

Inter-Religious Council of Uganda



Religions for Peace

GENERAL MEMORANDUM TO PARLIAMENT OF UGANDA AND THE IRCU OPINION ON THE MARRIAGE BILL, 2024

1.1 INTRODUCTIONS

Praise God from whom all blessings flow!

We bring you warm greetings from the Inter-Religious Council of Uganda (IRCU).

It is our call as religious leaders to protect and preserve the future of the family unit as well as protect Ugandan marriages being the bedrock for a stable and harmonious country.

The Inter-Religious Council of Uganda with great concern has learnt through consultations with our religious structures, of the growing concern among Ugandans, regarding the need to strengthen the institution of marriage and protect the same from degeneration.

Marriage is the foundation of the institution of family which is the basic building unit of society. The ultimate state of the nation and the quality of life of the citizenry are directly tied to the nature and quality of marriage in the nation. This matter is therefore so important that it should be handled carefully and judiciously.

If we fail as a country to protect the family and marriage institution then such a state of affairs, will threaten our marriages, families, children, and future generations. It will also negatively affect our national security and social stability, and has the potential to plunge the nation into untold conflict and dysfunctionality. Over time, this country could become a failed state due to weak marriages and therefore, families.

We thus, call upon Parliament to take its time in enacting the Marriage Bill, 2024. This will allow for comprehensive consultations with all stakeholders and ensure that the developed legal

framework is one that will guarantee healthy and long-lasting marriages in our nation.

1.2 GRATITUDE

We are utterly, indebted to Parliament and especially the Chairpersons of the Committees on Legal and Parliamentary Affairs; Gender, Labour, and Social Development, for giving IRCU an opportunity to present its opinion on the IRCU Marriage, 2024.

The IRCU has adequately consulted with the IRCU Marriage Committee, Inter-Faith Legal Forum, the IRCU Board, Council of Presidents, and our respective District and Regional structures on the Marriage Bill.

We are delighted to share the propositions and recommendations made regarding the Marriage Bill, 2024. In this document, we have provided to the Committee our detailed opinion, providing for a Clause by Clause consideration of the Bill.

We congratulate Parliament for fast-tracking the enactment of the Marriage Bill, 2024 and we believe that if our opinion and that of the other like-minded stakeholders are captured and adopted, the Marriage Bill 2024 can become the classic law that will transform the institution of Marriage in Uganda.

1.3 IRCU GENERAL OBSERVATIONS AND REASONS WHY THE BILL SHOULD NOT PASS IN ITS CURRENT FORM.

- 1) The Marriage Bill, 2024 in its present form, does not provide sufficient protection to the institution of marriage which was ordained by God. If the Bill is passed in its current form, it will create conditions that will lead to massive destabilization, weakening, and breakdown of marriages.

We therefore state that the Bill, should not pass in its current form based on the following:

1. **The Bill erroneously legalizes Polygamy** under its Clause 4 & 39,
2. **Introduces the concept of prenuptial and postnuptial agreements under Clause 47**, which effectively treats

marriage as a contractual relationship rather than a sacred covenant as intended by God.

3. **Inaccurately, introduces the no fault divorce under Clause 73 of the Bill.** This will significantly increase the threshold for divorce and in so doing will weaken, cheapen, and trivialize marriage, which is a sacred and divine institution as the Bill pushes for dissolution of marriage by mutual consent of Parties without reason. No fault divorce may also ignore the innocent Parties intention to save a marriage.
4. **The Bill, introduces the Presumption of Marriage when a child is born out of wedlock/legal marriage under Clause 61,** this introduces the concept that if a child is born outside of a legal marriage, this new law will automatically presume that this man was married to the mother of that child, as far as child maintenance and property rights are concerned. This threatens and erodes the very foundations of marriage and the moral fabric of society.
5. **Furthermore, the Bill, suggests that irretrievable breakdown of marriage under Clause 74,** of the Bill should be a sole ground for dissolution of marriage to the petitioner ignoring the need for collaboration with others grounds for dissolution of Marriage, before a marriage is ended.
6. **Recognition of Extraterritorial Dissolution of Marriage, Clause 63 introduces the concept of “extraterritorial dissolution of marriage” in Uganda.** What this means is that if a spouse realizes that it will be difficult to secure a divorce here in Uganda, they can, for example, decide to go to London and divorce their spouse from there. The new law in essence states that a marriage which is dissolved in another country should be recognized by and so the divorce that was carried out in another country should be acknowledged. This also weakens, threatens, cheapens, and trivializes the institution of marriage.
7. **The Minister to Determine Other Type of Marriage, Clause 3 (1) Sub Clause (g),** specifies that the Minister may recognize any other type of marriage and that

such a marriage will have to be accepted in Uganda. This means the Minister can determine such an important thing as a new kind of marriage which has not been accepted in Uganda. This is a gross violation of the power vested in Parliament which represents the people of Uganda. Only Parliament has the legislative responsibility in the country on such crucial matters that have impact on the quality of life in the nation. This Article leaves a big loophole that can be used to smuggle in any kind of marriage which may be undesirable and destructive.

8. **Over-emphasis on Property under Clause 45 to 61**, for example a total of 16 Clause out of the 106 Articles of the whole bill, are about property. This emphasis on property reduces marriage to something that is primarily concerned with property rather than a life-long covenant between a man and a woman. It could make marriage contentious rather than a union that promotes the concept of one flesh and living in unity and harmony
- 2) The IRCU observes and warns Parliament regarding escalating cases of Divorce in Uganda. It has been reported that in Uganda, 7% of people experience divorce and separation every 4 years, which translates to approximately 370,000 people annually. Additionally, the number of divorce cases filed at the Family Division of the High Court has more than doubled from 215 cases reported in 2023 to 503 cases report in the year 2024. This increase indicates a growing trend in divorce rates within the country which calls for urgency in supporting families and marriages to deter separation.
 - 3) Furthermore, when making policies, regulations, guidelines, legislation or implementing an intervention to a societal problem, it is always important to ensure that the outcome does not make the situation worse. It has been observed on numerous occasions that when certain critical principles are ignored when implementing interventions, the good intentions will not make things any better. This is what is usually referred to when it is said that, "two wrongs don't make a right". Caution should therefore be taken in enacting the Marriage Bill, to avoid ending up with a negative outcomes.

1.4 SUMMARY OPINION OF THE IRCU REGARDING SPECIFIC CLAUSES OF THE BILL.

CLAUSE 2: Interpretation Clause

We concur with the Interpretation Clause and we recommend that the Bill should define a Christian marriage under clause 2.

We propose that a Christian Marriage be defined as; *'A marriage covenanted between one Christian man and woman for Life to the exclusion of others until they are separated by death.'*

The Rationale for this is that all the Marriages created under the Bill are defined in the Interpretation Clause, with the exception of Christian Marriages.

CLAUSE 3: Recognized Marriages

We concur with the recognized marriages under Clause 3 (1) (a)-(f) & (h) of the Marriage Bill, 2024 and we recommend that;

- 1) **Clause 3, Sub Section (1) (g)** which provides, 'any other type of marriage as may be recognized by the Minister by statutory instrument;' be expunged from **Clause 3 of the Bill**.

The Rational for this is because **Clause 3 Subsection 1(g)** empowers the line Minister to create new forms of marriages outside the six recognized types of marriage.

Clause 3 (1) Sub Clause (g) gives wide and extensive powers to the line Minister to create new forms of marriage without necessarily going through Parliament and ignores the idea of consultations with key stakeholders before legislation.

Delegated legislation envisioned by Parliament on formation of new forms of marriage may be potentially abused and the Minister may go beyond the intended scope or purpose of the Bill.

Clause 3 (a) Subclause g, is a gross violation of the power vested in Parliament which represents the people of Uganda. Only Parliament has the legislative responsibility in the country on such crucial matters that have impact on the quality of life in the nation. This Article leaves a big loophole that can be used to smuggle in any kind of marriage which may be undesirable and destructive.

- 2) The IRCU further recommends a seal off on the reorganized forms of marriages so as to maintain the six mentioned and described forms of marriage under Clause 3 of the Bill.
- 3) Furthermore, the mandate of the minister should be limited to operationalize the Bill and not to create any other laws/subsidiary legislation under the Bill. We recommend that to ensure the protection of the Marriage Institution, Parliament should be empowered legislate on marriage and the powers of the line Minister be limited due to the need for conclusive consultations that comes with primary legislation.

The Rationale for this is that living an option for the Minister to describe other forms of marriage would bring ambiguity which may lead to creation of marriages not legally recognized in Uganda.

CLAUSE 4: Civil Marriages

We concur with Clause 4 of the Bill, prescribing the nature of Civil Marriages and recommend that the wording of Civil Marriages as being 'potentially polygamous' be expunged from **Clause 4 Subsection 1**, of the Marriage Bill, 2024.

The Rationale for this is that; Initially the Ugandan Civil Marriages provisions did not have the wording describing Civil Marriages as potentially polygamous. This should therefore be maintained as it was to protect the civil marriages institution.

Civil Marriages originate from the British system, which informed the legislation of the Marriage Act, Cap **146** that commenced on 1st April 1904. Therefore, maintaining the Civil Marriages as

Monogamous marriage makes the same comply with the doctrines of the Common law system, which Uganda subscribes to.

Additionally, having the word potentially Polygamous and civil marriages in the same breadth, continues to inscribe and promote the practice of polygamy as being automatic or synonymous or associated to Civil marriage by the language of the law, yet the practice has been one man and one woman for Civil Marriages.

Moreover, making Civil Marriages potentially polygamous threatens and weakens the other forms of Marriage, as parties intending to marry will all run to the Civil Marriages since its open and has no limit on the numbers a given person can marry.

Furthermore, making Civil Marriages potentially polygamous will position the practice as an official practice of government of Uganda, since civil marriages are in sense Government Marriages and yet the Government of Uganda has not declared Polygamy an official practice or stand.

CLAUSE 5: Christian Marriages

We concur with **Clause 5 of the Bill**, prescribing the nature of Christian Marriages and we recommend the following;

- 1) We recommend that in the description of Christian Marriages the word 'Contracted' reflected in **Clause 5 (b) of the Bill** be replaced with the word 'Covenanted'

The Rationale for this that a contract in Marriage may mean marriage for a specific period of time which does not apply to a Christian Marriage which is a covenant for life between a Christian Man and Woman, with the exclusion of others until they are separated by death.

- 2) That **Clause 5(e) of the Marriage Bill**, which is represented in the Bill as **Clause 5 (d)** be revised to read as follows; *'solemnized by a licensed registrar of marriage in a public place of worship or a public place preferred by the Parties intending to marry, ... in accordance with the observed customs, rites and practices of the faith, church or*

denomination to which the public place of worship or parties to the marriage belong.' We therefore recommend deletion of the word ... '*or in a place approved by the Registrar General...*'

The Rationale for this This proposal is intended to give the Faith, Church or Denomination the autonomy to implement its religious duties in the celebration of Christian Marriages without necessarily having the Registrar General necessarily issuing a special license for marriages taking place outside the Public Place of worship, as long as the marriage is celebrated within the Faith, Denomination or Church.

Furthermore, these special licenses have been extortional and yet they are not charged on other Faiths like Muslim Faith, etc. A case to note is that special licenses cost UGX 800,000/= and one has to attach an affidavit which may cost about 250,000/=. These monetary requirements on Christian Marriages are discriminatory in nature.

- 3) Furthermore, we propose the introduction of **Clause 5 sub Clause (f)** where a schedule is created to give specific conditions for the celebration of Christian Marriages in accordance with the respect Faith, Church or Denomination.
- 4) We further recommend deleting of the word 'Organization' represented in **Clause 5 (d)** and replacing it with the word 'Faith.'

The Rationale for this proposal is to cater for the different rites or practices concerning Christian Marriages per Faith, Church or Denomination and promote freedom of worship in the celebration of marriages.

- 5) We recommend reconstruction of **Section 5 (d)** so that Consent required for a Christian marriage to take place, should be the consent of the Parties entering the Marriage. However, Parents and Christian leaders can give guidance to the Couples intending to marry. The Clause should therefore be revised to read as follows; '**with the consent of the Parties**

intending to marry, with guidance and blessing from parents and religious leaders.'

The Rationale for this is based on the fact that **Article 31 Clause 3 of the 1995 Constitution** provides for the need for consent from the Parties intending to marry as it states, 'Marriage shall be entered into with the free consent of the man and woman intending to marry.'

Tying consent in Christian Marriages to the Parents of the Parties intending to marry, has in the past led to unreasonable withholding of the said consent from Parents. It is therefore imperative that parents should only guide and bless the couples intending to marry.

CLAUSE 6: Customary Marriages

The IRCU recommends that Cultural institutions and leaders be engaged to provide comments on Customary Marriages, since the same is not under its domain.

CLAUSE 7: Hindu Marriages

IRCU recommends engaging the Hindu Leadership on Hindu Marriages since this is not within the domain of the IRCU.

CLAUSE 8: Bahai Marriages

The IRCU engaged the Bahai, and they agree with the Provisions of the Bill on Bahai Marriages and they are part of our delegation.

CLAUSE 9: Islamic Marriages

The IRCU sought the Opinion of the Uganda Muslim Supreme Council on Islamic Marriages as proposed under Clause 9 of the Bill. **The same opinion is hereby attached.** However, UMSC has also delivered its position on the Marriage Bill to Parliament.

CLAUSE 32: Registrars of marriage

We concur with most of the provisions of **Clause 32** and we recommend that **Clause 32 Subsection 1**, should clearly define a **Registrar of a Christian Marriage**, just like registrars in the other forms of marriage are mentioned like the Imam for Islamic Marriages, a local spiritual assembly of the Bahai, a town clerk, etc.

We therefore recommend reconstruction of **Clause 32 Subsection 1** as follows; '***A celebrant or an ordained church, Faith or Denomination minister shall be the Registrar of a Christian marriage.***'

CLAUSE 39; Conversion of Marriage

The IRCU agrees with **Clause 39** of the Bill, on conversion of marriages from Monogamous to Polygamous and from Polygamous to Monogamous Marriages respectively with reservations, however we recommend as follows:

- 1) The IRCU proposes an exception for Christian and Civil Marriages under **Clause 39 (1) (a)** to read as follows;

We recommend that the Clause should be reconstructed to read as follows; 'A marriage contracted under this Act may be converted- (a) from monogamous to potentially polygamous with the exception of Christian and Civil Marriages.

The Rationale for this is that Christian Marriages are monogamous, covenanted for life between a Christian woman and man to the exclusion of others until they are separated by death. The option of conversion of the same from Monogamous to Polygamous should not apply, suffice, or even be mentioned.

Additionally, Civil Marriages have been potentially monogamous and therefore the same should be maintained.

The allowance for converting monogamous Christian and civil marriages into polygamous contradicts Christian teachings

and the common law system, which view marriage as a lifetime union between one man and one woman.

- 2) The IRCU further recommends, that **Clause 39 Clause 5 of the Bill** be expunged from the Bill.

he IRCU recommends expunging of Clause 39 (5) from the Bill to limit the excessive powers of the Minister to prescribe other conditions for Conversion of marriage.

CLAUSE 40: Void marriage

We concur with most of the Clause however we disagree with **Clause 40 Subsection (1) (f)** that provides for a marriage being null and void where a party suffers from permanent impotence or vaginismus and the fact is not known to the other party at the time of contracting the marriage.

The IRCU proposes that this Clause should be qualified to be based on scientific or medical evidence.

The Rationale for this is that this will protect and save married couples from unnecessary separation or divorce based on impotence or vaginismus that could be cured medically or scientifically.

Additionally, the law should encourage such couples to seek Assisted Reproductive Technology instead of ending a marriage by reason of importance or vaginismus.

CLAUSE 45: Types of Matrimonial Property

The IRCU agrees with **Clause 45** defining the forms of Matrimonial property. We however, propose the inclusion of Ancestral Property that has been duly inherited and passed to any of the Parties to marriage in the definition of Matrimonial Property under Clause 45.

The Rationale for this is that the exclusion of inherited and passed ancestral property from the definition of matrimonial property may

jeopardize the security of thousands of women and even men on land. While this exclusion intends to preserve family heritage. The role, and rights of women and even men who when married are occupying such ancestral property should not be ignored by the law.

Women always maintain, cultivate, and provide labour on such land since such property is always a source of livelihood and may be the only primarily property enjoyed by couples in a marriage. However, at separation or at the death of a partner such ancestral land is not considered a shared asset leaving women in a place of vulnerability, stripped off of their livelihoods and even homesteads and yet in most instances this property has passed to partners in Marriage either through allocation or distribution.

CLAUSE 47: Prenuptial and postnuptial agreements

The IRCU disagrees with the Provisions for prenuptial and postnuptial agreements. We recommend that the provision be expunged from the Bill.

The rationale for this is that the IRCU believes that prenuptial agreements if violated may potentially undermine trust and unity which are the foundations for a successful marriage. Prenuptial agreements may therefore fail the actualization of Marriages, if violated.

Additionally, the concept of prenuptial and postnuptial agreements, effectively treating marriage as a contractual relationship rather than a sacred covenant. This reduces marriage to a transactional arrangement over property rather than a couple being one flesh in a lifelong union.

CLAUSE 61: Presumption of marriage for maintenance of children and property rights

The IRCU disagrees with the section on Presumption of Marriage for Maintenance of Children and Property.

The rationale for this is that **Clause 61** introduces the concept that if a child is born outside of a legal marriage, this new law will automatically presume that this man was married to the mother of

that child, as far as child maintenance and property rights are concerned. This threatens and erodes the very foundations of marriage and the moral fabric of society. Otherwise people may then find no reason to marry or be married.

The IRCU recommends that Government enacts a separate law from the Marriage law, to deal with relationships of cohabitating Parties. We also noted that the Children's Act and the Succession Act of Uganda effectively addresses rights of Children pertaining to property and maintenance, and this should not be replicated in this law in the guise to establish the presumption of marriage.

CLAUSE 63: Recognition of extraterritorial dissolution of marriage

We disagree with clause on recognition of extraterritorial dissolution of marriage.

The Rationale for this is that **Clause 63** introduces the concept of "extraterritorial dissolution of marriage" in Uganda. What this means is that if a spouse realizes that it will be difficult to secure a divorce here in Uganda, they can, for example, decide to go to London and divorce their spouse from there. The new law in essence states that a marriage which is dissolved in another country should be recognized by and so the divorce that was carried out in another country should be acknowledged. This also weakens, threatens, cheapens and trivializes the institution of marriage.

We recommend expunging of Clause 63 from the Bill.

CLAUSE 73: Dissolution of marriage by mutual consent

We strongly disagree with the **Clause 73 Subsection 1 (a)**, of the Bill, that provides for dissolution of marriage by Mutual Consent of the Parties. This section should be expunged from the Bill.

The Rational for this is that:

- 1) Mutual consent to end a marriage amounts to connivance to end a Marriage through a Mutual Consent Divorce. In Mutual Consent Divorce Parties may have no opportunity to carefully think about the decision to end a Marriage.

- 2) Mutual Consent to end a Marriage also introduces the idea of a no-fault divorce. From a moral and religious standpoint, no-fault divorce is criticized as too accessible, and that it devalues marriage vows, aka one's promise to love and cherish, until death do you part.
- 3) Most no-fault divorces are unilateral, meaning that only one spouse needs to think the marriage is beyond repair, thus trumping the other's potential desire to save the marriage.

We therefore recommend that Parliament should Maintain the original grounds for dissolution of marriage, as provided for in the **Divorce Act** to end a Marriage either through Adultery, Dissertation or Cruelty among others. Religiously and morally there should be a ground for dissolution of a marriage.

CLAUSE 74 Irretrievable breakdown of marriage to be sole ground for dissolution of marriage for sole petitioner

We vehemently disagree with the provision that irretrievable breakdown of marriage should be a sole ground for dissolution of a marriage.

We recommend that for a dissolution of marriage based on irretrievable breakdown of a marriage to stand, the same should be corroborated with other grounds for divorce as they appear in the Divorce Act.

The Rationale for this is that the inclusion of "irretrievable breakdown of marriage" as the sole ground for divorce will potentially lead to higher divorce rates and in so doing will weaken, cheapen, and trivialize marriage, which is a sacred and divine institution

1.3 OTHER GENERAL RECOMMENDATIONS OF THE IRCU REGARDING THE BILL.

The IRCU proposes the following general recommendations;

1. The IRCU proposes that to ensure access to justice in matrimonial matters, Parliament should consider passing the National Legal Bill. The National Legal Aid Bill, will ensure

access to justice for the vulnerable and marginalized persons in matrimonial matters.

2. While push for criminalizing of cohabitation under the Bill. We observe that there is need to offer adequate protection of rights of parties, Children and Property acquired in cohabitation relations.

Therefore, given the magnitude of the many relationships founded on cohabitation, the IRCU recommends that Government should enact an exclusive Bill separate from the Marriage Bill, 2024 regulating relationships between cohabiting persons.

The IRCU takes cognizance of the common law wife principles in Britain but also the Scotland 2006 Act of Scotland that regulates matters to do with sharing of jointly acquired household goods, moneys, property and childcare and custody for children acquired in cohabitation. In the UK a cohabitation could be regulated by a Cohabitation contract or a living together agreement that seeks to regulate and protect the relationship between cohabitating partners.

CONCLUSION

We acknowledge Parliament's mandate to pass laws under **Article 79 of the 1995 Constitution**. Parliament is mandated and enjoined to make laws for the peace, order, and development of Uganda.

We strongly advise Parliament against enacting the Marriage Bill, 2024 in its current state but to consider the aspirations of people of Uganda, as evidenced by the opinion from different stakeholders including the religious communities of Uganda.

We opine that If the Bill is passed in its current state into law, then it will not provide a legal framework that will help Ugandans build a stable, progressive, and transformed nation for future generations.

We further urge Parliament to exercise due diligence, allow more time for consultation and dialogue with stakeholders regarding the Marriage Bill, 2024.

This, we believe, this will create opportunities for more dialogue and building of consensus that will lead to the establishment of a legal

framework that respects to the interests and needs of the different stakeholders, religious entities, and communities of Uganda.

As the IRCU we believe that this is the right way to go and hope that our appeal and recommendations herein will be heeded too.

We thank you all,

Apostle Dr. Joseph Serwadda,

Co-Chairperson, IRCU Council of Presidents/

Chairperson IRCU Marriage Committee/

Presiding Apostle-Born Again Faith in Uganda

FOR AND ON BEHALF OF THE IRCU COUNCIL OF PRESIDENTS