HOW LONG SHALL WE WAIT? AN ANALYSIS OF THE MARRIAGE AND DIVORCE BILL 2009

By Godiva Akullo Monica*

Abstract

The Marriage and Divorce Bill is one of the most debated laws in the history of Uganda having languished in Parliament for almost 5 decades. One of the main reasons why the Bill has been shelved every time it comes before Parliament is that it has faced stiff resistance from traditionalists, Muslims and Christians alike. The law is intended to reform and consolidate the law relating to marriage, separation and divorce in Uganda and therefore addresses issues like property, bride price and polygamy which are issues that understandably get people riled up. This analysis is an attempt to cool down tempers and return the discussion to cold hard facts and the issues the law addresses.

It discusses the most contentious issues raised in public discussions of the Bill which are; cohabitation, bride price, property sharing and divorce. It analyzes the way these issues have been addressed in previous versions of the bill and in the current version. Contentious issues which have been mostly resolved through a provision in the bill such as matrimonial property are pointed out. The Bill in its current state still raises a number of human rights issues, however, the consensus among activists who have been working to get the law passed seems to be that in the very least, we need the law to be passed. This analysis recognizes the compromises that have been made on the road to getting the Bill to where it is now.

Introduction

The Marriage and Divorce Bill has had a long and chequered history in the Parliament of Uganda. A version of it, titled the Domestic Relations Bill was first tabled before the Parliament of Uganda in 2003, about 16 years ago, a product of the efforts of Women's Rights Activists and government technocrats that were kick started by the 1964 Marriage and Divorce Commission. Since the Bill was first tabled, it has remained unfinished business in 3 Parliaments and has faced stiff resistance from traditionalists, Muslims and Christians alike.

Status of the Bill

On 16th October 2009, **The Marriage and Divorce Bill, 2009** (the MDB hereinafter) was gazetted. Its object is among others, to "reform and consolidate the law relating to marriage, separation and divorce."[1] This is an important objective particularly considering the fact that the

[1]*LLB (Mak)13', LLM (Harvard)15'. Ms AKullo is a partner with Development Law Associates, Uganda.

marriage law on the books right now is the Marriage Act of 1904, similar to the Divorce Act. The law regarding marriage and divorce in Uganda is split among 6 Acts namely, The Marriage Act, The Divorce Act, The Registration of Customary Marriages Act, The Marriage of Mohamedans Act and the Marriage of Hindus Act. As such, the consolidation and reform of Uganda's laws on marriage and divorce is long overdue. Generally, the bill is a comprehensive one—as it is, based on consultations with all relevant stakeholders. The bill was drafted based on studies and recommendations by the Uganda Law Reform Commission, FIDA-Uganda, and Ministry of Women in Development, Culture and Youth.[2] It addresses several issues that have been points of contention among the Ugandan public, particularly matrimonial property, polygamy, bride wealth and same sex marriage among others. These issues will be the focus of this analysis.

In 2011 debate on the bill came to a standstill as it was heavily opposed by Muslim and Christian Religious leaders and believers. The most contentious issue for the Muslims was that the bill attempted to outlaw polygamy, which is a central part of the Muslim faith. Christians opposed the law allegedly because it would promote promiscuity and "cheapen the institution of marriage." This issue was resolved by a decision that Muslim marriage would be provided for under a separate law.

At the last tabling of the bill before Parliament in February 2013, it was withdrawn by the Government in order to give Members of Parliament more time to consult their constituents. The Speaker of Parliament, Rebecca Kadaga, recently reminded Members of Parliament that it is their duty to consider that bill.[3] She stated that she had notified the Leader of Government Business and the Leader of Opposition to meet and come up with a joint report on how to proceed with the Bill considering the views that came from the constituencies.[4] However, to date, the Parliament of Uganda is yet to reconsider the bill.

Yasin Mugerwa argued in an opinion piece for the Sunday Monitor that:

> To have the disputed Bill accepted by all Ugandans, the architects of this law should calm down before it's "reburial". We need to drop the rubicund ideas on cohabitation, bride price, discourage divorce and embolden the institution of marriage. I suggest we consult Ugandans again, delete the word divorce from the original draft; stop demonising critical views and lobby for a common ground on property sharing. We can guarantee women rights and protect children from abusive marriages without necessarily vulgarising the institution of marriage.[5]

Makubuya 'Memorandum' in the *Marriage and Divorce Bill, 2009.*

[2] *Ibid.*

[3] Kadaga Resurrects Marriage and Divorce Bill, available at http://www.newvision.co.ug/news/664999-kadaga-resurrects-marriage-and-divorce-bill.html.

[4] *Ibid.*

[5] Yasiin Mugerwa, Dilemma Sets in as Marriage Bill Returns, available at http://www.monitor.co.ug/Magazines/PeoplePower/Dilemma-sets-in-as-Marriage-Bill-returns/-/689844/2631426/-/item/1/-/rpvqlx/-/index.html.

In this analysis, I discuss the most contentious issues he raises above which are; cohabitation, bride price, property sharing and divorce. I will analyze the way these issues have been addressed in previous versions of the bill and in the current version. For matters in which the controversy has been mostly resolved through a provision in the bill, I will point those out and for those that are yet to be addressed, I make recommendations. This bill has languished in Parliament for almost 5 decades, it is one of the most debated laws in the history of Uganda, and the only problem is that the debate is usually informed by 2nd and 3rd hand information about the law. Even the MPs who are expected to know the provisions of the bill inside out before they debate them in the house sometimes do not read these bills.

It is my contention that while making domestic law the legislature cannot ignore the country's obligations under international human right law. These international human rights instruments are voluntarily entered into and therefore legally binding on the state. I thus make reference to various instruments of international and regional human rights law in this analysis.

Polygamy

The Marriage and Divorce Bill (MDB) recognizes polygamous marriages as lawful in Uganda. Clause 3 (Interpretation) of the MDB defines a '*polygamous marriage*' as "a marriage in which the man is married to more than one wife," and it goes on to define a *potentially polygamous marriage* as 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.[6] From the above definitions it is clear that the polygamous marriage envisioned by the drafters of the MDB is one in which one man is married to, or is allowed to legally marry more than one woman.

A feminist argument grounded on the principle of equality of men and women arises against this provision. Article 21 of the Constitution of Uganda provides that all people are equal before the law regardless of sex. Article 31 of the Constitution provides that men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.

At the international level, Article 23(4) of the International Covenant on Civil and Political Rights (ICCPR) provides that States Parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. Similarly, the Maputo Protocol under Article 6 calls upon State Parties to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. It also calls upon State Parties to enact appropriate national legislative measures to guarantee that monogamy is

[6] Clause 3- Interpretation of the Marriage and Divorce Bill.

encouraged as the preferred form of marriage and that the rights of women in marriage and family are promoted and protected.[7]

Furthermore, Article 16(1) of the Universal Declaration of Human Rights (UDHR) provides that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. These are the very issues emphasized in Article 31(1) of the Constitution of Uganda.

Similarly, Article 3 of the African Charter on Human and People's Rights (ACHPR**)** calls for equality of all persons before the law and entitles all people to equal protection of the law. However, the MDB is permitting polygamy only for men. It clearly goes against the principle of equality and non- discrimination enunciated in Uganda's Constitution and its international and regional undertakings, in that it allows only men to marry more than one wife but the same is not permitted for women.

Polygamy continues to thrive in Uganda as a cultural practice among most, if not all, ethnic groups, and by some religious groups for example Muslims. Attempts to outlaw it have been the primary cause of stiff resistance to previous versions of the Marriage and Divorce Bill. It therefore makes sense that law makers who are mandated by the Constitution to make laws that reflect the aspirations of the people of Uganda and women's rights activists who at the moment are more concerned with getting a more updated and comprehensive law on the books would leave the recognition of polygamy in Uganda's marriage laws undisturbed. This notwithstanding, the contentions around polygamy create a heard debate and discussion which is not going to die down.

Bride Price

The MDB recognises the institution of 'bride wealth' as legal although it provides that it shall not be 'an essential requirement for any marriage under this act' and that 'it is an offence to demand for the return of a marriage gift' (Clause 14). A marriage gift is defined in Clause 3 of the bill as a gift by whatever name known, in cash or in kind given by either party to a marriage in respect of that marriage and includes bride price and bride wealth.

Traditionally, bride price was supposed to consist of gifts given to the parents of a bride in appreciation of their role in the bride's upbringing. Bride wealth has also been defended as an institution that serves to protect the wife against abuse from her husband, stabilise the marriage and join the two families together. In some cases, bride price was supposed to act as security for the wife in case of divorce.[8] However, today the purpose of bride wealth has been distorted. According to Tamale

[7] Article 6(c) of The Maputo Protocol.

[8] Kulsum Wakabi, 'Bride Price and Domestic Violence', Briefing Paper 2000, The Mifumi Project in Partnership with PROMPT.

> Whatever virtues the institution of bride wealth carried in the past, they have been lost in the present. Rather than cementing the relationship between the families concerned, and providing stability to the marriage, the customary payment of bride wealth now gives the husband proprietary rights over his wife, allowing him to treat her more or less like a chattel. This is especially so because it equates a woman's status in marriage with the amount of bride wealth exchanged and not with her skills and abilities.[9]

This distortion in practice is clearly degrading and takes away the dignity of women as it leads to women being considered as mere property to be bought and sold to the highest bidder at will and also to women being looked at as less than men in a marriage. In addition to this, there are increasing instances these days of cases where the woman has to contribute to the bride price because she wants to marry a man who can't afford the exorbitant bride wealth that some parents ask for. This leads to young couples starting their families while in debt.

Article 16 of the CEDAW calls upon State Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women;

(a) The same right to enter into marriage;
(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
(c) The same rights and responsibilities during marriage and at its dissolution.

The UN Committee on Elimination of Discrimination against Women which received Uganda's last periodic report in August 2010 expressed concern that such customs and practices (polygamy and bride wealth) perpetuate discrimination against women and girls, that they are reflected in the disadvantageous and unequal status in many areas, including in education, public life, decision-making, marriage and family relations, and the persistence of violence against women and harmful practices, including polygamy, early marriages and the bride price, and that, thus far, the State party (Uganda) has not taken effective and comprehensive action to modify or eliminate stereotypes and negative traditional values and practices.[10] The Committee urged Uganda to address harmful practices, such as polygamy, early marriages and the bride price, more vigorously.[11]

However, in the case of *Mifumi (U) Limited v AG* the argument by women activists that bride price was unconstitutional was rejected.[12] The Constitutional Court considered the practice of

[9] Sylvia Tamale, Law Reform and Women's Rights in Uganda, 1 East African Journal of Peace & Human Rights(1993) at 170.
[10] Paragraph 19 of Concluding Observations.
[11] Paragraph 20 of Concluding Observations.
[12] Constitutional Petition No.12/2007 [2010] UGCC 2 (26 March 2010) available online at http://www.ulii.org/ug/cases/UGCC/2010/2.html.

payment of bride price as a condition precedent to the customary marriage separately from the practice of claiming a refund on dissolution of the marriage and held that it is the practice of demanding for a refund that is unconstitutional and that it "demeans and undermines the dignity of a woman."[13] The recognition of bride price in the bill reflects the position adopted by the Constitutional Court in the Mifumi case and goes a long way towards ensuring the protection of women in marriage and at its dissolution. However, it is my considered opinion that the well being of all women in marriage and Uganda's compliance with her international human rights obligations, would be best ensured by completely removing the requirement for bride wealth as a condition precedent to a customary marriage, and leave it at the will of the parties as a gesture of appreciation.

On the whole, the institution of bride wealth is very problematic; despite the fact that the Constitutional Court which is charged with interpreting the Constitution of Uganda found it to be constitutional and the Laws of Uganda must be made in accordance with the Constitution. It's important to note that even earlier versions of the bill before the Court pronounced itself on Bride wealth, recognized it as legal. Advocates for this law have had to make compromises to get it where it is now; bride wealth and polygamy were the greatest compromises.

Matrimonial Property

In 2013, matrimonial property was one of the most contentious issues of debate during the last tabling of the Marriage and Divorce Bill in Parliament. This is also one of the most comprehensive Clauses of the bill. The Interpretation section says that matrimonial property shall be given the meaning in Clause 116 of the bill and Clause 116 refers us to Clause 115 which gives a list of the things that shall be included in matrimonial property.

Clause 115(c) of the bill states that matrimonial property includes any other property either immovable or movable acquired before or during the subsistence of a marriage deemed to be matrimonial property by express agreement. Over the years, the courts of Uganda have made pronouncements on what does and doesn't constitute matrimonial property, particularly at the time of dissolution of marriage. In the case of *Hope Bahimbisomwe v Rwabinumi*, the Supreme Court of Uganda held that matrimonial property is that property acquired jointly by the parties in marriage and any property that the couple decides to treat as matrimonial property by agreement.[14] The courts' pronouncements have been adopted and applied accordingly in the distribution of property at the dissolution of a marriage. However, none of this is reflected in any written law. In fact before taking leave of the appeal in *Bahimbisomwe v Rwabinumi,* Kisakye JSC had this to say:

[13] *Ibid*.
[14] Civil Appeal No. 10 of 2009.

> I would strongly urge Parliament to enact a law that clearly defines what constitutes marital/matrimonial property as opposed to individually held property of married persons and that spells out the principles that courts should follow in adjudicating disputes involving division of property upon the dissolution of marriage. Such law should of course be based on the principle of equal treatment of the husband and wife, as is prescribed by our Constitution.[15]

This provision therefore brings the law in line with the practice that the courts have adopted on issues concerning matrimonial property and fills a long existing gap in the law.

Prenuptial Agreements

A new addition to the Marriage and Divorce regime in Uganda appears in Clause 117 of the MDB which provides for agreements prior to marriage or cohabitation that partners may enter into, regarding the acquisition and sharing of property in their marriage/ cohabitation. This clause effectively neutralizes the arguments that have been raised against the bill's provisions on matrimonial property. Some MPs argued that the scope of matrimonial property included in the bill was too high and would amount to unjust enrichment of one spouse in case of divorce, at the expense of a spouse who came into the marriage financially stable and owning their own property. Individuals contemplating marriage would be free to make agreements as to their property under this clause and such contracts would be valid and enforceable before courts of law in Uganda. This would limit cases of "unjust enrichment" as the property would be divided in accordance with their prenuptial agreement in the event of divorce.

Same Sex Marriage

Same sex marriage is an issue that many jurisdictions are contending with in different ways. The Republic of Ireland decided the issue of marriage equality through a referendum in which a majority of Irish people voted for marriage equality.[16] The Supreme Court of the United States recently pronounced bans on gay marriage in the USA to be unconstitutional thereby recognizing the rights of same sex couples to marriage. In Uganda's case, the 2005 Constitutional Amendment Act amended the Constitution by adding Art.31 (2 a) which prohibits marriage between persons of the same sex. In the same vein, S. 18 and 40 of the Marriage and Divorce Bill prohibit same sex Civil and Christian marriages respectively. It is unclear whether the absence of a prohibition of same sex marriage in the sections of the law covering Bahai, Hindu and Customary marriages was deliberate or an error of omission on the part of the draftsperson.

The issue of homosexuality has been the subject of much public and private discourse in Uganda especially in the past 6 years. The Parliament of Uganda passed an Anti Homosexuality Act in

[15] *Ibid.*
[16] Ireland Same Sex Referendum Set to Approve Gay Marriage, www.bbc.com/news/world-europe-32856232.

2014 which was challenged before the Constitutional Court and found to be unconstitutional on grounds that it was passed without the requisite quorum. The Court did not consider the other grounds raised by the petitioners in challenging the law which included the right to privacy, equality before the law and non discrimination all of which are guaranteed under the Constitution of Uganda, and which the petitioners alleged were infringed upon by the Anti Homosexuality Act. It is inevitable that the Constitutional Court of Uganda will be confronted with this issue again very soon and its pronouncement will determine the constitutionality of this clause of the Marriage and Divorce bill.

Divorce

The provisions of the Divorce Act, particularly regarding the grounds for divorce, are obsolete. The Constitutional Court has found unconstitutional and struck down several sections of the Act on equality grounds. These changes have, until now, never been reflected in the law via amendment. The practice now is that in divorce cases, courts only require the party petitioning for divorce to prove one ground i.e either adultery, cruelty, or any other of the grounds listed in the divorce act to secure a divorce. Clause 144 of the MDB provides for irretrievable break down of marriage as the only ground upon which a party may petition for the dissolution of that marriage. It does away with the burden on the party petitioning for divorce to prove any wrong doing on the part of the other. Parties only need to present sufficient evidence to convince the court that a marriage has irretrievably broken down. This clause has faced some resistance with religious leaders claiming that it will weaken the institution of marriage. However, it is my opinion that this clause will prevent cases of people being trapped in empty marriages simply because they cannot prove some wrong doing on the part of their spouse. This clause illustrates an understanding of the state of marriage in modern times where parties may mutually decide to separate instead of staying in a failing marriage.

Some religious institutions and leaders argue that marriage is a union before God and therefore no court should be invested in tearing it up. That argument is valid; however there are certain instances in which it would be inhuman to force a person to stay in a marriage. The recognized grounds for divorce in Uganda are cruelty, adultery, desertion and sodomy, among others. This means that in order to be granted a divorce by a Ugandan Court, one must prove extreme cruelty that causes physical and mental injury, adultery, that their spouse has committed sodomy or that they have been abandoned by their spouse for a period exceeding 3 years. A perusal of most of the cases that come before courts of law shows that most Ugandans seek divorce on grounds of extreme cruelty and mistreatment at the hands of their spouse. Courts presiding over divorce cases carefully consider the evidence presented to them by all the parties involved before granting or denying divorce. This minimizes the danger of parties seeking divorce over trivial matters and also maximizes the Court's ability to remove spouses and children from dangerous situations.

Furthermore, the government of Uganda has a constitutional duty to make law that respect, promote and protect the rights of its citizens. It is the responsibility of the government to regulate the relationships of Ugandans and ensure our well being while in those relationships. A law providing for divorce is part of the fulfillment of that duty.

Some activists have suggested that perhaps it is the presence of the word 'divorce' in the title of the bill that is creating all this havoc and therefore that word should simply be deleted from the title so that the law can be passed. I disagree with this position on two grounds.

First of all, it would be dishonest to try to sneak a law passed the citizens of Uganda for whom that law is made. It is our constitutional right as citizens to know the contents of laws that are being passed by our Parliament and therefore changing the title of the law just to hoodwink citizens is not the best approach. Secondly, it is my considered opinion that Ugandans are capable of recognizing and engaging with the issues raised in the marriage and divorce bill without getting caught up with the title. The biggest problem is that citizens do not often have sufficient objective information to engage on the issues intelligently. The burden therefore falls on the government and activists to educate the citizens about the purpose of this law. They should explain why it addresses the particular issues that it does, and why divorce is an important part of it. This work is being done right now and I am hopeful that the next time this law comes before Parliament, the debate will be focused on real issues and that whatever title it is given at that time will not bias Ugandans as they will understand the contents of the law.

Time of Divorce

Clause 140 of the bill bars any divorce proceedings before the expiry of 2 years from the date of marriage, and yet Clause 145 asserts irretrievable breakdown of marriage as the sole ground for divorce. What happens if a marriage irretrievably breaks down before 2 years have elapsed? S.140 therefore defeats the purpose of S.145 and may leave weak spouses at risk. In case of domestic violence, a vulnerable partner may lose his or her life while waiting for the required two years to elapse, for example in the Sharma Kooky case where the wife was battered to death. No one should be forced to stay in a marriage that has gone sour for two extra years by the law. Furthermore, the reality of the HIV/AIDS pandemic in Uganda should not be ignored. HIV/ AIDS will not wait for two years to infect someone in case of a habitually unfaithful spouse. The aggrieved party should therefore be able to leave the marriage as soon as a problem is detected.

Article 31(3) of the Constitution provides that marriage shall be entered into with the free consent of the man and woman intending to marry. This by implication connotes a freedom to withdraw from the marriage when this consent ceases to exist.

Cohabitation

The Interpretation Clause (3) of the bill defines cohabitation to mean a man and a woman living together as husband and wife; this definition is ambiguous and too wide. In fact, this was one of

the most contentious issues in the bill when it came before parliament in 2013. Yasin Mugerwa argues that:

> The Bill in its current form distorts the Godly institution of marriage by legalising cohabitation and encouraging divorce. The Bill is a recipe for domestic violence. There is also another controversial clause that seeks to vulgarise the institution of marriage by recognising cohabitation.[17]

In the same manner, the ArchBishop of the Church of Uganda, Stanley Ntagali came out to condemn vices like cohabitation that may destroy the fabric of society.[18] He however reiterated that the church has nothing against the Bill, except for the fact that they supported wider consultations and sensitization of the masses since this is a bill that concerns the family which is the basic unit of society.[19] The arguments against the recognition of cohabitation are all valid. Christians and Muslims have religious reasons for opposing it and so do traditionalists. During community consultations in Lango, one lady spoke about how in her culture moving from one man to another is a curse and therefore the bill should not promote cohabitation if it is to earn their support. However, these arguments are based on a lack of understanding of the provisions of the bill on cohabitation. The bill does not recognize cohabitation or legalize it as a form of marriage, it simply provides for the different proprietary rights of the parties in cohabitation. The law is geared especially towards the protection of women who have often been the victims of dishonest men who live with them for years and have children and build an estate together, only for the man to pass away and the woman and her children are left unprovided for and destitute because under the law, they have no rights. This has become a rather common scenario before the courts of law in Uganda and with the rise in the number of women owning property in Uganda, there are many men being caught up in such situations as well. Hon. Odonga Otto was one of the MPs who supported calls to have cohabiting partners benefit in case of dissolution of a cohabitation. He argued during the house proceedings that "I think it is not fair for a man to stay with a woman for ten years and walk away from the marriage with nothing. Marriage should not be mechanical." [20]

The law does not recognize cohabitations as marriages; it merely provides legal protection for such widows, widowers and children who are victims of circumstances—especially during dissolution. Furthermore, the problems envisioned by the church and traditionalists can be cured by simply amending the provisions on cohabitation and providing a set of criteria that a couple must satisfy in order to qualify as cohabiters whose property rights are recognized by the law. Two people should not be considered cohabiters unless they have the capacity to contract a valid marriage and have lived together for a substantial amount of time (preferably 3 years). The

[17] *Supra* note 5.
[18] NTV Uganda, Arch Bishop Ntagali Condemns Cohabitation Clause, https://plus.google.com/+ntvuganda/posts/KUyKZZYsB6N.
[19] *Ibid.*
[20] House Considers Marriage and Divorce Bill, available at http://www.parliament.go.ug/new/index.php/about-parliament/parliamentary-news/165-house-considers-marriage-and-divorce-bill.

definition of cohabitation should also be amended because as it stands, the definition is too wide. It may be defined as follows: Cohabitation means a man and woman ***with capacity to contract a valid marriage*** living together as husband and wife ***for a period of 3 years or more.***

Jurisdiction of Local Council Courts

The issue of jurisdiction is one matter at the core of marriage and divorce issues. Clause 134(2) of the MDB gives jurisdiction over matrimonial causes arising out of customary marriages to Local council courts (LCs hereinafter). This provision expands jurisdiction over divorce cases beyond S. 3 of the **Divorce Act Cap 249**[21] while reflecting the provision in the **Local Council Courts Act** 2006(the **LCCA**). S. 10 (b) (ii) (b) grants LCs jurisdiction over "disputes concerning marriage, marital status, separation, divorce or the parentage of children."

However, the local council courts may not be in a position to protect the rights of vulnerable persons like women and children. Professors Barya and Oloka Onyango have argued that

> Because LCs continues to operate in social contexts that are still largely patriarchal, women's rights are in most cases ignored or arbitrarily violated. It is thus our opinion that there is a likelihood that the LCs will ignore, or abuse, the rights of women in marital causes.[22]

Furthermore, Ugandans have many customs which have an impact on marriages creating a multiplicity of customary marriages and customs to apply in decisions relating to them. And yet LCs Courts are geographical and the leaders who constitute them are elected on the basis of popularity rather than knowledge of all the customs in the area.

Of course the problem of the backlog of cases before the Courts of Law persists and granting jurisdiction over such cases to LC Courts would free up the higher courts to handle more cases. However, this problem would be better resolved by providing for recourse to Alternative Dispute Resolution in some divorce cases. This would entail providing for mediation in cases of conflict over property in a divorce. Couples can be encouraged to make their case before qualified individuals supervised by the Court in order to avoid decisions being made outside of the law and abuse of vulnerable parties in divorce proceedings.

Conclusion

When the law was last tabled before parliament in 2012, the Government withdrew it from the floor to give Members of Parliament more time to consult with their constituents on the law. I

[21] S.3 of Cap. 249 provides that: Where all parties to a proceeding under this Act are Africans or where a petition for damages only is lodged in accordance with section 21, jurisdiction may be exercised by a court over which presides a Magistrate grade I or a Chief Magistrate. In all other cases jurisdiction shall be exercised by the High Court only. Such jurisdiction shall, subject to this Act, be exercised in accordance with the law applied in matrimonial proceedings in the High Court of Justice in England.

[22] Barya and Oloka- Onyango, "Popular Justice and Resistance Committee Courts in Uganda," 1994, New Vision Printing and Publishing Corporation.

argue that as a potential piece of legislation, the MDB reflects the will and aspirations of the people of Uganda. It is after all the product of the efforts of legislators and activists and as the memorandum states is based on studies and recommendations by FIDA- Uganda and the Uganda Law Reform Commission, among others and consultations by MPs with their constituents. However, there is still a lot to be done in terms of ensuring that it complies with Uganda's international human rights obligations in the face of stiff resistance from cultural and religious leaders. After having languished in parliament for decades, this bill is one of the most debated proposed laws in Uganda's history. The Constitution of the Republic of Uganda guarantees the equality of men and women and any law providing for the regulation of relationships between men and women should reflect this. The MDB reflects this equality in certain aspects like property sharing but fails miserably when it comes to polygamy and bride wealth.

The Marriage and Divorce Bill of 2009 is not the most comprehensive law on domestic relations that the world has ever seen, but it is the most comprehensive and up to date handling of the issues of marriage and divorce in Uganda. There is room for improvement, however at this point the consensus among activists and technocrats alike seems to be that we need a law in the first place. I am inclined to agree.