly important to reproduce that reasoning of the learned Justice Kibuuka Musoke in this case because it goes to show that the courts today have zero tolerance to any form of injustice faced by women or girls in marriage or partnership relationships. He opined that,

Article 31 of the Constitution is particularly helpful in this interpretation. According to Art. 31(1), 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. Furthermore, Article 31(3) states that marriage shall be entered with the free consent of the man and woman intending to marry”

### Property of Cohabiting Parties

The property interest of cohabiting couples or partners are not protected under the current Marriage laws of Uganda and yet they constitute a bigger portion in our society. The UDHS 2012 report reveals that there is a decrease in the proportion of married women, from 49% in 2006 to 36% in 2011, and the increase in the proportion of those living together, from 14% to 27% during the same period. The Bill of 2009 made an attempt to salvage this situation by providing for distribution of matrimonial property even to cover cohabitees.

The implications of having legal provisions that fail to recognize cohabitation implies that there are no legal effects of non-marital partnerships. The disregard in Uganda’s current laws therefore falls behind legal progress attained in other legal spheres in the country. The courts in the case of **Kajubi v Kabali (1944)**, court took judicial notice of the fact that getting children out of wedlock was so common and widespread that discrimination between legitimate and illegitimate children would be detrimental to a larger section of the community and thus contrary to natural justice. This leniency should be extended to persons in cohabiting relationships as it has been to children begotten out of wedlock.

In fact, the courts have made progress in this aspect of protecting property rights of cohabitees. Take for instance the case of **Patrick Namenkere V Florence Mwanja**, where the court in this case accepted Namenkere’s claim to repossess the house since there was no marriage between the deceased and Mwanja, hence the property in question was not matrimonial property<sup>8</sup>.

In a more recent case, the courts allowed some property rights for cohabiting parties. This is evidenced in the case of **Hajj Musa Kigongo v Olive Kigongo (2015)** where the court ordered that the contested property be owned in equal shares by the two disputing parties under the doctrine of proprietary estoppel.

Otherwise, the position of the law in protecting only couples married legitimately under Ugandan law is unfortunate because it leaves many persons without a defined legal status unprotected.

### What is at stake if the Bill is not passed? Implications of not passing the Bill.

The implications / costs of not enacting the Bill cover the social, economic and political spheres; if the Bill is not enacted infringements of the rights of women and men in families will keep on occurring.

- Teenage girls of 16 years will be allowed to marry under customary marriage, an inconsistency with the Constitution. Child marriage not only strips a girl of her childhood, it lessens her chances to complete education and fulfill her full potential. Without the protection accorded by the Bill, thousands of girls will be denied a right to have a say in their future.
- From a **Sexual and Reproductive Rights perspective**, child marriage throws a young girl into situations she is unprepared for and increases her chances of suffering and dying from pregnancy and childbirth related causes. Uganda’s Maternal Mortality ratio remains high with approximately 16 women dying daily from

<sup>8</sup> Court of Appeal, Civil Appeal No 37 of 2004

preventable causes. These issues are only a fraction of the concerns the Bill seeks to address.

*.....the continued prevalence of GBV demonstrated in physical and sexual violence*

*economic deprivation; psychological abuse; and, control of women's mobility and decision-making powers even over their own bodies.*

*This is a manifestation of deeper socio-cultural beliefs and practices including the patriarchal tendency to believe that: payment of bride price provides full authority over a woman by a man/ community;*

*The cost of inaction on this Bill also includes the perpetuation of poverty particularly for women – both in economic terms and as a result of powerlessness. The feminization of poverty is attributed to several factors including women's subordination and status in society*

*In relation to property rights, women will continue to derive their legitimacy in the home only through a male – husband, father or son; which legitimacy ceases when that individual is no longer there to defend their rights.....*

- There needs to be a much broader understanding of consent to marriage, to sex and to use of contraception, planning families and the making of decisions in relation to the size of a family, and the spacing of births in line with the SDG 3, 4 and 5 and the recommendations from the CEDAW Committee and the Human Rights Council to the Universal Peer Review Mechanism.
- **Gender-based Violence.** The cost of inaction on this Bill includes the continued prevalence of GBV demonstrated in physical and sexual violence; economic deprivation; psychological abuse; and, control of women's mobility and decision-making powers even over their own bodies. This is a manifestation of deeper socio-cultural beliefs and practices including the patriarchal tendency to believe that: payment of bride price provides full authority over a woman by a man/community; women should not have property rights; and conjugal rights in a marriage. These beliefs denigrate the principles

of equality of persons laid out in the Constitution and in both CEDAW and the Maputo Protocol. According to a study by the Centre for Domestic Violence Prevention (CEDOVIP), an economic cost can be attached to domestic violence, and places this cost – for the minority who seek outside help – at about 0.35% of Uganda's GDP and 0.75% of the national budget.

- **Perpetuation of Poverty and injustice.** Another cost of inaction on this Bill includes the perpetuation of poverty particularly for women – both in economic terms and as a result of powerlessness. While recent indicators point to a decline in poverty to 24.5% of the population, although the data is not sex disaggregated, there are indications that female headed households experience higher rates of poverty. This feminization of poverty is attributed to several factors including women's subordination and status in society. In relation to property rights, women will continue to derive their legitimacy in the home only through a male – husband, father or son; which legitimacy ceases when that individual is no longer there to defend their rights. The overall impact of the denial of rights in marriage and at its dissolution will largely maintain generations in a perpetual cycle of poverty and impact on national development processes.
- **Continued Hindrance to Education.** In September 2015, Uganda was one of the countries that adopted a set of goals to end poverty, protect the planet and ensure prosperity for all as part of the new sustainable development agenda SDG 4 aims at achieving inclusive and quality education for all as a vehicle for building human empowerment and delivery of economic progress. Presently, Uganda has 78.4 females aged 15 years and above that have acquired basic education or no education at all. This is as a result of the high dropout rates. A report from the UN Education, Scientific and Cultural Organization (UNESCO) shows that Uganda has the highest school dropout

rates for females in East Africa<sup>9</sup>. Students are exposed to a number of risk factors including teenage pregnancy<sup>10</sup> and family pressure to end to farming activities during the planting and harvesting seasons.

- The Marriage and Divorce Bill seeks to eliminate child marriages and reduce school dropout rates by harmonizing the position on the age of marriage as 18 years contrary to the existing legal regime that is not harmonized. Furthermore, the bill seeks to address the issue of wife purchase by which some underage girls are exchanged for bride price thereby disrupting their education.
- **Perpetuation of Discrimination and the lack of conformity.** As a signatory to the CEDAW Convention, Uganda is committed to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations including the same rights for both spouses in respect of ownership, acquisitions, management and administration and enjoyment and disposition of property whether free of charge or for a valuable consideration, the same right to freely choose a spouse and to enter marriage with their free and full consent.
- The CEDAW Committee in response to Uganda's combined 4th–7th report expressed concern about the fact that the Marriage and Divorce Law has not been enacted; The Committee urged Uganda to complete its law reform in that area of marriage and family relations in order to bring its legislative framework into compliance with Articles 15 and 16 of the Convention.
- The Protracted delay in the enactment of the Bill greatly hampers the protection of rights, guaranteed in the constitution and perpetrates discrimination in various areas including inheritance and success, access to land and education and access to marital property

generally affecting women's participation in economic development.

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

There is no doubt that achievement of full and complete gender equality in the country would be expedited by the Marriage and Divorce Bill. UWONET and the Marriage Bill Coalition therefore implore the government of Uganda to expeditiously enact the Marriage and Divorce Bill.

## LIST OF THE MARRIAGE BILL COALITION MEMBERS

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

1. ActionAid International- Uganda
2. Action for Development (ACFODE)
3. Akina MamaWa AFrika
4. Anti- Domestic Violence Coalition in Jinja (ADOVIC)
5. Associates for Change
6. Association of Uganda Women Medical Doctors
7. Association of Women Lawyers in Uganda (FIDA-U)
8. Bahai Faith
9. Department of Women and Gender Studies, Makerere University
10. Department of Law, Makerere University

<sup>9</sup> UNESCO 2010 report

<sup>10</sup> 2006 UDHS put the teenage pregnancy rate at 25 percent

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

**With Support from:**



Contact;

**The Executive Director**

Uganda Women's Network  
Plot 710, Block 216, Mirembe Close  
Bbuye-Kigowa, Ntinda, Kampala  
P. O. Box 27991-Kampala, Uganda

**Phone:** +256 414 286 539,

**Email:** [info@uwonet.or.ug](mailto:info@uwonet.or.ug)

**Website:** [www.uwonet.or.ug](http://www.uwonet.or.ug)

**Facebook:** <http://www.facebook.com/uwonet>

**Twitter:** @uwonet