



Memorandum and Comments on the Marriage Bill, 2024

Prepared by

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Introduction

Bukedi Rural and Urban Community Initiatives (BRUCI) is a national organization that was founded with the aim of empowering rural and urban communities for self-reliance. BRUCI is an indigenous organisation headquartered in Tororo District, targeting a cross-section of beneficiaries who include vulnerable children, adolescents, youth, vulnerable adults (women and men), persons living with sickle cells, HIV, Key population, persons with disability in hard to reach and underserved communities. BRUCI uses bottom-up and holistic empowerment approaches to build community led groups that focus on individual behavior change amongst vulnerable communities for sustainable livelihood transformation. BRUCI's core programme areas include; Democracy and Human Rights; Disaster Risk Reduction and Environmental Protection; Community Health and Education; Smart Agriculture and Economic Empowerment; Resilient and Sustainable Livelihood; Research, Innovation and Capacity Building.

BRUCI's vision is: "A self-reliant, sustainable and holistically transformed Community" and mission is: "Building an empowered community through capacity building, economic empowerment, smart agriculture, linkages and networking for sustainable livelihoods and community-centered development."

BRUCI has carried out an assessment of the Marriage Bill, 2024. Whereas the Bill is well-intentioned and provides a number of good reforms for the marriage and domestic relations sector in Uganda, it has some issues that may potentially be unconstitutional and could violate human rights, especially the rights of women while others may be difficult to enforce. Below we provide our assessment and recommendations on areas we feel need to be addressed by parliament before the Bill is passed.

Key concerns and recommendations

Definition of Christian marriages

Clause 5(b) A Christian marriage shall be contracted between one Christian man and one Christian woman for life, to the exclusion of others. This potentially means only Christians can contract Christian marriages and marriages between a Christian and a person of another faith is not acceptable. It also provides that such a marriage shall be for life. This presupposes that under such a marriage, parties are not allowed to divorce.

Limiting the marriage to only Christians undermines potential unions between Christians and persons who profess other faiths and yet this is an important aspect of life that promotes unity in diversity.

Making the marriage for life undermines the possibility of divorce and this goes against the freedom to marry and found a family under Article 31 of the Uganda constitution which includes the freedom to dissolve the marriage where parties are unable to stay together. The provision has a potential to negatively affect spouses (especially women) who may live in violent marriage but cannot dissolve such marriages because of the provisions of the law.

Recommendation

Clause 5(b) should be rewritten as follows

(b) celebrated in accordance with the customs and tenets of the Christian faith

Justification

1. To promote the constitutional right of freedom to found a marriage and freedom to dissolve it
2. To promote unity by removing marriages that are exclusively for Christians
3. To remove ambiguity

Clause 15 – free and informed consent

Clause 15 is an important clause in as far as it provides for informed consent. However, as the world's understanding of free consent developed, today, the requirement is to have free and informed consent. This is after the realization that whereas it is possible to have free consent, such consent needs to be informed where a person understands what he/she is doing.

Recommendation

Clause 15(1)(a) be amended to provide for informed consent

Justification

To remove possible abuse of the process of consenting

Clause 18 – Place of Celebration of Marriage

The clause provides that 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. The clause does not consider some customs and religious practices where marriage can be celebrated in closed doors or where some activities and rites are held behind closed doors. It also does not consider the fact that valid customary marriages have particular persons who preside over them and these cannot be registrars since the registrars are neither recognized by custom. Sometimes they belong to different cultures and customs.

Recommendation

1. Provide an exception on customary marriages which may have some aspects conducted behind closed doors
2. Registrars should not be mandatory for customary marriages

Justification

For clarity

To ease the management of marriages, especially customary and religious marriages

Clause 19 – Celebration of marriage by licensed registrar of marriage

The requirement to have a registrar to celebrate the marriage does not fall within customary marriage since local customs do not recognize the registrar as the person to preside over a marriage. The clause may also be difficult to enforce given the fact that there could be one registrar at a sub-county level and several marriages to attend in a day.

Recommendation

Make an exception for the clause not to apply to customary marriages which are normally local custom and in most cases the presence of the elders is what validates the marriage

Justification

To make it easy for people to continue carrying out customary marriage in accordance with local custom.

Clause 21 – Marriage in Ugandan Embassies, High commissions or Consulates

The clause provides for the celebration of marriages outside Uganda. This is an important provision since it makes it possible for Ugandans living outside Uganda to conduct a marriage in accordance with Ugandan law. However there are a number of issues that arise and need to be addressed, these include

- i. It is not clear if the provision can be applied to customary marriage and whether the Ugandan Embassy, high commission or consulate can be treated as an ancestral home where a traditional marriage ceremony can be conducted
- ii. It not clear where the notice will be given. To avoid a situation where a person moves out of Uganda and gets married when there are subsisting marriages, it would be important that a notice for such a marriage is given in Uganda and within the local area where the person stays outside Uganda
- iii. It is not clear how long the person needs to have stayed in the country before such a person can be allowed to conduct a marriage in a Ugandan consulate

Recommendations

- i. The Bill should provide for how customary marriages can be conducted in a consulate and where possible limit the application of this section to only civil marriages
- ii. Notice should be given in Uganda, to the registrar general, a local place of worship in case of religious marriages, or a sub-county in cases of civil or customary marriages
- iii. At least one of the persons intending to get married should have stayed in the country where the marriage is to be conducted for 6 months prior to carrying out the marriage

Justification

To remove ambiguity

Clause 22(2) Certificate of no impediment

Clause 22(2) is ambiguous in that it provides that once a certificate of no impediment is issued by the registrar, it shall be proof that there is no marriage between a person getting it. The provision does not cover potentially polygamous marriages under the Bill.

Recommendation

Amend the Bill to provide for polygamous marriages. Such a certificate should be able to recognize the polygamous marriages conducted under the same law.

Justification

For clarity

To remove a potential of abuse where persons under existing marriages use the certificate to hold out as if they were not married

Powers of a registrar and powers of court after a substantive objection has been made

The Bill is silent on what the registrar or a court can do once an objection to a marriage has been raised. There is a need for the Bill to provide for the immediate actions and the long-term actions. For example, where there is evidence that there are genuine reasons, the registrar may

investigate the matter, where the objection is raised at the time of celebration of a marriage, such a marriage should be stayed for more investigation. To avoid a situation where false accusations are made, the law should empower the registrar to order for costs in case where there is a malicious or false accusation that leads to loss due to suspension of the marriage ceremony

Recommendation

1. Give the registrar powers to investigate a complaint including powers to examine evidence and make a ruling
2. The registrar and court should be empowered to make particular orders such as;
 - a. To suspend the marriage ceremony where there is evidence that the complaint raised is substantive
 - b. To investigate the complaint, gather evidence, and make a decision
 - c. To order for the continuation of the marriage ceremony where there is no evidence to prove the allegation or where the allegation is not part of the grounds under the Bill
3. Give the registrar and court powers to order compensation and payment of costs in cases of false or frivolous accusations

Justification

1. To empower the registrar and court to take action in case of an objection to marriage
2. To prevent against abusive objections to marriages that may negatively affect the parties to the marriage.

Marriage districts and district registrars (clauses 30 and 31)

Under clause 30, the minister shall by statutory instrument declare places in Uganda to be districts and under clause 31 each Chief Administrative Officer is a registrar. The fact that each district in Uganda has a chief administrative office, means every district automatically becomes a marriage district. In effect, clause 31 removes the effect of clause 30.

Recommendation

Every district in Uganda should be a marriage district by operation of the law

Justification

To remove ambiguity

To bring services closer to the people

Clause 34 and 35 marriage particulars

The two clauses provide that the registrar should submit marriage particulars to the district registrar and the district registrar to the district registrar. The use of the phrase “marriage particulars” is confusing since these tend to be particulars of an individual. Instead, the law should require the registrars at all levels to submit returns to the Registrar general

Recommendation

Replace the words “marriage particulars” with returns wherever they appear in clauses 34 and 35

Justification

For clarity purpose

Clause 37 Access to National Marriage Register

- (1) The register shall be kept by the National Identification and Registration Authority established under the Registration of Persons Act. Under S. 3 of the Registration of Persons Act, NIRA is under the Ministry of Internal Affairs, while under clause 2 of

the Bill, the Minister means Minister in charge of justice. This means the Registrar General for marriages and all registrars will be under the Ministry of Justice. Only the National Marriage Register will be under a different registry. This may cause unnecessary bureaucracy and challenges in data management and authenticity since it may require a different person to be in charge of this register.

The clause conflicts with clause 36 which establishes the National Marriage Register

- (2) Clause 37 requires that once a person has requested for information, it will be granted in electronic form. This goes against the right of access to information under Article 41 of the Constitution, operationalized by the Access to Information Act, which provides that information should be granted in a form that the citizen who is requesting prefers and can afford. Restricting information to electronic formats may undermine access to information by those who do not have access to such formats and persons with disabilities who may not be able to access electronic systems.

Recommendation

1. The register should be kept by the Registrar General since this entity is already established under the Bill.
2. Access should be granted by the Registrar General who is in accordance with the Access to Information Act an information officer. The Registrar General should be given powers to authorize other persons to grant access.
3. Information should be accessed in a form that is preferred by the requester

Justification

1. For clarity
2. To align the Bill to Article 41 of the constitution
3. To provide for the harmonious implementation of the Bill

Clause 38 nonregistration does not invalidate a marriage.

The clause provides that one need not register a marriage for it to be valid. Whereas this was an important provision under the Customary Marriages Act and the Marriage of Africans Act of 1904, given the high levels of illiteracy at the time, it was necessary to provide for the legality of unregistered marriages. However, today, looking at the Bill, where all marriages have to be conducted before a register who witnesses them, and even where they are not witnessed, they are required to give notice to the registrar. Allowing unregistered marriages will undermine the validity and enforcement of the Bill.

We suspect that the justification for the above clause was to meet requirements for those who are unable to register. However, the Bill should make it easy to register as opposed to allowing unregistered marriages.

Recommendation

Delete clause 38

Justification

For clarity and avoiding to undermine the enforcement of the Bill

Clause 39 Conversion of marriage

The law does not provide for effecting the changes in the marriage register. This has the potential of giving a false search where a marriage was changed to polygamous or monogamous but the register was not changed and any search does not bring the change hence giving a false status on the marriage. The law should require the notice of change to be served on the Registrar General who should make changes in the register.

Conversion of a marriage is an important aspect of marriage law and should not be handled with ease. Under the Bill faith ministers such as religious leaders are registrars, these may not be well grounded in the law to handle important issues like conversation of the law. Such issues should be left to a magistrate and to registrars who are probably qualified in law. The registrars should require registrars or magistrates to inquire into the applications for turning the marriage to ensure there was genuine, free, and informed consent.

Recommendation

1. A change in the marriage should be served on the registrar general and the registrar should effect changes in the register showing the dates and time when that change has happened and the change should take effect after being registered
2. Conversion of marriage should only be before a magistrate or the Chief registrar

Justification

1. To avoid situations where the register reads a different marriage from the one that was converted into.
2. To ensure harmonization of systems
3. For clarity

Clause 40 Void marriages

The clause makes permanent impotence or vaginismus a fact for void marriages. Whereas consummation is a factor in marriage, ordinarily lack of consummation is a ground for voidable marriages. This is especially so where the parties have consented and agreed to the situation. The law should not force people not to go under a union of their choice based on physical diseases. However, the law can make this a ground for people to leave a marriage if they choose to.

Recommendation

permanent impotence or vaginismus should be grounds for voidable marriage

Clause 42 Voidable marriage valid until annulled

When a marriage is annulled by the court for whatever reason, there should be a system where the National Register is adjusted to reflect the changes.

Recommendation

Introduce a clause that requires an order to be served on the registrar general to be able to make changes in the register.

Clause 43(3) name of the husband.

Clause 43(3) provides that 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.

The above provision makes it mandatory for the wife to use the name and requires a divorced husband to consent to the dropping of his name after divorce. This could come with issues of the husband forcing a wife to use his name even after divorce or refusal to give consent.

Recommendation

A person should be free to use a spouse's name

A woman should be free to choose whether to continue using the former husband's name or not, even after divorce. Such a choice should not be mandatory. The clause should be redrafted to read as follows

(a) A spouse may choose to use another spouse's name during the subsistence of the marriage

- (b) *A wife may choose to continue using the former husband's name after the dissolution of the marriage.*
- (c) *No person shall prevent a person from continue using of a spouse's name in situations where the person chooses to*
- (d) *no person shall compel a woman to use a husband's name*

Justification

To avoid a situation where a wife is conditioned/forced to take on the husband's name after dissolution of marriage

Clause 45 Types of Matrimonial Property

The clause mentions the type of matrimonial property. However, it is not explicitly on intangible property. The clause seems to limit itself to movable and immovable property. With the development of the world today, it is possible to have intangible property, and such property can meet the definition of matrimonial property.

Recommendation

Amend clause 45(c) to include intangible property.

Justification

To provide for future developments where matrimonial property can be intangible

Clause 46 matrimonial property owned in common

Ownership in common is normally associated with land and registration of titles. However, when it comes to other forms of property, there is a presumption that ownership in common would mean an equal share of property. In this case, it could mean an equal share of property between a man and wife. It could also be an equal share between a man and wives in the case of polygamous marriages recognized under the Bill. Under the Bill, we find these as major gaps in this clause.

1. Under a polygamous marriage, ownership of property could mean an equal share among the husband and wife.
2. It is not clear how the law will treat property acquired before or during a marriage between a man and a woman before the marriage is polygamous (acquired before the husband marries a second wife) and whether this becomes matrimonial property within the meaning of clause 45, in which case the subsequent wife/wives have a say on the property.
3. The relationship between clause 46 and S. 2 of the Registration of Titles Act (RTA) which provides that
 - a. Where there is a conflict between other laws and the RTA, the RTA shall prevail and
 - b. The above does not affect laws for the protection of the rights of married WOMEN. The provision in clause 46 applies to both spouses, including men and women. We have a challenge where if the clause is being enforced for women, it is upheld, and if it is against men, S. 2(a) of the RTA is applied, and that may be against the rights of men.

Recommendation

1. A sub-clause defining what ownership in common means should be added. Such ownership should focus on an equal share of property for people with equal rights. For example, spouses under the same polygamous marriage should have equal rights to matrimonial property where the spouses share the same property.
2. The clause should also provide for common ownership to include other properties, including land and any other tangible and intangible property.

Justification

For clarity

Clause 47 Prenuptial and postnuptial agreements

The provisions of clause 47 are not clear whether they apply to contacts before or after contracting a marriage. The title talks about prenuptial and postnuptial marriage, while the body of the text mixes the two up. For example, clause 47(1) states that

“Two persons in *contemplation of a marriage may, before or during the subsistence of a marriage,*”

The wording of the sub-clause suggests that the prenuptial (or postnuptial) is made in contemplation of the marriage, which may suggest the agreement is made before the marriage.

Clause 47(3) states, “The agreement in subsection (1) shall be witnessed by not less than two people chosen by the persons *contemplating marriage.*”

The interpretation clause of the Bill (clause 2) defines a "postnuptial agreement" as an agreement made between parties to a marriage,.....

The clause needs to be split up into provisions for prenuptial agreements and postnuptial agreements.

Other concerns on the same clause include

- a. The Clause does not provide for how the couples will handle issues of liabilities such as debt incurred either before or during the marriage. For example, how will the law treat matrimonial property pledged under a mortgage or any other arrangement?
- b. The clause does not provide for the maintenance of parties after the dissolution of the marriage.
- c. The clause does not provide for free and informed consent as a basis for a prenuptial or postnuptial agreement.
- d. There is a need to have such agreements registered to protect either party, especially after the passing of time.

Recommendations

1. Provide different sub-clauses for prenuptial and postnuptial agreements for easy clarity and interpretation.
2. Add sub-clause (d) after clause 47(1)(c) to read *“management of debt and other liabilities acquired before or during the marriage”*
3. Add sub-clause (d) after clause 47(1)(c) to read *“maintenance of the spouses after the dissolution of the marriage”*
4. Add sub-clause (4) to read as follows. *“An agreement entered into under this section shall be under free and informed consent from the parties entering into it”*
5. Add sub-clause (5) that reads as follows. *“A party to the agreement under this section may register the agreement with the registrar of marriages.”*
6. Add sub-clause (6) that reads as follows.

A certified copy of a registered agreement shall be prima facie evidence of the prenuptial or postnuptial agreement.

Justification

1. For clarity
2. To provide for the handling of debt in cases of prenuptial or postnuptial agreements
3. To provide for the maintenance of either spouse after dissolution of the marriage
4. To provide for free and informed consent as a basis for the agreements
5. To provide for registration of prenuptial or postnuptial agreements

59. Distribution of property

Under sub-clause (59(2)(c), the Bill requires the court to consider the best interest of the Child. The Bill does not define a child since this could mean children as defined by the Children's Act or biological children irrespective of age. A definition of a Child under the Bill is needed.

Recommendation

Add sub-clause (5) to read as follows

“Under this section, a child shall mean;

- (a) A biological child under the age of 18 years
- (b) An adopted child under the age of 18 years

Justification

For clarity

Clause 62. Jurisdiction in matrimonial proceedings

The clause provides that 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.

Under clause 32, the registrars of marriages are;

- i. Sub-county chief for customary marriage
- ii. Religious leaders for faith-related marriages
- iii. District registrar (not clear on the qualification) for civil marriages

Much as the above persons can witness the conduct of marriage, they are not well grounded to preside over matrimonial proceedings and may lead to miscarriage of justice. All matrimonial causes should be handled by the court

Clause 62(2) provides that registrars should only handle issues of reconciliation. Ideally parties who want to reconcile should find a person they trust to engage with. The law should not set who should mediate between two adults.

Recommendation

Delete clause 62

Justification

To avoid potential miscarriage of justice.

Clause 73(1)(b)

Clause 73(1)(b) dissolution of marriage shall be where the parties have mutually separated for at least one year immediately preceding the date of presentation of the petition. This makes it difficult for persons in a marriage to move on where they feel the marriage can no longer work. It is also against clause 76, which is to the effect that when parties are separated they can go ahead and separate

Recommendation

Delete clause 73(1)(b)

Justification

For clarity

Clause 74: Irretrievable breakdown of marriage to be the sole ground for dissolution of marriage for a sole petitioner

Requiring a sole petition in a dissolution of marriage only one ground for petitioning makes it difficult for people to move out of marriages. This puts proof of dissolution at a high level and a person has to prove irretrievable breakdown. Evidence may not easily come and at times such evidence may be demeaning to be kept as a public record. On the other hand, this provision undermines other grounds already provided for in the act such as grounds for voidable marriages, and consent, among others.

Recommendation

Delete clause 74.

Justification

To avoid potential injustice coming from the enforcement of the provision

Clause 75.

Clause 75 looks at evidence of irretrievable breakdown of marriage, similar to clause 74.

Recommendation

Delete clause 75

Justification

Consequential effect of Clause 74

Clause 89; Holding out as though married

The clause provides that a person who holds out as a husband or wife under this Act commits an offense. Clause 89(2) provides that 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.

The clause seems to make cohabiting a crime. This is the case despite the fact that the majority of Ugandans are living under such relationships and the fact that even those who get married start off in a cohabitation arrangement. This will be difficult to enforce and will be unfair to those in these kinds of relationships. The clause goes against Article 31 of the constitution that provides for free consent to marry. Where 2 adults have agreed not to marry but stay together, the law should not criminalize their union.

Recommendation

Delete clause 89

Justification

To bring the Bill within the constitution

To avoid legislating against free relationships

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