

## THE DOMESTIC RELATIONS BILL, 2003

### MEMORANDUM.

1 . The object of this Bill is to reform and consolidate the law relating to marriage, separation and divorce; to provide to the types of recognised marriages in Uganda, marital rights and duties, grounds for breakdown of marriage, rights of parties on dissolution of marriage and for other connected Purposes..

2. The Bill is the product of a report of a comprehensive study conducted by the Uganda Law Reform Commission in which all relevant stakeholders were consulted and several seminars and workshops were held and which takes full account of previous similar studies carried out in Uganda including -

-The Report on the Commission of Inquiry into Marriage, Divorce and Status of Women (Kalema Report) 1965; — The FIDA-U Report on the draft Domestic Relations Bill. 1980: and

-The ministry of **Women** in Development, Culture and Youth Report on the draft 1980 Domestic Relations Bill, 1980 (WID working paper and Tororo Report) 1993.

3. In the report from which the Bill emanated, the Commission has made recommendations which will result in a law that is fair and achieves social justice; addresses the issues of poverty: protects the human rights of all members of the family; protects the institution of marriage and the family; is enforceable and accessible to the Uganda population: and is in line with the Constitution and legal obligations of Uganda.

4. The Bill seeks to cover all types of marriages obtaining in Uganda and there fore seeks to consolidate and replace all the family laws listed below --

(a) the Customary marriage (Registration) (Cap 248);

(b) the Divorce Act (Cap 249):

(c) the Hindu Marriage and Divorce Act (Cap 250);

(d) the Marriage Act (Cap. 25 I);

(e) the Marriage and Divorce of Mohammedans Act (Cap 252); and

(f) the Marriage of Africans Act (Cap 253).

5. The Bill in particular seeks to conform with the Constitution and specifically deals with the age of marriage, consent to marriage as required by article 31(3) of the Constitution, forms of marriage, solemnisation of marriage, prohibited degrees of relationship for marriage, conditions for polygamy, cohabitation and its legal effect, marriage gifts responsibility for maintenance, sexual rights including the right to sexual intercourse and the offences of adultery, marital rape and demanding the return of marriage gifts property rights and for divorce prescribing no fault divorce otherwise known as irretrievable break down of marriage, to apply to all forms of marriage.
6. The Bill also deals with widow inheritance and mixed marriages, separation and alimony.
7. The Bill in sum gives effect to the principle in article 31 (1) of the Constitution that men and women are entitled to equal rights in marriage during marriage and at its dissolution.
8. Finally, references in the Bill to Acts and sections of Acts in existence before the year 200 I which are now Contained in the revised edition of the Laws of Uganda which was brought into force on 1st October. 2003 by Statutory instrument No. 69 of 2003 is Sit ed tile Attorney General, are now adapted to read as references to the corresponding sections and chapters as contained in the Revised edition.

**HAJAT JANET B. MUKWAYA.**

Minister of Justice and Constitutional Affairs.

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**A BILL. for an Act**



## ENTITLED

### THE DOMESTIC RELATIONS ACT, 2003.

**AN ACT to reform and consolidate the law relating to marriage, separation and divorce; to provide for the types of recognised marriages, marital rights and duties, grounds for breakdown of marriage, rights of parties on dissolution of marriage, and for other connected purposes.**

BE IT ENACTED by Parliament as follows:

#### PART I PRELIMINARY.

1. This Act may be cited as the Domestic Relations Act, 2003.

2. (1) Unless otherwise provided, this Act applies to all people domiciled in Uganda.

(2) This Act shall come into force on a date appointed by the Minister by statutory instrument.

3. In this Act, unless the context otherwise requires—

“adultery means a voluntary act of sexual intercourse between a married person and a person other than his or her spouse;

‘church marriage’ means a marriage solemnised in a church by a recognized minister: and includes, a marriage solemnised by a recognized minister in a place directed by the Minister’s license:

“civil marriage” means a marriage solemnized before the District Registrar under section 48:

‘cohabitation’ means the fact of an tin married in an and an unmarried woman living together as if they were husband and wife;

“competent court” means a court established or recognized by law in Uganda:

“co—ownership of property” means the ownership of property as provided in sections 65, 66 and 67:

‘consortium’ means the fact of a husband and wife living together and includes, the right to sex.

companionship, care, services and all rights and obligations commensurate with the marriage status:

"currency point" has the value prescribed in the First Schedule;

“customary marriage” means a marriage celebrated according to the rites of an African community to which one or both of the parties belong;

“District Registrar of Marriages” means a public officer appointed under subsection (1) of section 5. and includes a Deputy District Registrar of Marriages ;

“district means a marriage district constituted under this Act:

“domicile means a person’s permanent home to which he or she has the intention of returning after a period of absence;

‘same treatment’ means the capability of the husband to give similar treatment to all his wives;

“family” means a husband and wife and their children, including adopted children if any:

‘Irretrievable breakdown of marriage’ means a situation where one or both of the spouses proves to the court that they can no longer live together in consortium as husband and wife;

“judicial separation’ means the separation of a husband and wife by court decree;

“Marriage Register Book’ means a register book kept under this Act for the purpose of registering marriages;

“matrimonial home means the principal residence or residences of the spouses in which one or both of them has or have a proprietary interest;

“marriage gift” means a gift whether in cash or kind given by either party to a marriage in respect of the marriage, and includes, bride, price and bride wealth:

‘matrimonial property as tie lined in section 65 means the property occupied as such and held in common in undivided shares.

‘Minister” means the Minister responsible for justice;

“minister” means a person authorized to celebrate marriages by a church, religious body, sect or denomination;

"monogamous marriage" means a marriage between a man and a woman neither of whom, during the subsistence of the marriage shall he at liberty to enter into or contract any other valid marriage;

"non—monetary contribution" means the contribution made by a spouse or the maintenance of the family other than by way of money and includes—

- (a) domestic work and management of the home
- (b) child-care;
- (c) companionship;
- (d) the duration of the marriage; and
- (e) any other matter that may be deemed by the court to be relevant;

"person in authority" means a chief, the executive of a local council, a religious leader or any other leader in the community:

"polygamous marriage" means a marriage in which the man is married to more than one wife:

"potentially polygamous marriage" means a marriage between a man and a woman in which the man has the capacity to contract another marriage during the subsistence of the first marriage but has not yet done so;

"Registrar-General" means the Registrar General as defined by law;

"Separate property," means the property which a spouse has acquired individually either before or during marriage;

"Spouse" means a husband or a wife in a marriage;

"widow inheritance" means a custom by which a relative of a deceased husband inherits the deceased husband's widow as his wife without conforming to the essential requirements of contracting any of the types of marriages under this Act.

## **PART II—GENERAL..**

4. The Minister shall, by statutory instrument, divide Uganda into marriage districts to the purposes of this

Act and may by any such instrument alter, amalgamate or sub—divide such districts as he or she may think fit.

5. (1) Subject to the provisions of the Constitution regulating the appointment of public officers the Minister shall appoint a fit person to be a registrar of marriages for each District, to be known as the District Registrar of Marriages; and the person appointed shall in addition, be the registrar of all divorces in the district and such other matters as may be prescribed by law.

(2) Subject to the provisions of the Constitution regulating the appointment of public officers the Minister shall appoint a fit person to be the Deputy District Registrar of marriages for each district.

(3) The Deputy District Registrar of Marriages shall perform the functions of the District Registrar of Marriages in the absence of the District Registrar of marriages.

6.(1) A minister of a licensed place of public worship shall be the registrar of marriages in respect of the marriages solemnized in that place of worship.

(2) A sub-county chief shall be the registrar of marriages in respect of any customary marriage celebrated in his or her locality.

(3) The minister and the sub-county chief shall submit to the district registrar of marriages such returns as may be prescribed.

7. Every district registrar of marriages shall have an office at such a place in the respective district as the minister may, by notice published in the gazette, direct.

8. (1) Every District Registrar of marriages shall enter in a book which shall be called the district marriage register book, all particulars of certificates of marriage which have been filled in his or her office.

(2) Every entry under subsection (1) shall –

(a) be made in chronological order, from the beginning to the end of the year; and

(b) be signed by the district registrar of marriages.

(3) The district marriage register book shall be open to inspection by the public during office hours on payment of the prescribed fee.

9.(1) The minister may license any place of the public worship to be for the solemnization of marriages and, may, at any time cancel the license.

(2) The minister shall give notice of the fact of licensing or cancellation of the license under subsection(1)-

(a) in the Gazette:

(b) in at least one newspaper circulating in the district: and

(c) to the person in charge of the place of worship concerned -

(3) All places of worship which at the commencement of this Act are licensed to solemnize marriages shall be deemed to have been licensed under this Act.

(4) A person in charge of any place referred to in subsection (3) shall notify the District Registrar of Marriages of its existence with the documentary evidence of its being licensed to solemnize marriages within thirty days after the commencement of this Act

(5) The District Registrar of Marriages shall, immediately upon receipt of the documentary evidence referred to in subsection (4) make a return to the Registrar General who shall keep an up-to-date list of all the licensed places of marriage in Uganda and cause it to be published once a year in the Gazette and in at least one newspaper circulating in the district.

10. (1) Subject to subsection (2) of this section, and subsection (1) of section 11 and section 13, marriages in Uganda shall be either-

(a) monogamous marriages which shall be-

(i) church marriages:

(ii) civil marriages:

(iii) Hindu marriages; and

(iv) Bahai marriages: or

(b) polygamous marriages which shall be-

(i) Islamic marriages; and

(ii) customary marriages.

(2) A marriage conducted in accordance with the laws of another country where one or both of the parties is subject to the laws of that country, shall be recognized in Uganda as a valid marriage except where the marriage is between parties of the same sex.

(3) For the avoidance of doubt, all marriages recognised under this section have the same legal status.

(4) Without prejudice to any procedures prescribed for marriages under this Act, any other institutions or practices which traditionally facilitate marriage shall continue to be recognised.

(5) For the avoidance of doubt, observing the custom or practice of introducing a future bridegroom to his intended bride's family shall not by itself be evidence of having contracted a customary marriage.

11. (1) A person, body or denomination may apply to the Minister in writing to have a form of marriage other than one referred to in section 10 be declared a recognised marriage in Uganda.

(2) An application under subsection (1) shall be in the prescribed form and shall set out all the particulars of the form of marriage, its essential elements as well as the required procedures.

(3) The Minister may or may not allow the application but in either case he or she shall notify the party or parties concerned by notice published in the Gazette and at least in one newspaper circulating in Uganda.

12. (1) Subject to section 13, cohabitation shall not, by itself, constitute a marriage or give rise to a presumption of marriage under this Act.

(2). Notwithstanding subsection (1), the following provisions shall have effect in relation to the rights of the parties to the relationship of cohabitation-

(a) one or both of the parties may, during the subsistence of the cohabitation register the fact of cohabitation and the particulars of any monetary and non-monetary contribution each party may have made during the cohabitation with a sub-county chief and the Sub-County Chief shall make returns of the registration and particulars to the District Registrar of marriages;

(b) where the parties cease to cohabit, a competent court on application by either or both of the parties, shall distribute the property in accordance with the registered amounts of Contribution made by either party;

(c) failure to register shall not affect the rights of the parties but the burden to prove the facts of cohabitation or any contributions made shall be on the party alleging the existence of those facts

(d) where the court is satisfied that the parties cohabited, and that there was some contribution, the court

may divide the property equitably between the parties.

(3). The particulars of the monetary and non-monetary contribution's referred to in subsection (2) shall be in the prescribed form.

(4) For the avoidance of doubt, the rights conferred by this section on persons cohabiting are available only to persons who have the capacity to get married to each other under any marriage recognized under this Act.

13. (1) Notwithstanding subsection (1) of section 12, where a man and a woman have cohabited for ten years or more, they shall be presumed to be married to each other if the parties have the capacity to get married to each other under a marriage recognized under this Act; except that the parties shall be presumed to have consented to the marriage.

(2) Where a marriage is presumed to exist under subsection (1), the marriage may be registered under this Act. (3) Where the parties to a marriage referred to in subsection (2) are not parties to any other subsisting marriage, the registration shall be with District Registrar of Marriages.

(4) Where in the case of a marriage referred to in subsection (2) the man is a party to a subsisting marriage, the registration shall be according to the procedures applicable to the subsisting marriage.

(5) For the avoidance of doubt, there shall be no presumption of marriage under this section where both or either of the parties is a party to a subsisting non monogamous marriage.

(6) The other provisions of this Act shall, with the necessary modifications, apply to marriages presumed under this section and duly registered, as they apply to similar marriages under this Act.

(7) Regulations may be made under section 109 to facilitate the operation of this section.

(8) Regulations made by virtue of subsection (7) may in particular prescribe notices to be given before registration is effected.

### **PART III- ELEMENTS OF MARRIAGE**

14. A person shall not have the capacity to marry unless he or she has attained eighteen years of age.

15. (1) A marriage shall not be celebrated solemnised or contracted in Uganda without the consent of either party to the intended marriage.

(2) The consent of a parent, relative, clan leader or any other person other than the respective parties to the marriage shall not be a requirement for the validity of any marriage solemnized, celebrated or contracted under this Act.

16.(1) A man shall not marry a widow through the custom or practice of widow inheritance.

(2) Without prejudice to subsection (1), a man may marry his relative's widow where both the man and the widow, with their free consent, adopt any form of marriage provided for under this act.

(3) Widow inheritance is prohibited.

(4). Any person who contravenes subsection (3) Commits an offence and is liable, on conviction, to a fine not exceeding twenty-four currency points or imprisonment not exceeding one year or both.

17. A person shall not be a party to a marriage where the other party is related to him or her within any of the degrees of relationship set out in the second schedule.

18. Subject to section 51, parties intending to contract a monogamous marriage shall each first prove by way of a declaration before the officiating minister that he or she is not a party to any other subsisting marriage.

19. (1) Parties married under a polygamous or a monogamous marriage shall not be allowed to convert their marriage to a monogamous or polygamous marriage as the case may be.

(2) Parties married under a potentially polygamous marriage may convert the marriage to a monogamous marriage in accordance with section 51.

20. (1) Marriage gifts shall not be an essential requirement for any marriage under this act.

(2). Where marriage gifts have been given by any party to a marriage under this Act, it shall be an offence to demand the return of those marriage gifts.

(3) A person convicted of the offence under subsection (2) is liable to a fine not exceeding twenty-four currency points or imprisonment not exceeding one year or both.

21. A marriage shall be null and void if contracted in contravention of any of the provisions of sections 14, 15, 16, 17, 18 and 19.

22. Where one of the parties to a marriage-

(a) is pregnant by or is expecting a child with another person at the time of the ceremony and the fact is unknown to the other party



- (b) refuses to consummate the marriage for a period of three months from the date of the marriage;
- (c) is unable to consummate the marriage within nine months: or
- (d) is permanently impotent; the injured party may, at his or her Own option, apply to a competent court to nullify the marriage.

#### **PART IV - PRELIMINARIES TO A CIVIL OR CHURCH MARRIAGE.**

23. (1) where a civil marriage is intended to be contracted, one of the parties to the intended marriage shall sign and give to the district Registrar of marriages of the district in which the marriage is intended to take place, a notice in the prescribed form.

(2) Where the party giving notice is unable to write or to understand the English language, or both, it shall be sufficient if he or she places his or her mark or cross on the notice in the presence of a literate person who shall attest the notice in the terms of the prescribed form.

24. (1) Upon receipt of a notice given under section 23 the District Registrar of Marriages shall cause the notice to be entered in a book, which shall be called the Civil Marriages Notice Book.

(2).The District Registrar of Marriages shall also cause a copy of the notice to be published by affixing it on a public notice board at his or her office for twenty-one consecutive days next after the notice was entered in the Civil Marriages' Notice Book.

(3).The Civil Marriages' Notice Book shall be open to inspection by the public during office hours on payment of the prescribed fee,

25. (1) Parties to a church marriage shall first fill in and sign the prescribed form before the minister of the parish church where the banns are to be Published to the effect that they are not in contravention of the essential requirements to a marriage under Part III.

(2)The banns referred to in subsection (1) shall be published-

(a) if the persons to be married reside in the same parish, in the parish church of that parish; or

(b) if the person to be married reside in different parishes, in the respective parish churches where the two persons reside.

(3).The banns shall be published on three consecutive Sundays preceding the solemn i sat ion of the church

marriage.

(4) Where banns are published in one parish church and the church marriage is to be solemnised in a district parish church, no minister shall solemnise the marriage unless he or she has received a certificate from the parish where the banns were published that the banns were duly published in that parish.

26.(1) Subject to subsection (2), at the expiration of the period of twenty-one days referred to in subsection (2) of section 24, the district registrar of marriages shall, at the request of the person by whom the notice was given, and upon payment of the prescribed fee, issue a marriage license in the prescribed form.

(2) The District registrar of marriages shall not issue a marriage license under this section unless-

(a) One of the parties has been resident within the district in which the civil marriage is intended to take place for at least fifteen days before the issue of the license;

(b) each of the parties to the intended marriage has, by declaration, proved to the satisfaction of the registrar of marriages that he or she is not in contravention of the essential requirements as to age, prohibited degrees, consent, status or mixed marriages as specified in sections 14, 15, 16, 17, 18 and 19 respectively; and ;

(c) any objection, if applicable has been removed in accordance with part VI.

(3) A declaration under this section may be made before the district registrar of marriages or before a magistrate.

(4). The district registrar of marriages or the magistrate before whom a declaration is made, shall explain to the person making the declaration the prohibited degrees of relationship specified in the second schedule and the penalties for false information.

27. A civil or church marriage under this act may be contracted or solemnized at any time within three months after the issue of the district registrar of marriages' marriage license or publication of banns; except that a marriage under this act may take place after three months where the district registrar of marriages is satisfied that there are reasonable grounds for the delay upon payment by the parties of the prescribed fee.

28. The minister, upon proof being given to him or her by the declaration, that there is no lawful impediment to a proposed civil or church marriage, may dispense with the giving of notice, the issue of the district registrar of marriages' marriage license, or the publication of banns as the case may be, and grant a license, in the prescribed form authorizing the solemnization of the civil or church marriage between the parties named in the minister's license, by the district registrar of marriages, or by a recognized minister.

## **PART V—PRELIMINARIES TO ISLAMIC, HINDU, BAHAI AND CUSTOMARY MARRIAGES.**

29. Subject to the limitations imposed by the Constitution and the provisions of this Act, the procedures

preceding the with solemnisation of

- (a) an Islamic marriage;
- (b) a Hind Marriage
- (c) a Bahai marriage; and
- (d). a customary marriage.

shall be governed by the rites and observed customs which are usual among the ethnic group, religion or sect in which the Islamic, Hindu, Bahai or customary marriage takes place.

30. (1) A person intending to marry under this Part shall, in addition to the customs, rites and practices referred to in section 29, give notice of intention to marry in writing—

- (a) in the case of a customary marriage, to a Sub-county Chief and
- (b) in the case of an Islamic or Hindu or Bahai marriage, to the relevant District Registrar of Marriages.

(2) The Sub-county Chief or District Registrar of Marriages, as the case may be, shall cause the notice to be entered in the relevant Marriage Notice Book for each form of marriage.

(3) In the case of a customary marriage, the notice shall, in addition to any other requirement, state that the parties have complied with all the customary requirements not being inconsistent with any written law.

(4) Where the party giving the notice under this section is intending to contract a subsequent marriage under this Part, the notice shall be accompanied in the case of an Islamic or customary marriage, by a copy of the decision of the District Registrar of Marriages under subsection (2) of section 31 or as the case may be, the decision of the Court under subsection (3) of section 31, showing that that party has complied with section 31.

(5) The notice shall be displayed for twenty one days in a conspicuous place on the premises of the offices of the Sub—county (Thief or District Registrar of Marriages, as the case may be.

31. (1) Where a man, referred to in this Act as the applicant, is a party to an Islamic or customary marriage, intends to marry a subsequent wife, he shall make an application to the District Registrar of Marriages supported by a declaration showing that he-

- (a) is economically capable of maintaining his wives and children at least at the same level of maintenance as

at the time of the application;

(b) has made provision for a separate matrimonial home for the subsequent wife, except in exceptional circumstances where the parties including the current wife or wives, have agreed to live together in the same home; and

(c) is capable of giving the same treatment to all the wives.

(2). Where the District Registrar of Marriages is satisfied that the applicant has complied with all the conditions set out in subsection (1), he or she shall approve the application for the subsequent marriage to take place under this Act.

(3) Where the District Registrar of Marriages refuses the application, the applicant may appeal to a court of competent jurisdiction, and the court may confirm, reverse or vary the decision of the District Registrar of Marriages.

32. The applicant shall in his application indicate-

(a) the property he owns separately:

(b) the matrimonial property which shall be registered with the sub county chief or registrar of marriages as the case may be.

33. (1) At the expiration of the twenty-one days referred to in subsection (5) of section 30 the Sub county Chief or the District Registrar of marriages as the case may be, shall subject to section 31 issue a marriage license in the prescribed form.

(2). A marriage license under subsection (1) shall be issued by the Sub-County Chief or the District Registrar of marriages as the case may be, if he or she is satisfied that-

(a) the parties have complied with all the provisions of this Act; and

(b) there is no objection lodged against the marriage, or if there has been an objection, that the objection has been removed in accordance with the procedure set out in part vi dealing with objections.

34. A customary marriage license shall have the following particulars-

(a) the names of the parties and their addresses'

- (b) the date and place when the marriage is intended to be celebrated;
- (c) the location of the parties;
- (d) the names of the parents of the parties;
- (e) in the case of a subsequent wife, particulars of the decision of the District Registrar of Marriages of as the case may be of the court under section 3 1 allowing the subsequent marriage to take place;
- (f) the name of the local council official to register the marriage; and
- (g). authorisation to the local council official to proceed with the registering of the customary marriage.

35. A marriage under this Part shall take place within three months from the date of the issue of the Sub-County Chief 's customary marriage license or District Registrar of months. Marriages' license as the case may be; except that, if the Sub-County Chief or the District Registrar is satisfied that there are reasonable grounds for the delay, a marriage under this Part may take place after three months upon the payment by the parties of the prescribed fee.

36. Section 28 shall, with the necessary modifications, apply to Islamic, Hindu. Bahai and customary marriages.

## **PART VI Objections.**

37. (1) A person who knows of any just ground why a Objection to civil, Islamic, Hindu or Bahai marriage should not take place may enter an objection against the issue of the marriage license by a District Registrar of Marriages by writing, at any time before the issue of the license, the word 'forbidden' opposite the entry of the notice in the respective marriage Notice Book and stating the reason why he or she claims to forbid the issue of the marriage license;

(2) A person who knows of any just ground why a church marriage should not take place, may make an objection against the marriage to the relevant minister, either in writing or orally, stating the ground of his or her objection to the intended marriage.

(3) A person who knows of any just ground why a customary marriage should not take place may make an objection against the marriage to the Sub—County Chief, in writing or orally, stating the grounds of his or her objection.

38. Where a person who knows of any just ground why a marriage should not take place resides outside Uganda, he or she may send his or her objection Signed in accordance with the law of his or her country of

residence and duly authenticated by a Notary Public, counsel, or another person authorized by the law of that country for the purpose, to the appropriate District Registrar of Marriages or the Registrar—General, whichever is the best placed to ensure receipt of the objection.

39. Where an objection is made in accordance with the section 37 or 38, the relevant district registrar of marriages or the registrar general shall refer the matter to a competent court.

40. (1) The court to which an objection is referred under section 39, shall summon the parties to the intended marriage, and the person who made the objection shall show cause why the district registrar of marriages should not issue the marriage license or why the minister or the sub county chief as the case may be, should not proceed to solemnise the marriage.

(2). The court shall hear both parties and shall determine the matter in a summary manner.

41. In the case of a person who has made an objection under section 38, the court may, if it considers it necessary, issue a commission in accordance with the Civil Procedure Rules relating to issuing of commissions in respect of persons residing outside Uganda.

42. (1) The court, on making its decision, shall forward the relevant court order in the prescribed term to the relevant Registrar of Marriages stating whether the objection has been dismissed or sustained.

(2). On receiving a court order dismissing the objection mentioned in subsection (1)-

(a) in the case of a church marriage, the relevant minister shall file the order and may without any further delay proceed with the solemnisation of the marriage;

(b) in the case of the civil, Islamic, I-Hindu or Bahai marriages the relevant District Registrar of marriages shall file the order and shall cancel the word "Forbidden" in the respective Marriage Notice Book and permit the marriage to be solemnised; and;

(c) in the case of a customary marriage, the relevant Sub—County Chief shall proceed to register the marriage.

(3). Where the Court issues to the District Registrar of marriages an order sustaining the objection, the marriage shall not be solemnised.

(4).The court may, if it considers that an objection was made on insufficient grounds, direct the person who made the objection to pay such compensation or costs to a party to the marriage, as it may deem fit.

43. (1) the decision of a court in objection proceedings may be appealed from either on a point of law or fact or both.

(2) The hearing of an objection by the court and also the hearing of an appeal if any shall be dealt with expeditiously.

## **PART VII -SOLEMNISATION OF A CHURCH OR CIVIL MARRIAGE.**

44. A church marriage shall be solemnized

(a) in a licensed place of worship

(b). in accordance with the customary rituals and practices of the respective church, sect, body or denomination;

(c). By a recognized minister of the church, religious denomination or body to which either or both parties to the marriage belong;

(d) in the presence of two witnesses;

(e) after the hour of six o'clock in the morning and before six o'clock in the afternoon; and

(f) with open doors.

45. Notwithstanding paragraph (a) of section 44, the Minister's license Part under part iv may direct the solemnization of a marriage in a place other than a licensed place of worship.

46. A minister shall not solemnize any church marriage if he or she knows of any lawful impediment to the marriage or, where applicable until the Minister's license to marry has been delivered to the relevant minister.

47. (1) Immediately after a church marriage has taken place, the officiating minister shall fill in quintuplicate a marriage certificate in the prescribed form and enter in the counterfoil the number of the certificate, the date of the marriage, the names of the parties and the names of the witnesses.

(2) The marriage certificate referred to in subsection (1) shall be signed in quintuplicate by the officiating

minister, the parties and the witnesses to the marriage; and the officiating minister shall give two copies to the parties to the marriage, retain one copy and forward two copies of the certificate to the District Registrar of Marriages who shall forward one of the copies to the Registrar General.

48. (1) After a District Registrar of Marriages has issued - a marriage license or after the issue of the Minister's license, a civil marriage may be solemnised in the office of the District Registrar of Marriages to whom the notice of marriage was given, or in the case of a Minister's license, at the place mentioned in the license.

(2) A civil marriage shall be performed before a District Registrar of Marriages—

(a) in his or her office;

(b) with open doors;

(c) in the presence of two witnesses; and

(d) between the hours of eight o'clock in the morning and six o'clock in the afternoon.

(3) A District Registrar of Marriages shall, after perusing the marriage license require the parties to the intended marriage to make the following declaration—

“I solemnly declare that I do not know of any lawful impediment why I, AB, may not enter into marriage with CD”

(4) Each of the parties shall then say to each other— “I call upon these persons here present to witness that I, AB take you, CD, to be my lawful wife (or husband) so long as both of us shall live”.

(5) No religious ceremony shall at the same time accompany the marriage contracted in the office of a District Registrar of Marriages but, for the avoidance of doubt, a civil marriage shall have the same status and legal consequences as a church marriage.

49.( 1) Immediately after a civil marriage has taken place, officiating District Registrar of Marriages shall fill in quintuplicate the marriage certificate in the prescribed form and enter in the counterfoil the serial number of the marriage, the names of the parties and the names of the witnesses.

(2) The marriage certificate shall be signed in quintuplicate by the officiating District Registrar of Marriages, the parties and the witnesses to the marriage and the District Registrar of Marriages shall give two copies to



the parties to the marriage, retain one copy and forward one copy to the Registrar General.

50. Whenever the Minister's license authorises the solemnisation of a church marriage at any place other than a licensed place of public worship, or a civil Marriage at a place other than the office of a District Registrar of Marriages, the District Registrar of Marriages in the district which the marriage is intended to take place, shall, upon the production of the Minister's license, deliver to the person producing the license a blank certificate of marriage in quintuplicate, and the minister or the District Registrar of Marriages solemnising the marriage shall observe all the formalities required under this Act for a church or civil marriage, as the case may be.

51. Parties to a potentially polygamous marriage may convert that marriage to a monogamous marriage under this Act, but only if the husband at the time of conversion has only one wife.

52. (1) Parties intending to proceed under section 5 1 shall comply with the provisions relating to preliminaries of a church or civil marriage under Part IV, except that the parties shall use the prescribed forms.

(2) Where the conversion of marriage takes place in the District Registrar's office or in a church each of the parties may, instead of saying to each other the words prescribed in subsection (4) of section 48 say— "I call upon all persons here present to witness that whereas 1 AB have been married to you CD; under (speedy type of marriage), I now solemnly knowingly and willfully renounce the (specify type of marriage) and agree to continue and to take you as my wife (husband) in a monogamous marriage as long as both of us shall live."

53.(1) Immediately after the conversion of marriage has taken place the officiating District Registrar or the minister as the case may be, shall fill in, in quintuplicate a marriage certificate in the prescribed form and enter in the counterfoil the number, the date on which the marriage took place, the names of the parties and the names of the witnesses.

(2) The District Registrar of Marriages or the minister, whoever is officiating, shall retain one copy of the marriage certificate, give two copies to the parties to the marriage And-

(a) in the case of the District Registrar of Marriages forward one copy to the Registrar General; and

(b) in the case of the minister, forward two copies to the District Registrar of Marriages who shall retain one copy and forward the other copy to the Registrar General.

## **PART VIII SOLEMNISATION OF ISLAMIC, HINDU, BAHAI AND CUSTOMARY**

**MARRIAGES.**

54. Subject to the provisions of the Constitution, marriage under this Part shall be solemnised in accordance with section 29 relating to the solemnisation of marriages and in accordance with the customs and rites observed among the ethnic group or religion in which the Islamic, Hindu, Bahai or customary marriage is taking place.

55 (1) Within three months after the completion of the ceremonies of an Islamic, Hindu, Bahai or customary marriage, the parties to the marriage shall appear before the District Registrar of Marriages who issued them with the license to marry, with at least two witnesses to the concluded marriage to register the marriage; except that the District Registrar of Marriages may register a marriage after the three month period on payment of a prescribed fee.

(2). Each type of marriage under this Part shall have a separate Marriage Register Book.

(3) After the details of the Islamic, Hindu, Bahai, or customary marriage have been entered in the relevant Register Book, under subsection (1) the District Registrar of marriages, the parties and the witnesses to the marriage shall sign their names in the relevant Marriage Register Book.

56. Each village local council shall be supplied with marriage certificates in the prescribed form by the relevant Sub-county Chief.

57. (1) Upon the solemnisation of a customary marriage, the local council official named in the marriage license issued by the Sub-County Chief shall sign the marriage certificate in quintuplicate on behalf of the Sub-county Chief together with the parties to the marriage and at least two witnesses.

(2) The local council official shall, give two copies of the marriage certificate to the parties to the marriage and forward three copies to the Sub-County Chief, who shall register the marriage in the Customary Marriage Register Book, retain a copy of the certificate and forward two copies to the District Registrar of Marriages.

(3). The District Registrar of Marriages shall, upon receiving the two copies of the marriage certificate from the Sub-County Chief retain one copy and forward the other copy to the Registrar General.

58. At the time of registration of an Islamic, Hindu, Bahai or customary marriage, the parties to the marriage shall pay a prescribed fee for the marriage certificate.

59. (1) The formalities relating to notification of marriages under this Act may be dispensed with where

(a) one or both of the parties to the intended marriage is or are on their death bed; or

(b) where there is a life-threatening emergency.

(2) The marriage may be solemnised by any religious leader or local council official or any other person in authority available under the special circumstances and in such manner as may be appropriate under the special circumstances

(3) Within seven days after the date of the solemnisation of the marriage or from the cessation of the special circumstances whichever is the later, the parties or relatives or any person in authority shall inform the District Registrar of Marriages in writing about the marriage and the special circumstances in which the marriage took place.

(4) The District Registrar of Marriages, upon receiving the information in subsection (3) and on being satisfied of the special circumstances, shall issue a marriage certificate to the parties which shall be signed by the parties in triplicate and where they are unable to sign, by their legal representatives.

(5) After the parties to the marriage or their legal representatives have signed the marriage certificate, the District Registrar of Marriages shall also sign the certificate in triplicate, retain one copy, give one copy to the parties or their legal representatives and forward one copy to the Registrar- General.

## **PART IX- MATRIMONIAL RIGHTS AND OBLIGATIONS**

60. (1) Spouses are entitled to equal rights to consortium in marriage.

(2). Notwithstanding subsection (1), a spouse may deny the other spouse the right to sexual intercourse on reasonable grounds, which may include

(a) poor health;

(b) after child birth;

(c) after surgery;

(d) during medical treatment or observation; or

(e) reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm to the spouse denying the other spouse the right to sexual intercourse.

61. Where a person has sex with his or her spouse against the consent of the spouse, the act shall create both a criminal and civil liability, and in the case of

(a) a criminal offence, a person who commits the offence is, on conviction, liable to a fine not exceeding twenty four currency points or to imprisonment not exceeding one year or both; and in addition, the Court may direct the person to pay to the spouse, compensation not exceeding thirty currency points; and

(b) a civil wrong, shall give rise to a civil remedy such as a restricting order, suspension of conjugal rights or compensation as the Court may determine.

62. (1) Where a party to a marriage has sex with a person other than his or her spouse, both parties to that sexual act commit the offence of adultery and each is, on conviction, liable to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or both.

(2) A party convicted under subsection (1) is liable in addition to any criminal penalty, to pay compensation of an amount determined by the court—

(a) to his or her own spouse, if any;

(b) to the spouse, if any, of the other party to the offence.

63. Both spouses shall have the duty to maintain their Duty to family except that-

(a) the monetary contribution of each spouse shall be proportionate to his or her income; and

(b) non-monetary contribution shall also be taken into account when determining a spouse's contribution to the maintenance of the family.

64. For the avoidance of doubt, but subject to section 69, notwithstanding any law or custom to the contrary, where a man has two or more wives, each wife shall enjoy the same and equal rights and have the same and equal status in law in the marriage.

65. (1) Matrimonial property shall include—

(a) the matrimonial home or homes

(b) household property in the matrimonial home or homes;

(c) any other property either immovable or movable acquired during the subsistence of a marriage, deemed to be matrimonial property by express or implied agreement as construed through the conduct of the spouses; and

(d) immovable property owned by either spouse, which provides the basic income for the family.

(2) Where immovable property has been ascertained as matrimonial property, if it is not already registered, it shall be registered in the names of the husband and wife; but where that property was registered in the name of one spouse, then notwithstanding any law to the contrary, it shall be deemed to be registered as matrimonial property.

(3) Any property held by a spouse as trust property whether acquired by way of inheritance or otherwise, shall not form part of matrimonial property.

(4) For the avoidance of doubt, the parties to a marriage may, by agreement entered before or during marriage, determine their property rights.

66. (1) Any matrimonial property, as defined by section 65, shall be owned in common by the spouses.

(2) For owning in common by either spouse of immovable property which provides the basic incomes for the family and on which the family derives its sustenance, acquisition of interest by a spouse in the property of the other spouse shall be in the following stages—

(a) acquisition of twenty percent of the share or property by the other spouse after five years of the marriage;

(b) acquisition of thirty percent of the share or property by the other spouse after ten years of the marriage; and

(c) acquisition of fifty percent of the share in the property by the other spouse after more than fifteen years of the marriage.

67. Subject to section 65, the interest of any person in any immovable or movable property acquired before marriage shall not be affected by the marriage

68. Any liability incurred by a spouse before marriage relating to property shall, after marriage remain the liability of the spouse who incurred it, except that if the property becomes matrimonial property under section 65, the liability shall be equally shared by the spouses, unless they agree otherwise.

69. Where a spouse has acquired property before marriage or acquires property during the marriage and the property is not matrimonial property as defined under section 65, but the other spouse makes a contribution towards the improvement of that property, whether it is monetary or non-monetary, the spouse without an interest shall acquire a beneficial interest in the property equivalent to the contribution she or he has made.

70. (1) Where a man has more than one wife in a polygamous marriage, ownership in common of property

between the husband and each particular wife shall be determined as follows—

(a) matrimonial property acquired by the man and the first wife shall be owned in common by the husband and the first wife if acquired before the man married the second wife.

(b) any matrimonial property acquired after the man marries a second wife shall be regarded as owned in common by the man, the first wife and the second wife, and the same principle shall be applied to any other subsequent wife or wives.

(c) Notwithstanding paragraph (b) of subsection( 1), where it is clear either by agreement or through conduct of the parties that each wife has her separate matrimonial property, then she will own that matrimonial property in common with the husband without the participation of the other wives.

71. Subject to this Act, a spouse in any form of marriage recognised under this Act shall have the capacity to acquire his or her own separate property during the subsistence of the marriage.

72. No transaction shall be entered into in respect of any matrimonial property from which the family derives sustenance except with the written consent of the other spouse and dependent children as required by section 39 of the Land Act.

## **PART X BREAKDOWN OF MARRIAGE.**

73. Subject to the right of a spouse to acquire separate property under section 7 1 and subject to any other relevant laws, matrimonial causes and disputes arising out of a marriage under this Act shall first be heard in a Magistrate's Court, Qadhis' Court or the High Court.

74. (1) Where both parties profess the Islamic religion and are married under Islamic law, the parties may petition a Qadhis' court in a matrimonial cause.

(2) A Qadhis' court shall, while hearing and determining the matrimonial cause, apply Islamic law subject to any written law

(3) A Qadhis' court shall observe the rules of procedure and evidence as provided by law.

75. The High Court shall have original jurisdiction in all matrimonial causes arising from marriages contracted under foreign laws.

76. Proceedings in a matrimonial cause shall be in open court ; except that where the court considers that the parties to any proceeding may be unduly prejudiced, the court may hold the proceeding in camera.

77. Separation of parties may either be—

(a) by agreement, where the parties consent to suspend the marriage and the consent is witnessed by at least one representative of either party; or

(b) by judicial separation, where one or both of the parties petition the court asking for a suspension of the marriage on evidence that the parties can no longer live together.

78. (1) A petition for divorce may be brought by either party to a marriage under this Act.

(2). The petition for divorce shall be on the sole ground that the marriage has irretrievably broken down.

79. (1) Subject to subsections (2) and (3), a spouse shall not petition for divorce before the expiry of two years from the date of the marriage which is sought to be dissolved.

(2) A spouse may apply to the relevant court for leave to bring a petition for divorce before the expiration of the two years specified in subsection (1) of this section where the spouse proves that she or he is suffering exceptional hardship in the marriage.

(3) A wife in a polygamous marriage may, without prejudice to subsection (2), bring a petition before the expiration of two years on the ground that the husband is in the process of marrying another woman without that wife's consent.

**80.** A petition for separation or divorce shall contain the following—

(a) the form of marriage;

(b) the names of the parties;

(c) the ages of the parties;

(d) the names, ages and sex of the children, if any, of the marriage;

(e) particulars of the facts giving the court jurisdiction;

(f) particulars of any previous efforts to resolve the dispute; and any matrimonial proceedings between the parties;

(g) a statement of the evidence to be relied on to establish the irretrievable breakdown of the marriage;

(h) the terms of any related agreement made between the parties;

(i) the orders being prayed for; and

(j) a verification sworn by the petitioner before a Commissioner for Oaths that what is stated in the petition is correct.

81. (1) In deciding whether or not a marriage has broken down, the court shall have regard to all relevant facts regarding the conduct and circumstances of the parties and, in particular, shall refuse to grant a decree where a petition is founded exclusively on the petitioner's own wrong doing.

(2). Without prejudice to subsection (1), a court may, without limiting the right of the court to accept other facts, accept any one or more of the following facts as evidence of the irretrievable breakdown of marriage

(a). the respondent's adultery and the fact that because of it, the petitioner finds it intolerable to live with the respondent;

(b) sexual perversion on the part of the respondent;

(c) cruelty, whether mental or physical on the part of the respondent~ affecting the health of the petitioner;

(d) the respondent's desertion of the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition without any justifiable cause; and

(e) a change of religion by the respondent where both parties followed the same faith at the time of the marriage and, where the petitioner cannot tolerate the change of religion.

82. A spouse shall not be prevented from presenting a petition for divorce. or a court from granting a decree of divorce, by reason only that the petitioner has, on similar facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation.

83. Where a court is not satisfied with the evidence given Court i~ lot that the marriage has irretrievably broken down, the court shall refuse to grant a decree of divorce hut may make any other orders for ancillary relief, including judicial separation, It marriage as it may deem necessary under the circumstances-

84. A decree of judicial separation shall relieve the parties of the duty to co-habit and to render each other consortium, except that the duty to maintain shall continue unless otherwise provided under the decree of separation.

85. (1) A court shall set aside a decree of judicial separation on the application of either or both spouses if the spouses have consented to the setting aside of the decree.

(2) A court may rescind a decree of judicial separation on the application of either spouse where the court is



satisfied that the decree was obtained as a result of misrepresentation or mistake of fact.

(3) A court may vary the terms of the decree of judicial separation on the application of both the spouses or either of them where there has been any material change in the circumstances of either or both of them.

86. Where a court is satisfied, on the basis of the evidence before the court, that has irretrievably broken down, it shall grant in open court a decree terminating the marriage.

87. Where there is a cross-petition, the court may grant a decree on the cross-petition or may dismiss the cross-petition or give any ancillary order or relief as it may deem fit under the circumstances.

88. A party not satisfied with the decision of a court may appeal against it in accordance with the law relating to the appellate powers of the respective, courts set out in the Magistrate's Courts Act, the Judicature Act and any other relevant law.

89. Where the matrimonial cause before a court on appeal Islamic law arises from a marriage contracted according to Islamic law, the court, subject to any written law and the principles of equity, shall be guided by Islamic law.

90. An appellate court may, after hearing and determining an appeal—

(a) uphold the decision of the lower court;

(b) reverse the decision of the lower court;

(c) uphold or reverse any ancillary order of the lower court or make any new order; or

(d) order a re-trial.

91. The High Court shall have power to execute foreign decrees in Uganda, subject to any law for the time being in force.

92. (1) Upon separation of the spouses, no matrimonial property shall be divided between the parties but a court may rule that the Spouses share any income that may accrue from the property.

(2) Any property that is separately acquired by either spouse during the period of separation shall remain the property of the spouse who acquired it.

93. (1) Where a decree has been granted terminating the marriage, the court may proceed to divide any matrimonial property between the parties to the dissolved marriage subject to any ante or post nuptial agreements the parties may have made relating to division of property.

(2) The court may, instead of dividing the matrimonial property between the parties, require one party to compensate the other party for the value of that party's interest in the matrimonial property.

94. (1) In determining the beneficial interest of each spouse in the matrimonial home, a court shall have regard to the monetary and non-monetary contributions of each spouse to the family pool.

(2) The court shall determine the value of the non-monetary contribution and place a monetary value on it.

95. Where a divorce has been granted, a court may order one party to—

(a) continue maintaining the other party; or

(b) compensate the other party for any contribution made by that party towards the maintenance of the family.

96. In making orders relating to maintenance and custody of children on separation and divorce, the Children's Act, and in particular the welfare principle, shall guide the court.

97. The right of a party to receive maintenance from his or her former spouse shall cease immediately on the re-marriage of that party.

98. The Court may, from time to time, vary or rescind any subsisting order for maintenance on the application of the vary order party in whose favor or against whom the order was made, on being satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances of the parties.

99. Subject to sections 8 and 9, a spouse may present a petition for the declaration by the court that his or her marriage is null and void.

100. A voidable marriage is for all purposes a valid marriage until it is annulled by a decree of a competent court at the instance of the innocent party.

## **PART XI MISCELLANEOUS.**

101. Any person who, for the purposes of doing anything required to be done under this Act, makes any statement, oral false or written which is false in a material particular

(a) knowing that it is false ;or

(b) without having taken reasonable care to find out whether the statement is true or false, commits an offence and is, on conviction, liable to a fine not exceeding twenty four currency points or imprisonment

not exceeding one year or both.

102. The Registrar General, or a District Registrar of Marriages authorized by the Registrar General, may correct any clerical error in a register, index, return or certificate under this Act.

103. The Registrar General shall supply to all District Registrars of Marriages such books, records and forms as may be required, or as may be prescribed, under this Act.

104. Within ten days after the last day of every quarter, each District Registrar shall forward to the Registrar General a copy of all entries made in the respective Marriage Register Books.

105. Every District Registrar of Marriages shall supply any form of notice of marriage to any person who may apply for it on payment of the prescribed fee.

106. A person commits an offence who—

(a). subject to this Act being unmarried, goes through a ceremony of marriage under this Act, with a person whom he or she knows to be married to another person; or

(b). subject to this Act, being married, goes through a ceremony of marriage under this Act with a person other than his or her spouse; or

(c) being a District Registrar of Marriages but subject to the provisions of this Act—

(i) performs a marriage ceremony under this Act, after three months from the issue of the relevant District Registrar of Marriages' marriage license, except where the period of three months has been extended under this Act;

(ii). issues a certificate which is prohibited by any law;

(iii) refuses to register a marriage without any justifiable cause;

(iv) has the custody of a Marriage Register Book or certified copy of a Marriage Register Book and without any reasonable excuse causes it to be damaged or lost.

107. (1) A person convicted under paragraph (a) or (b) of section 106 is liable to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.

(2) A person convicted of an offence under paragraphs (c) of section 106 of this Act is liable to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

108. (1) The Minister shall, by statutory instrument, make Regulations. the regulations for the better carrying into effect of this Act.

(2). Without prejudice to the general effect of subsection(1), regulations made under this section may provide for the following—

- (a) prescribe the forms to be used under this Act;
- (b) prescribe the matters for which fees shall be paid and the rates of the fees;
- (c) prescribe registers and records to be maintained under this Act and for their inspection;
- (d) the making of returns under this Act; and
- (e) prescribe penalties in respect of any contravention of the regulations not exceeding a fine of forty eight currency points or two years imprisonment or both; and
- (f) any other matter conducive or incidental to the implementation of this Act.

109. The Minister may, by statutory instrument in consultation with the Minister responsible for finance and with the approval of the Cabinet, amend the First Schedule

110. The following enactments are repealed

- (a) Section 154 of the Penal Code Act (Cap. 120)
- (b) the Customary Marriage (Registration) (Cap 248);
- (c) the Divorce Act (Cap 249);
- (d) the Hindu Marriage and Divorce Act (Cap 250);
- (e) the Marriage Act (Cap. 251);
- (f) the Marriage and Divorce of Mohammedans Act (Cap 252); and
- (g) the Marriage of Africans Act (Cap 253);

## **SCHEDULES**

## FIRST SCHEDULE

### CURRENCY POINT

A currency point is equivalent to twenty thousand Uganda shillings.

## SECOND SCHEDULE

### PROHIBITED DEGREES OF RELATIONSHIP

Mother	Father
mother's daughter	father's son
daughter	son
father's mother	father's father
mother's mother	mother's father
son's daughter	son's son
daughter's daughter	daughter's son
sister	brother
wife's mother	husband's father
wife's daughter	husband's son
father's sister	father's brother
mother's sister	mother's brother
brother's daughter	brother's son
sister's daughter	sister's son

father's brother's daughter

father brother's son

mother's sister's daughter

mother sister's son

son's wife

daughter's husband

father's wife

mother's husband

The relationships prescribed in this Schedule apply whether they occur biologically or by adoption.









