

Fact sheet

Promoting the rights of women and girls in Uganda: Culture and the Marriage Bill, 2017



About the Marriage Bill

The 2017 Marriage Bill, a draft law that seeks to regulate and harmonise different laws relating to marriage in Uganda is a product of consultations on the Marriage and Divorce Bill by the Law Reform Commission after which some recommendations were made. However, many critical voices pointed out particular clauses of the Bill such as age of marriage, cohabitation, property rights, and marital rape to be in contradiction with our cultural practices and traditions.

About the Research on the nexus between culture and the 2017 Marriage Bill

The Cross-Cultural Foundation of Uganda (CCFU), in 2019, with support from Diakonia, conducted a study to examine cultural resources in Acholi, Lango and Teso that complement or contradict the provisions of the 2017 Marriage Bill. In 2020, with support from UN Women, this study was expanded to the cultural communities of Buganda, Busoga, Karamoja, Alur and Tooro. The research highlighted both positive and negative aspects of beliefs and cultural practices that can set the basis for harmonisation with the provisions of the Bill and improve opportunities for passing the Bill.

Cultural provisions relating to the Bill

All the cultural communities that participated in the research share common values and principles which support many of the provisions in the Bill, with a few exceptions. Such provisions relate to the age of marriage, protection of women and girls' rights to access and use resources within the home and social safety nets within the family. Issues of marital rape however emerged as more difficult to conciliate with provisions in the Bill.

Age of marriage

Most of the cultural communities examined explicitly present 18 years as the legal age of marriage and marriage certificates can only thus be issued to parties who are over 18 years. In communities such as Busoga however, girls between 14-17 years are persistently married off upon the start of menstruation.

Bride price/ marriage gifts/ criminalisation of its refund

Bride price is important in the cultural contexts explored as a requirement to validate a customary marriage. It is viewed as a sign of respect to both man and woman and bestows on them certain rights and privileges with its importance embedded in the intrinsic value attached to the exchanged items.

The Bill attempts to criminalise the refund of bride price, a clause that is contested by many of the communities that participated in the research. Bride price initiates a relationship between the two families; hence the refund symbolises the cessation of such a relationship and unless it is refunded, the relationship still exists.

Cohabitation

Cohabitation is neither recognised by the Bill nor by the cultural communities as a form of marriage despite being a common phenomenon. The Bill makes an attempt to protect the rights of women and children in cohabitation relationships in relation to properties that they personally or jointly acquired during the subsistence of the cohabitation.

Property rights in monogamous and polygamous marriages

The Bill reinforces the cultural provisions on equal access, use and benefit from property by both spouses in a marriage while maintaining the indivisibility of ancestral land upon separation. In most cultures, upon marriage, a wife is entitled to the use of as much land as she can cultivate and any land not utilised reverts to the clan. Even in polygamous marriages, every woman has a right to be provided for separately in terms of land on which to farm for her children, house, and other properties as may be acquired, which confirms the

Divorce

Divorce is discouraged in all the surveyed cultural communities except in cases of extreme hardships such as witchcraft and disrespect of either spouse. Divorce in many of the cultural communities is accompanied by the refund of bride price, an act which the Bill seeks to criminalise hence resistance to this provision of the Bill by community members.

Asset sharing upon divorce as provided for in the Bill is contested by many men in the communities examined for fear of being used by women to defraud men. This provision is similar to instances in some cultures where a woman can own some property which mainly constitutes seasonal crops that she farms on the land. In Teso and Alur for example, women are allowed to take part of the harvest upon divorce while the Karamojong may provide a divorced woman with a cow for milk and land on which to settle with her children, a practice similar to the provision in the Bill.

Matrimonial and conjugal rights

The different cultures examined have provisions that are similar to those in the Bill for instances where conjugal rights may be denied by a spouse such as during menstruation, a post natal period or illness. The existence of marital rape is however contested in the cultural contexts of Acholi, Busoga, Buganda and Teso. In instances where it is acknowledged such as in Alur and Tooro, it attracts cultural remedies such as fines, and reprimand by the man's close relatives.





Action points to take forward

- There is a need to translate the Bill to clear the misinformation, disinformation, and myths about its provisions.
- There is a need to include provisions relating to the position of children and their protection in the Bill since most of its clauses centre on the entitlements of men and women.
- There is a need to highlight the positive aspects of the Bill in relation to the rights of men.
- Cultural institutions should adopt alternative symbols/ actions with positive sentiments equivalent to bride price for legitimising and dissolving marriages. For instance, among the communities in Karamoja, the practice of sprinkling water on the divorcing couple seals the separation, rather than the refund of any bride price.