

Promoting Women's and
Girls' Rights in Uganda

Culture and the 2017 Marriage Bill



*An abridged position paper based on
experiences from the cultural communities
of Teso, Lango, Acholi, Alur, Buganda,
Tooro, Busoga and Karamoja*

*Cover photo: A traditional marriage bungle for the Acholi,
a cultural community in northern Uganda*

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The support from all these partners has allowed the potential of our diverse cultural communities to be showcased as an important contributor to discourses and interventions for managing violence against women and girls and ensuring that their rights are respected.

Preface

Culture can be a powerful contributor to development and to a just society because it defines how we see the world. It influences our perception of what is “right” and “wrong”, how we relate with each other and with nature; how we govern ourselves and share power. Culture therefore influences social and power relations in all spheres of life, including marriage.

In spite of this potential, culture is often misinterpreted and perceived as a hindrance to progress. This could be attributed in part to the influence of modernity, formal education and some religions that dismiss it as irrelevant and prescribe development solutions that are often external to the cultural context. There is also a tendency to attribute most social injustices, oppression and different forms of marginalisation to culture, without objectively examining the negative and positive factors at play.

In 2019, the Cross-Cultural Foundation of Uganda (CCFU), with support from Diakonia Uganda, conducted research to examine cultural resources in Acholi, Lango and Teso that may complement or contradict the provisions in the 2017 Marriage Bill, which has been debated for the past 40 years. In 2020, with support from UN Women, CCFU expanded the scope of the study to include the cultural communities of Buganda, Busoga, Karamoja, Alur and Tooro.

All these cultural communities share common values and principles that, with a few exceptions, support provisions in the Bill, such as the protection of women and girls, social safety nets within the family and clan settings, women’s authority and responsibility over resources within the home and freedom of choice in traditional marriage. Women’s right to own land, the need for consent for additional wives in polygamous marriages and in cases of widow inheritance, as well as issues of marital rape (which in most cultures is a foreign concept) however emerged as more difficult to conciliate with provisions in the Bill.

It is anticipated that this study will be a resource for civil society, government policy makers, cultural and religious leaders, to appreciate the commonalities and differences between cultural and statutory principles and provisions regarding marriage, and to contextualise cultural controversies as they debate the passage of the Marriage Bill.

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1. Introduction

The enactment of a comprehensive law on the family has stalled for close to six decades. Various consultations and studies have led to attempts to develop a single Bill – the Marriage Bill, 2017 - that harmonises the different laws concerned with family life. This has however not reached a conclusive stage, in spite of the efforts of legislators, women’s organisations and other actors.

These efforts include the Kalema report of 1964, the Uganda Law Reform Commission Report of 2010, the Domestic Relations Bill and the Marriage and Divorce Bill. While some areas initially covered by the Marriage Bill were turned into separate proposals (including the Domestic Violence Act and the Sexual Offences Bill), the Marriage Bill remains to be enacted.

Several clauses in the Bill have drawn much controversy. Many critical voices have pointed out to a disconnect between the Bill’s provisions and “culture” or “traditions”.

2. The position paper

This abridged position paper¹ is intended to provide information to support advocacy for enacting the Marriage Bill, by affirming, confirming and/or challenging beliefs and perceptions about the Bill and its intersection with the culturally-defined rights and traditions of Ugandan women and men.

The paper examines and contextualises cultural beliefs, norms and practices (past and emerging) related to marriage in several Ugandan cultural communities - the Acholi, Lango, Iteso, Alur, Karamojong, Batooro, Basoga and Baganda. It represents an attempt to identify whether, how and why they may have an impact on ‘contentious’ clauses in the Bill. The paper draws on research carried out by the Cross Cultural Foundation (CCFU) on the culturally-defined rights of these communities, as well as on other literature. This paper also uses primary data from all the cultural institutions covering the districts of Soroti, Serere, Amuria, Kabarole, Kyenjojo, Nebbi, Jinja, Luuka, Mayuge, Moroto, Napak, Masaka, Kampala; as well as secondary data for districts in Acholi and Lango.

The clauses of the Bill examined in these pages concern the age of marriage; property rights in marriage; consent to marry a second wife under polygamous arrangements; bride-price / marriage gifts; bride price refund; property rights under cohabitation; divorce and asset sharing upon divorce; widow inheritance and marital rape. While the Bill no longer seeks the legalisation of cohabitation, the paper discusses it as an important rights issues.

The paper attempts to provide answers as to whether the disconnect mentioned above actually exists and, if so, to what extent. Recommendations are also made. It is anticipated that this study shall inform advocacy engagements with legislators, cultural and religious leaders, and ordinary men and women on the contentious issues pertinent to the long-drawn out Marriage Bill.

3. Resistance to the Marriage Bill and respondents' recommendations

a. Limited information

The reasons respondents to the study gave for resistance to the Marriage Bill are many. A major one concerns limited information and understanding of the Bill by the communities, due to inadequate '*sensitisation at the community level*'.² Men in particular are not convinced about the need for the Bill and are often sceptical about the reasons women support it. Respondents to this study believe their communities have not understood³ or have misunderstood the issues in the 'Bill', in part because of the lack of translations to the languages that most people understand.⁴ Much sensitisation⁵ is also needed. Another flaw with the process of developing the Bill according to respondents, was that of a 'top bottom' non-participatory approach. This particular view was that since values differ and no cultural consultations were made, the Bill does not take into consideration the diverse views and cultures across the country: '*...let people air their views 'if they don't own the law, they will violate it'*⁶ and '*pass the Bill so that every culture is respected and included*.'

b. Lack of harmony with culture

A recommendation made was that culture should be examined carefully and used to *include some exceptions in the Bill and attune to changes*⁷ in the current context. There was also a call for the Bill to address the causes of the problems in marriage, *as it was seen to address symptoms*: hence a need to focus on the issues that bring about misunderstandings leading to divorce (identified as a "modern" way of life) and on the traditional and religious remedies (e.g. respect for the man as household head). Another source of tension pointed out was government's focus on the concept of equality, which conflicts with culture, and the 'excessive power' given to women (and children) to take men to police, which means a man cannot discipline them, as culture demands: '*Women's freedom is too much, they are accused of challenging men while dangling before them the prospect of prison in case the men respond by 'beating them'*⁸. The resistance here concerns the notion of equality and the conviction that 'women can never be equal, or else violence will ensue, since culturally women are supposed to be submissive.

The particular provisions of the Bill exist in a broader context, that of several "legal regimes" co-existing – the law, as well as culturally-defined norms and prescriptions. Thus, the Bill seeks to create an environment where the rights of both men and women are upheld. One challenge is that this means highlighting all aspects of marriage, including "unspoken areas", in as far as violations are reported in these very areas. Another concerns differences in view points, all of which have to be harmonised where possible. The conflict between commonly held perceptions and an honest look at practices is well illustrated by the response that '*when the law 'enters' the bedroom...the law starts asserting that there is marital rape; it is a big challenge and hard to accept. How can they start controlling what happens in the bedroom? (There is) conflict between law and culture... 'people' run straight to the police to report simple matters, making the men ashamed (...this is a) foreign law without a human touch, that has affected culture by making women not to respect men and bringing out matters of the bedroom*⁹. The question as to whether married women get forced into sex and how that affects them is invalidated in this argument, by the idea that reporting the 'simple matter of

a man raping his wife' is *foreign, uncultured* and should be 'kept under wraps', as it has been for ages. The issue then becomes not that the practice exists, but rather, that it is reported.

Another example is that of a minor (as legally defined), a girl of 15 getting married¹⁰. Culturally, the payment of bride price indicates that she is a married woman, while the law stipulates that she cannot give consent as a minor and having sex with her is defilement. The limitations of cultural structures in promoting women's rights are some of the same '*socially constructed unwritten laws*' that attract social censure if not followed, but that also hide practices that are violations even from a cultural perspective under a blanket of silence and submission by women. Several instances were reported where women have withdrawn cases of severe rights abuses under the pressure of the communities they live in, but examples were also given where the patriarch of the family has stood by the woman, against his own son, for a violation committed that he could not condone. Another difference in approach acknowledged by some respondents in the cultural institutions surveyed is that culturally, the focus is on peace, reconciliation, reparation¹¹ and continuity while often the courts of law will provide custodial and punitive sentences and rarely reparation. The legal provisions (take) men and women as equal and this denies the men their power and control over women.¹² The Elders' Forum in Karamoja thus works at two levels, to provide protection and find solutions to some issues, for instance, courtship rape is declining because the elders are discouraging it, yet it was previously an accepted cultural practice.

A further issue that challenges access to justice is when there is a conflict in law and cultural norms, then '*enforcement becomes contentious.*' This is especially the case since traditional norms and value systems are rarely codified, though understood by the communities, while the common person gets 'strange' lawful directives that often take precedence¹³. There is a mixed sense of who the communities go to first and trust, between the LCs and clan leaders, although members do not always easily differentiate what cases are for LCs to handle and what cases are for clans. There is an overlap between some of their respective activities and in some cases, one individual wears several hats. While some issues are to be dealt with by the families and clan structures they may be taken directly to the formal structures. Conversely, criminal cases, such as defilement and incest, that should be taken directly to the police, are sometimes discussed and 'handled' by clan structures.

In Busoga and in Karamoja, some of the sanctions used may conflict with legal provisions, such as caning errant members. Inheritance practices that leave out girls and deprive women of property on divorce are also potentially in conflict with the law, which would require that an assessment be done¹⁴. The past cultural practice in Tooro, where a daughter-in-law had to submit to her father-in-law as her first sexual encounter affected and disempowered the woman and was in conflict with her legal and human rights, as well as with religious provisions¹⁵ quite apart from the psychological torture that the women (and husbands) would go through.¹⁶ In Ker Alur, it was pointed out (as a perception taken as fact) that men own property and even own women as property, whereas the legal view is that women have a right to own property and are equal beings to men. Widow inheritance was also viewed as in conflict, such as with provisions of full and informed choice and consent. Subordination of women and their confinement / low mobility reduce their access to information on important rights and laws, that effectively reduces their access to justice¹⁷.

c. Men's status

The Bill has clauses that some categories of men consider to be disempowering, since it reduces the hold men can legitimately have on women, who are their intimate partners and wives. Many assume that most women will be "big-headed" if the Bill is passed and are rooting for some clauses to be revised. The controversy on the division of property upon divorce, and non-refund of bride price upon divorce (in the bill) are viewed as favouring

women. The practical and cultural reach of concepts such as consent, divorce and separation are not clearly defined according to some of the respondents, especially since what is viewed as divorce *'is in fact separation.'* They recommend that an examination and definition of property sharing mechanisms for boy and girl children be defined and that inefficiencies and delays in the traditional justice system¹⁸ be addressed by the Bill, which should include guidelines for in-laws and elders on addressing rights abuses and the protection of families¹⁹.

d. Stereotypes

Stereotypes and biases affect the way the Marriage Bill is perceived. Irrational behaviour is expected., such as where ... *the Bill will 'discourage people (read women) from working, people will kill each other as a result of property sharing 'because it's the men that contribute mostly'*²⁰. Arguments are also made about the maintenance of inequitable - and sometimes unfair - privileges in the name of protecting a presumed static culture and stifling changing norms.

e. Divorce and bride price refund

To divorce, at least 5 years should have passed, argued some respondents, otherwise if a woman divorces twice, it would appear that she interested in property. A view from Tooro, while discussing bride price, was that if there is 'excessive' violence, then a refund should be made, as an exception, to enable the woman divorce quickly and survive. A cultural leader from Ker Alur strongly recommended maintenance of bride price but suggested a refocus on support to the new family and on protection of the woman; and that there should be no refund in case of divorce.

f. Property Rights and Women's Contribution

Care work is not recognised and the proceeds of joint work are often in the names of the man. As a result, if a separation takes place, the woman may go empty handed²¹ unless the man is a fair person. To protect women's property rights, it was suggested by some respondents that joint purchase of property should always feature the woman's maiden name in addition to the married name, otherwise women have been dispossessed because the agreements read "Mr. and Mrs..." and the "Mrs". had since changed²². They also suggested that all joint matrimonial property should be documented. In addition, a study should be conducted on the traditional approaches to property / productive resource ownership, especially shared use and shared benefit as a more 'cultural' approach because the *'productive system and unit of production and consumption depends on the family, especially in the north.'*

g. Religion

Challenges from a religious perspective were mentioned, as divorce and related practices are discouraged or forbidden, depending on religious groups. In addition, these groups would rather issues such as marriage and divorce be handled according to religious doctrine and law: *'divorce is difficult because the vows are for life, but the couple can separate if Catholic or obtain a divorce if Anglican or Muslim'.*

h. The role of cultural institutions

Elders and other cultural leaders are important to target to understand the rationale for the Bill and thereafter support it. The respondents recommended that the Kabaka and Katikiro and religious leaders in Buganda, as well as the Emorimor, Rwodi, Kyabazinga and Omukama as well as the elders in Karamoja, would need to speak in favour of the Bill, for it to be accepted.

4. The Marriage Bill: the contentious issues

a. Marriage age; choice; free and full consent

The Bill stipulates 18 years as the minimum age of marriage, for all forms of marriage and for boys and girls, reflecting the provision of the Uganda Constitution.²³ The proposals in the Marriage Bill would remedy many gaps between Ugandan law and Uganda's obligations under the Convention on the rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the African Charter, the African Protocol and other relevant human rights treaties.²⁴

The stipulations and practices in the 8 communities surveyed vary, although their cultural institutions have explicitly embraced the age of 18 as the statutory minimum age of marriage. Several only issue marriage certificates to couples if they have attained that age.

Cultural practices however vary. Thus, respondents reported that culturally, the age of marriage amongst the Acholi, Alur and Lango was – until the law provided otherwise - between 20- 22, and gauged by the physical, emotional and cognitive signs of maturation^{25, 26}. A focus group discussion with youth emphasised the cultural practice that *'in the past, marrying a girl below 17 years was never heard of'*²⁷. The Karamojong use(d) puberty, development of breasts and menstruation²⁸ as signs of readiness for marriage. Some respondents cited the age of 16 and above as the age of maturity for girls, when *'they are able to perform all the duties a married woman can do'*²⁹. A youth group on the other hand mentioned that in the past, the age of marriage was between 20 – 25 years³⁰. In Acholi, respondents reported that they also wait for a girl's ability to lift a pot of a particular size alone. Among the Iteso, *'a girl would be given time to mature; then they would remove 2 of her teeth, signifying she is now ready for marriage. This would happen at around age of 20 – 21'*³¹. The current practice is however that some youth marry as young as 16 – 17 years old. In Tooro, a practice of marrying off girls before the age of 18, exists but is changing. Girls could and still do get married from as early as 14 – 15 years because *'culturally, people don't mind about age, as long as a girl has her period'*³². The Busoga Kingdom is currently engaged in trying to stamp out marriage before the age of 18 and respondents indicated that the communities accept this age generally, with exceptions driven by poverty, drop-out from school and pregnancies³³. The practice previously was for marriage to take place from around 14–16 years in Busoga, which persists in some areas. Respondents from the cultural institution reported that they *'recognise that the age of consent is 18'*³⁴. Given the different signs for these ethnic communities, the favoured age of marriage ranged from 16 to 22 years. In the case of betrothal of children at an early age, they were left to mature before being *'officially'* married. ***The stipulation on age in the Marriage Bill is therefore not contradictory to the cultural requirements for many communities and is in line with emerging practice in these communities.***

There are however also instances of abuse of cultural norms by parents who marry off very young girls and the youth themselves who tend to elope at an early age. Underage cultural marriages thus still take place, even at times in the presence of relatives and culturally-compromised leaders. The minimum age of marriage is lower in practice (10-14 years) for example amongst communities practising female genital mutilation in Karamoja, and in many rural areas. Nevertheless, when 14 - 17 year-old girls get married, this is considered by some members of the communities consulted in this study, as harmful and *'against their*

culture'. The fact that these marriages nevertheless take place highlights the low monitoring and enforcement capacity of the cultural mechanisms meant to preside over them; and the vested interests of the concerned parents, mainly acting in anticipation of bride wealth.

Marrying children below 18 runs into the legal problems related to choice and consent. Thus, a 14-year-old cannot consent to getting married as underage and, where the parents or guardians are involved, the choice of the youth is also negated. As some girls are still in school at the age of 18, an interest in a higher minimum age amongst a minority group was reported by a CSO respondent and expressed by a cultural leader. Some respondents however, reported that their communities think 18 is 'too old', particularly for those girls no longer at school.

b. Exchange of bride price / marriage gifts

Bride price is an amount of money, property or wealth paid to a woman's parents for the right to marry their daughter³⁵, exchanged during customary marriages. The Marriage Bill makes the payment of bride price optional and describes it as gifts to the girl's parents and other relatives.

Bride price is important for all the communities surveyed, though differently defined. The value attached to the exchanged items varies, but has symbolic meaning in all cases. Under the current customary marriage law, payment of bride price is essential in determining the legality of a marriage, though this is not harmonised with the ruling on bride price demand and refund as a result of the campaign, litigation and appeal by the NGO MIFUMI³⁶.

Bride price items vary, from the *mutwalo*³⁷ or *mukaaga* of the Baganda and Batooro, alongside other items such as paraffin, clothing for the parents, aunts and uncles; to the many heads of cattle and goats amongst the Karamojong and Iteso and the sacrificial goat of the Basoga, as well as the various gifts exchanged, to the mandatory iron "ingot" of the Acholi, with cows, goats and other items inclusive. In many communities, such as the Karamojong and Iteso, it is a kinship, extended family and clan members' responsibility to prepare the bride price, viewed as the outward symbol of the beginning of a lasting relationship between two families. The payment of bride price amongst all the communities is a sign that the woman becomes part of her husband's clan and it bestows certain rights on her and on her husband. Amongst the Karamojong, for instance, the woman is allowed to participate in rituals, while her husband can 'sit' with the men and is respected.

While the **research identified bride price as still a valued practice amongst the groups consulted, changes in its implementation and how it is perceived have begun to erode some of its cultural value.** An important change is its commercialisation, which goes against the grain of some cultural values. Amongst the Baganda, for example, a father-in-law was not expected to negotiate for bride price, a practice now reportedly happening. Respondents, as in Buganda and Tooro indeed decried an exaggeration of marriage ceremonies, which have become more lavish, with expensive gifts and high bride price demands. The behaviour of the youth, and the more transient nature of current marriages are factors making some parents wary of an expensive bride price, for fear of having to refund it, as mentioned by respondents in Ker Alur. Hence the call to revert to the intrinsic value of the bride price that symbolised the new relationship between families, as opposed to the creeping transactional value of the relationship. Many respondents strongly supported the maintenance of bride price payments, while others agreed with the notion of a gift. A challenge, as seen below, is the increasing incidence of divorce and concerns about not therefore being able to have the bride price refunded.

c. Criminalisation of the refund of marriage gifts

The criminalisation of the refund of marriage gifts, as proposed in the Bill, proved controversial in all the communities studied. Many, for instance respondents in Karamoja, Teso, Alur and to some extent in the other consulted communities as well, do not agree with such criminalisation as a matter of principle, although the practice is more nuanced than the opinions expressed. Some respondents want the bride price criminalised because of the way it is abused, the hardships caused in some cases and because it often no longer reflects the underlying cultural principles of togetherness. The assertion is that, while a bride price is paid to commit the couple to each other and initiate a relationship between two families and clans, the return of the bride price symbolises the breakup of this relationship. Respondents cited examples of families who refused to return the bride price, as well as those who felt obliged to return it because in their view, it would be wrong not to do so, since a refund is the norm upon dissolution of a marriage. Examples were cited of women working to return the bride price to free themselves from a relationship, and even to ensure their own safety. Culturally, among some Iteso and some Karamojong, a refund happened only when the woman married another man who would then pay the bride price to her ex-husband to compensate him. Examples were provided among the Karamojong, where a clan did not accept refunds, while some respondents in Tooro, Buganda and Karamoja found the practice disrespectful to the parents and inconsiderate of the woman. Not refunding exists and is emerging among the Karamojong, Alur and Iteso, particularly when the man is considered to be in the wrong. On the other hand, families of the ex-husband among the Iteso have been known to 'confiscate' a woman's children with subsequent partners, if the refund is not made. Among the Karamojong, these children are considered to belong to the separated husband until the refund is made by the new husband to the previous one. The strength of this practice is illustrated by the fact that without the return of bride price, the ex-husband and his family sometimes will struggle for the body of a deceased ex-wife and the location of her burial will be in contention, as he might claim that she is still his wife.

On getting married culturally, women change their totems, such as in Teso and their gods, such as in Busoga, to that of their husbands. This change must be reversed if the marriage breaks up and is linked to practices such as bride price for a deceased wife before she is buried and determination of her resting place, amongst almost all the communities studied. Negative effects on women include staying in abusive relationships for fear of burdening poor parents to refund the bride price. In Teso, Karamoja, Alur and to a certain extent in Toro, whether and how much bride price to refund increasingly depends on the time spent in marriage and the number of children had, implying some computation of the *material value* of the bride price, despite the widespread view that culturally, the symbolism of bride price is in relation to building new relationships. The *mutwalo* of the Baganda, (which at one time was winged termites³⁸), the iron ingot (of the Acholi); the exchange of various gifts between two families among the Alur; all have intrinsic social cohesion value, binding one family to the other. A separation will not undo many of the permanent relationships developed. A focus on the material value of bride price, and therefore its refund in case of separation, cheapens the deep bonds developed between the concerned families and brings them into the material realm.

The idea of a gift appealed to several respondents across the communities consulted, as a way to avoid some of the pitfalls of a refund and to encourage more culturally recognised marriages. Marriages are also considered to be less stable, so some parents are reserved about receiving high bride price amounts because of a fear of having to refund soon after. The slowly emerging practice is to place less emphasis on bride price payment, and particularly its refund. The more common argument against refund is that the marriage then

takes on the aura of a commercial transaction, incorporating the “sale” of women and girls, a concept many respondents found offensive from the point of cultural values, human and women’s/children’s rights. These were from both sides of the argument (for and against bride price as a gift). Many ethnic groups are still holding on to the practice of bride price, but even within them, a minority are calling for it to be dropped, as, according to them, it is linked to violence against women, and to ‘disrespect’ to the girl’s parents because the bride price initially paid reflects an appreciation of their role in bringing her up. Amongst the Karamojong for instance, the bride price was distributed to several relatives and a refund meant going back to these same relatives or taking on the full burden of the refund: this would often prove impossible, thus forcing women to stay in abusive relationships. As a bride price symbolises a relationship that cannot end when children have resulted from the marriage, this is another argument for making it a non-refundable gift. Other arguments have focussed on the incomparable contribution made by the women to their marital homes and families.

d. Rights and protection mechanisms for cohabiting and formerly cohabiting couples

Cohabitation is not recognised as a form of marriage under the Marriage Bill, nor is it recognised as such amongst the different cultural communities. It is however an increasingly common phenomenon. The Bill seeks to protect the rights of cohabiting partners in relation to properties they jointly or individually own and to properties they may acquire, seeking to promote the establishment of formal agreements between the cohabiting parties. The rights of a cohabiting woman are culturally very limited and subject to abuse, with little protection by family and clan members. A woman who is not officially married is in most cases neither recognised nor respected. Amongst the Iteso and the Karamojong, she for instance cannot participate in important rituals within her ‘husband’s’ clan. Property rights are also not well defined within cohabitation arrangements: an Alur, Acholi or Lango woman may not for example be shown the land she should cultivate. A cohabiting man may have no say over his children, such as among the Karamojong and the Iteso, until he has paid a fine to the relatives of the woman he is living with. Children born in these unions are affected in a number of ways: if their mother dies, they may for instance get embroiled in disputes over where she should be buried. If their father dies, they are often dispossessed of property and may be sent away with their mother, or get distributed to different families. There are however instances where, ‘for the children’s sake’ the woman is protected and given clan land on which to bring up her children, as cited amongst the Karamojong and Iteso.

e. Property rights in monogamous and polygamous marriages

The Bill provides for equal access, use and benefit from matrimonial property. It also enables women and men acquire and own property separately, if they so wish; and allows them to determine what constitutes their matrimonial property. It provides a remedy to the common occurrence of women’s lack of property after a lifetime of living and working in a home. The Bill states that matrimonial property ‘*excludes ancestral³⁹ property*’, which is therefore not distributed on separation, thus leaving intact the cultural perspective on ownership of clan lands. Several points of convergence exist between the Marriage Bill and the culture and practices related to property in the surveyed communities. Women had and still have user rights over land. In some of these communities, a young man is shown the land he can use with his wife when he gets married. The Acholi and Lango cultures determine the inheritance of clan lands by sons, reflecting the land tilled by their mother, as they inherit as much clan land as their mother is able to utilise: ‘*if your mother was lazy, you will get too little ... land... because you can only inherit what she cultivated⁴⁰*’. Any land not used by the family will revert to the clan. In polygamous marriages, in most of the communities studied, each

woman retains a right to be provided for separately; and each woman is expected to have her own house, gardens and other property, different from those of her co-wives, although this is not always followed in practice. The Karamojong have a more communal definition of provision of food for the family by the wives, but each wife is expected to be given a cow to milk when she gets married, and to be shown the lands she will cultivate. This separation of property wife by wife in a polygamous family tallies well with the stipulations in the Marriage Bill. Among the Iteso, the first wife sometimes accommodates the second, until she harvests her own crops. When the second wife has harvested and stored food in her own granary, she then moves into her own house; other properties, such as the houses the wives live in, the household furniture and utensils and sometimes livestock are not expected to be shared as each wife is expected to be provided with her own.

f. Polygamy, consent to marry a second wife and other conditions

Consent by the first wife to her husband marrying a second wife is another issues considered contentious in the Marriage Bill. The requirements to be met by the man include equal treatment of the wives, economic capacity to take care of them and their children and to provide separate homes for them. Among the Acholi, Lango and Iteso communities, culturally, consent by the first wife was the norm, although some of the respondents indicate that this requirement is no longer followed, while others believe it is a new idea that is being introduced by the Bill (whereas not). The cultural position on consent was less clear in the other communities, where some respondents believed their communities sought consent while others did not. Respondents reported that consent is more likely to be sought when the man and woman have a common issue to resolve, such as failure to bear children. The attitude towards consent is polarised: rejected by some because they do not think women will consent if requested, and favoured by others because polygamy is potentially a cause of strife in the family. Amongst the Alur, the Karamojong and the Iteso, the first wife is very much involved in settling in the subsequent wife. In several of the surveyed communities, the wives are shown their own separate gardens and houses, indicating that **the stipulations of the Bill and culture converge in this regard**. There are specific reasons that 'necessitate' the marrying of a second wife, from the cultural perspective, mainly childlessness. In the past, some first wives who needed more labour would ask their husband to marry 'a helper', a practice that however persists in Karamoja and in some rural communities. Other reasons for wives asking their husbands to marry again included feeling too tired or old to accommodate his sexual needs. Such 'senior wives' culturally occupy a position of respect. This is however changing, as some respondents reported that new wives are now aggressive, many do not listen to the first wife and often struggle over property and over the care the husband should provide to them and their children.

g. Divorce; asset sharing upon separation and divorce

The Marriage Bill proposes that at least 2 years should pass after contracting a marriage before a couple can be allowed to seek a divorce, except in instances of 'suffering exceptional hardship'. In the cultural communities surveyed, divorce is discouraged. Clans in Karamoja have for instance been known to retain and accommodate a woman on clan land, when her husband no longer wants her, in order to avoid the severance. There are however circumstances, especially of 'great hardship' when separation and divorce are allowed and may even be broached by clan members. The triggers include disrespect and non-observation of the rights of the woman, cited in the CCFU research in Acholi and mentioned by respondents in Teso; and persistent domestic violence, mental illness or the practice of witchcraft by the man or woman, as cited by all the communities consulted. Once divorced or separated, the woman may return to her maiden home in most cases, or continue living

on the ancestral/clan lands, together with her children, particularly when the husband is considered to be in the wrong and the clan/family comes out in defence of the woman and/or the children. The main contention regarding divorce is that while the cultural procedure entails the refund of the bride price (although not necessarily all the cattle paid), the Bill criminalises this procedure. Divorce has a direct effect on the maiden home of the woman, where her relatives have to prepare to accommodate her, often together with her children, and may lose resources if the bride price is refunded. When her natal family is unwilling or unable to do so, the woman may find it impossible to go home and may become destitute if she has not developed or retained the capacity to fend for herself and her children, especially if all assets are retained in her marital home.

Asset sharing upon divorce is informed by an assessment of the spouses' contributions to marital property. The Bill proposes that either the man or woman in a couple can claim alimony, depending on the circumstances of their stay. Among respondents, the issue of asset sharing proved controversial, with various fears raised - mainly by men - about the possible abuse of the provisions of the Bill by women and about possible fatalities among women as a result. Strong sentiment was expressed across the communities about women moving back with property, *'when they came with nothing'*. Other groups and individuals recognise that the women contribute to the family assets, and acquire property in their own right. Many however expect that the property remains with the family when the wife leaves. Some go as far as to say that culturally, the property belongs to the man, since it is acquired in his home. In this case, a woman gets married to a man in his home and he pays bride price, 'in anticipation' of her contribution, as well as the loss of that contribution in her maiden home. Once in his home, she works for the family and is not expected to have property of her own. While some cultures allow women to claim some properties, these may be seasonal crops, clothes and land for her use and that of her children. Among the Karamojong, a divorced woman may be provided with a cow for milk and sometimes with land on which to stay with her children; the Iteso and Alur will also allow 'divorced' women to take part of the harvest. In some cases, women are allowed to take with them the movable assets they acquired or contributed to. Children in polygamous families are entitled to the property their mother was using prior to divorce, including the land she cultivated on and the house/ household property. Asset sharing upon divorce is therefore not new from a cultural perspective. Much feeling is expressed that while women might have 'come with nothing', their contribution, time spent in the family and children born are also acknowledged. Examples of actual practice include various instances where property is shared, and even interventions by family and clan leaders to ensure that women and children are not left destitute. ***The controversy is thus on the nature of any entitlement and the 'fear' that women will take advantage and 'marry around' to obtain property. The practices indicate that asset sharing needs to be managed well and with sensitivity but there are precedents akin to the requirements in the Bill.***

h. Widow inheritance

Widow inheritance is criminalised under the Marriage Bill. The aspect of full and free consent is however applied in case the widow is willing to marry a relative of her deceased husband, who is also willing to marry her (and who additionally will need to seek the consent of first or other wives, if he is already married). Almost all the communities consulted practiced widow inheritance with a few differences. It is part of the concept that 'marriage continues', whereby the younger brother of a deceased husband is often eligible to 'inherit' the widow. The practice is presented as a protection for the widow and her children, who will then have a protector and provider, a father figure to guide the children, as well as an intimate partner for the widow. The children are also assumed to be relatively safe from sexual exploitation if

they live with their relatives. The widow may or may not have a choice and consent, although many respondents reported consent by the widow as needed, and a choice to be left alone. Amongst the Acholi and Alur, the widow can decide who should 'inherit' her and the Acholi widow has the right to chase away a man who does not fulfil the attendant responsibilities of this role. Much emphasis is put on the clan losing the widow if she marries elsewhere. It is acknowledged that consideration for the children, the property and the potential 'loss' of her bride price is important.

Widow inheritance is however dying out, partly because of the HIV/AIDS pandemic and a growing recognition of the rights of women. The Alur and Busoga cultural institutions actively discourage widow inheritance with sexual rights. A number of youth are also wary of the practice, which often means marrying an older woman. The practice of widow inheritance has also been transformed in instances where the 'widow's inheritor' no longer has the role of intimate partner, but rather that of guardian and advisor. In Buganda, these are sometimes called *omukuza*. The Alur, Batooro and the Basoga also have this symbolic husband, just as the Karamojong have a figurehead, who stands in when the widow's home requires the presence of a man for rituals that can only be performed by a man. While some cultural institutions have maintained but repurposed that role, without invading the widows' private space, many do still however invade her privacy. Much comes from the perception of women as subordinate and weaker, while other considerations are physical safety, the gender division of labour, and overall concern for the children of a deceased relative. **The emerging practice of widow inheritance therefore is leaning towards the stipulations in the Marriage Bill of the free and full consent of the partners involved** and coercion is slowly reducing. Alternatives to the practice are emerging in many of the surveyed communities.

i. Matrimonial and conjugal rights

Marital rape / '**forced sexual acts are unacceptable**' within the broader understanding of conjugal rights. The Bill makes provision for the conjugal rights of both parties but either spouse can deny the other sexual intercourse on stipulated 'reasonable grounds'. These grounds also exist in many of the cultures surveyed: the period of menstruation, the post-natal period (although some rituals do invade the space provided for post-natal recovery) and illness. The place of marital rape within the cultural context is however contested. Even if condemned, there is scepticism about the notion's validity amongst some respondents: '*Marital rape does not exist*' is the mantra in Busoga, Buganda, and Teso. It is hard to talk about, but acknowledged in Alur, and to a certain extent, in Tooro, despite protestations that it does not exist. The challenge pointed out is: how can it be proved, and therefore shown to be true?

Culturally, in instances where it is acknowledged, marital rape is sometimes considered a grievous 'misdemeanour', addressed quietly by the mother (and/or father) in-law of the woman, the paternal aunt and /or the family in cases where there is evidence of physical harm. Otherwise, it is not to be brought out into the open and women are not expected to say or even feel that they have been raped by their husbands. Further, those closest to the act are those with the most interest to keep it quiet, as it is 'shameful to talk about' and to the name of the family. In addition, some men view their conjugal rights over their wives as 'unlimited', with no room for the wife to decline, because her '*consent was given at the time of the exchange of the bride price*'. They cannot fathom how a man can '*rape his own wife*'.

The period immediately after birth appears to be when women fear sexual violence most. Some practices cause harm immediately after birth, such as '*returning the uterus in place*' mentioned by some Iteso. Cultural remedies include the separation of the new mother from her husband for long periods, which though still practiced, is dying out. While cultural

protection for women against rape was elucidated by some of the respondents, in practice it is difficult to access help due to limited information, particularly among rural women, the indifference of some leaders, or the practical challenges such as difficulty of accessing evidence that make it difficult for leaders to act. If cultural and religious leaders are some of the avenues available for redress, the social stigma is such that few women take advantage of these channels directly, and may only make references to the act when resolving other issues or when there is other grievous harm in the process.

Some respondents believe that once the woman comes home after giving birth, the man will demand sex and will rape her if she is not ready. While this happens, it is also discussed in a way that stereotypes men generally, which leads to a reluctance to deal with the issue of marital rape and a resistance to acknowledge it openly because it somehow appears to reflect on all men. Nevertheless, instances where some men may have forced sex with their wives are actually acknowledged by many respondents even while asserting that their communities do not believe in the concept. Forced sex within marriage is not directly condoned but some respondents believe that a woman should not be able to say 'no' to the husband. Some cultures however have remedial action in case it happens, such as fines, withdrawal of a wife, and reprimand by the man's close relatives. Nevertheless, interpretations of practices such as bride price as paying for a wife, and myths about women's place as well as misbehaviour⁴¹ by some men are sometimes passed off as culture, yet if the same behaviour was subjected to cultural remedies, it would be punished. In short, the culture of the surveyed communities does not condone forced sex within marriage as such and **cultural remedies against the practice reinforce the provisions in the Bill rather than go against it**. However, women are instead expected to willingly comply to a man's demands, almost all the time, so that there is no occasion to contemplate the sceptre of marital rape. The culture of silence and the submissiveness expected of women make it a difficult challenge to address.

5. Conclusions and recommendations

The analogy of the Marriage Bill as ‘a big stone that needs to be rolled because the leaders are from different clans, with different practices and values’⁴² points towards a process to assess and then muster different resources collectively to address the provisions of the Bill. Such an approach requires an extensive buy-in by varied communities and groups to move in the same direction. The different voices asking for more understanding imply that such buy-in can be achieved through this and other consultative processes. A few are however questioning the legitimacy of the process so far. We are reminded here that many meetings have already occurred over the years: what is now needed is also to document and classify all the efforts, since those who are not personally contacted tend to doubt that wide consultations have indeed taken place.

Misinformation and disinformation

The interviews held pointed to misinformation, disinformation and lack of information about the intentions and clauses of the Bill. Information is amorphous and poorly managed to address the real and misplaced concerns of individuals, communities and institutions. A woman cultural leader was for instance against the Bill because it supposedly allows the sharing of a man’s property after six months of marriage, which she perceived as an unfair way of grabbing men’s property. Others said ‘it endorses actions against religious practice, for instance, cohabiting’. Some of the resistance was traced to fears about property and unwillingness to acknowledge women’s contribution, even when obviously made through cash. In sum, many were opposed to the Bill without really knowing much about its content. Many respondents were conflating putting in place provisions for addressing challenges faced by cohabiting couples and cohabitation itself. While it is not encouraged by the different cultures surveyed, separation of men and women happens. Cohabiting couples tend to have children, acquire property and separate: although their union is not recognised culturally or by law, their interests as individuals and couples need to be managed. The Marriage Bill tries to establish legal steps to protect the cohabiting parties and their children, but this is viewed as encouraging cohabitation. This needs to be clarified.

Bride price and marriage

The symbolism of bride price appears to often be lost in materialism, resulting in situations where women bear the brunt of any fall-out regarding material exchanges they do not even benefit from individually⁴³. Amongst the Bantu groups involved in the research, i.e. Tooro, Buganda, and Busoga, the idea of being born in a family and clan may have deeper implications, than linked to bride price and divorce. The Basoga sacrifice a goat at the time of marriage, symbolically severing the link between the girl and her natal family, and indicating that she is also taking on her husband’s family’s gods. Similarly, in Teso, a woman changes her totems to that of her husband’s clans. A reluctance to have a woman buried in some locations may be linked to this change of clan. It could explain why a cohabiting woman cannot be buried at her cohabiting partner’s ancestral home, where the totem change has not taken place. Cultural institutions need to identify actions that generate positive sentiments equivalent to those brought on by bride price, in legitimising marriages and in dissolving those that need to be dissolved. The polarity of views and its consequences may otherwise never be resolved to the satisfaction of the various cultural communities in the country. If there are practices that can signify divorce or separation while leaving out the negatives, these should be identified. For instance, the Karamojong practice of sprinkling water on the

divorcing couple seals the separation, rather than the refund of any bride price, even though this is also practiced.

Positive cultural changes and the Bill

Many of the practices that individuals and groups have supported as 'cultural' are changing. When these are discussed in relation to the Bill, an element of stereotypical thinking about cultural practices and norms that does not take into account the actual reality can however take over. This explains why individuals from the same ethnic group often have divergent opinions on practices in their communities, e.g. *widow inheritance never happens and is culturally unacceptable*; and conversely, *widow inheritance is part and parcel of the culture and should be retained*. Yet some controversial issues are gaining acceptance because of the experiences that families and cultural leaders have had when dealing with rights violations or when observing the consequences of cases in their communities. These shifts in perceptions and in attitudes have for instance led to changes in practice around bride price, property rights and other rights within the marriage. Exposure to (and discussion of) cultural norms vis-à-vis rights and the implications of their implementation on the family structure, sexual and gender-based violence, the dispossession of widowed and divorced women and their families, women stuck in abusive relationships due to fear of bride price refund by their families, is therefore important. Where respondents acknowledge positive change, this should be incorporated, from an objective viewpoint, to develop a consensus.

Focus on men

Power and the selective adoption of some values need to be interrogated in a systematic and logical manner. For instance, the '*mutwalo*' the bride price in Buganda, is giving way to expensive practices, and even to fathers asking for money from in-laws, an act culturally considered shameful. Yet identifying and acknowledging property contributed by women is not acceptable, because '*culturally, women are not expected to own property*'. What is adopted and what is discarded depend on judgements made by those with the power to enforce one or the other, and the narratives with which the communities are convinced. It is therefore important to highlight as much as possible what the Bill provides for men, the holders of 'power over', whose perception is currently that they have much to lose, including the power and respect they command. It is important that men be helped to clarify what they will lose and what they will gain individually, at family and societal level from the changes that may be brought about by passing the Bill.

Women and children

It is also important for women to be sensitised to examine and change the socialisation processes that lead to their subordination. Discussions and awareness raising need to focus on the benefits of a more equal society within families and communities. While marriage, divorce, cohabitation and the other issues in the Marriage Bill are pertinent to men and women, the discussion also needs to include the situation of children and implications for them, which may change some perceptions. In Karamoja, for instance, a refund of the bride price for some communities also means forfeiting children by the father.

Highlight other potential benefits

Regardless of the debate on the clauses in the Marriage Bill, such as whether and to what extent marital rape happens, the focus should be on potential benefits, e.g. on what ought to be done in the cases^{44'} in which it happens. Similarly, given the differences in cultural practices, implementation of the proposed changes in bride price could be done in a phased manner. Some progress has already been registered by the court ruling designating bride

price as a gift, which (though not wholly embraced) has led to several changes, sometimes supporting long-held tradition. Thus, '*Kasiimo*'(gifts) existed in old Tooro culture (and still do during the marriage of a princess) where the man is not allowed to bring bride price, but can bring gifts⁴⁵. In addition, the deterrent effect of exorbitant bride price demands are removed when it is accepted as a gift and in turn others are encouraged to legalise marriage by providing gifts they can afford, that are not refundable⁴⁶.

To conclude, this study has been able to provide examples of beliefs and practices that meet several of the clauses of the marriage Bill, providing evidence that these clauses are in fact not undermining the cultural rights of communities in the study areas. Further, many of the objections are informed by religious and cultural beliefs and a perception that the Marriage Bill encroaches on sacred premises, while other objections seem to be concerned with maintaining the status quo of those who wish to continue enjoying certain privileges.

The Marriage Bill addresses inequalities, power imbalances and rights abuses, yet emerging practices and beliefs are in several cases showing a path towards acceptance of its 'controversial clauses', although some negative practices are deeply entrenched. In such cases, a more comprehensive understanding needs to be reached on the issues that are still contentious when the controversy is on the basis of differences in perception, myths, membership of particular ethnic groups, or power and interest in maintaining privilege. Some value judgements therefore have to be made by cultural leaders, families and individuals as to what concessions are necessary. The paper highlighted both the positive and negative aspects of beliefs and practices that can then be examined further to set the basis for such consensus and to improve opportunities for passing the Bill and enhance the observation of rights for couples. This demands efforts to break down meaning and implications for the different clauses to become more easily understandable to the average person, while resonating with his or her cultural context.

(Endnotes)

- ¹ See CCFU, *“Promoting Women and Girls’ Rights’ in Uganda - Culture and the Marriage Bill – A position paper based on experiences from the cultural communities of Teso, Lango, Acholi, Alur, Buganda, Tooro, Busoga and Karamoja”* for the full version
- ² KII CSO official Busoga, FGD Community Group A Tooro; FGD Community Group B Tooro, KII CI leader Sec Culture;
- ³ KII LG officer Busoga
- ⁴ KII female elder Karamoja
- ⁵ KII LG officer
- ⁶ youth Leader, Buganda
- ⁷ KII CI leader
- ⁸ KII elderly female Buganda
- ⁹ KII CI leader
- ¹⁰ Several examples of cultural practices show that for an appreciable group of people, maturation is expected to be complete before marriage takes place, although the measures differed.
- ¹¹ For instance, in Karamoja, a violation will lead to a fine that is given right away and that is meant to compensate the aggrieved party, while imprisonment of such people is sometimes not considered to be of benefit to the community and aggrieved party.
- ¹² KII religious leader
- ¹³ KII CI Leader ES paraphrased
- ¹⁴ KII CSO official, female
- ¹⁵ FGD Community Group Tooro
- ¹⁶ KII religious leader
- ¹⁷ KII CSO Nebbi paraphrased
- ¹⁸ FGD Mixed youth group Nebbi
- ¹⁹ GD mixed youth group Ker Alur
- ²⁰ elders, Buganda
- ²¹ KII Tooro
- ²² KII female elder, Tooro, narrating an occurrence she had personally witnessed
- ²³ Marriage Bill, 2017; requirements for a valid marriage - accessed at ulrc.go.ug home page. Uganda Constitution, Article 31(1).
- ²⁴ Uganda Human Rights Commission. Assessment of the compatibility of Ugandan Legislation with the convention on the rights of the child page xvi, accessed at unicef.org
- ²⁵ CCFU Research Reports Acholi and Lango and KIIs Ker Alur
- ²⁶ KII with cultural leader, a CSO and a local government official.
- ²⁷ FGD, mixed youth group, Ker Alur
- ²⁸ CCFU Karamoja Research
- ²⁹ FGD community men and women Karamoja
- ³⁰ FGD youth group Karamoja.
- ³¹ FGD Bugondo Sub County; Mixed group
- ³² CSO Official, Tooro
- ³³ KII Female Cultural Leader Busoga
- ³⁴ KII Male cultural leader Busoga
- ³⁵ Food and Agriculture Organisation of the United Nations: Gender and Land Rights Database: Uganda. Customary norms, religious beliefs and social practices that influence gender differentiated land rights (under country profiles). Bride price is not a dowry, which

is defined as the money, goods or estate a woman brings to her husband in marriage.

- ³⁶ The Republic of Uganda, in the Supreme Court of Uganda at Kampala. (CORAM: Katureebe, CJ. Tumwesigye; Kisaakye; JJ. S. C: Odoki; Tsekooko; Okello and Kitumba Ag. JJSC) Constitutional Appeal No. 02 of 2010 between MIFUMI (U) and 12 Others == Appellants and 1. Attorney General; 2. Kenneth Kakuru ===== Respondents. [An Appeal arising from the Judgement of the Court of Appeal (Byamugisha, Kavuma, Nshimye, JJA) dated 29th May 2012 in Civil Appeal No. 71 of 2020]. Judgement of Dr. Kisakye, JSC
- ³⁷ *Mutwalo* is a reference to 10,000 shillings and here refers to the bride price given by a groom's family to that of the bride. It may be in kind or in cash, but small in value. The Batooro's *mukaaga* has the same connotations. The value of the *mutwalo* is determined by the groom's family.
- ³⁸ FGD youth, Buganda
- ³⁹ Home page, Uganda Law Reform Commission; Marriage Bill, 2017 - matrimonial property excludes the ancestral property; accessed from ulrc.go.ug
- ⁴⁰ CCFU Lango Research Report, quoting an interview with Bishop Onono Onweng, Gulu.
- ⁴¹ In Teso, some members of the cultural institution made it a point to distinguish between 'uncultured' behaviour by men such as sexual and gender based violence and what the culture actually stipulates.
- ⁴² KII community male Karamoja
- ⁴³ Mothers and aunts in some cultures benefit from some element of the bride price however insignificant
- ⁴⁴ Again, for arguments sake since many claim that it is rare, negligible or does not happen.
- ⁴⁵ KII Male elder, Tooro
- ⁴⁶ FGD Community Group B



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