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The Socio-Legal Dynamics Of Customary Marriage In Uganda

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Valuable inputs from

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The views expressed in this publication are neither for the Centre for Policy Analysis nor its partners

Obong offered dowry for Apio in January 2017; seven cows, twelve goats, a bag of salt, soap and sugar were some of the items presented. The couple did not go to their sub-county headquarters to get registered and be issued a customary marriage certificate by the sub-country chief. When the dowry was paid, Apio became Obong's wife. Culture and society expect that she diligently plays her wifely triple role of reproduction, production and contributing towards community self-help and other empowerment initiatives. Her family and friends know her as Obong's wife. Similarly, Obong became the *okeo*¹ to Apio's family. The two are now wife and husband by all cultural and social standards. Apio became, *Ciko*²Obong and Obong became *Cwar*³Apio. The irony, though, is that Obong and Apio are oblivious of the fact that they are not legally married—their marriage is not a valid one at least according to law. It is a mere union because it was not registered. A fundamental question thus ensues: why should their union not be regarded as legal and valid yet they are expected to love, fulfil conjugal duties, show affection and be companions just like their registered counterparts? Finding relevant answers to this question and contextualizing it within a socio-legal framework underpins the logic of this paper.

Customary marriage, termed locally as *nyomkwaro* among the Lango/Acholi, *Kubingira* among the Bakiga/Banyankole and *Kwanjula/kukyala* among the Baganda, etc. precedes most types of marriages in Uganda. It is a type of marriage which is negotiated, celebrated and concluded according to specific culture and norms, celebrated according to the rites of an African community to which one is a member⁴. By most standards, it is the fulcrum of matrimonial institutionalization in Uganda. For instance, the progress of a religious marriage ceremony in either a church, mosque or a temple is sometimes dependent on the availability of proof of a customary marriage practice. Similarly, a civilly married couple faces high risks of social ostracization if they have not performed a customary marriage ritual. Most of the time, customary marriages are converted into church marriage if it is monogamous in nature. It is also converted to Muslim marriage, even when it is still polygamous⁵.

In Africa, the tentacles of marriage extend beyond the union between man and woman. It was and still is a community affair. In the pre-colonial context, customary marriage was the glue that held different societies and communities together. It was a both a cultural and political connecting rod. Clans, tribes and kingdoms intermarried to promote social cohesion, alliances, trade, peace and harmony, among others.

A key feature of customary marriage ceremony is bride price/wealth and/or dowry. Offering bride wealth and customary wedding represented the loss of a daughter to a family, hence the loss of labour and someone to tend to younger children within the family⁶. A young man, in paying bride price, would give the bride's family gifts in form of livestock to replenish labour and to act as a source of food; these are still typically offered as gifts to the bride's family⁷. In the past, dowry and bride price involved exchange of gifts

¹ Luo word for in-law

² Luo word for wife

³ Luo word for husband

⁴ Law of Uganda (1973): Customary Marriage Act

⁵ The Marriage and Divorce of Muhammedans Act (1906) recognizes polygamy. The Muslim tradition and practice allow men to marry up to four wives.

⁶Tendayi, C (2013). The Cows are coming Home: African wedding customs still have value for the diaspora. Africa at LSE Blog

⁷Ibid

such as gold, cows, fabric, and iron, mostly paid by the groom to the bride's parents. In Uganda, cows are the commonest medium of bride price. The practice is most pronounced in Northern Uganda, specifically among the Karamojong where grooms are still expected to pay dozens and sometimes hundreds of cows to the family of the bride. The same is true for other major the Ateso, Lango, Acholi although fewer cows are usually demanded. In other parts of Uganda, especially, in the non-cattle keeping regions, bride price payments are now monetized.

Despite its central cultural and social significance, customary marriage discourses are a major theme of contentious debate in Uganda since they encompass sensitive issues such as bride price, divorce, domestic violence and property inheritance. There is also a wide information schism, even among the elites about the legal components of customary marriage in Uganda.

Ugandan laws on customary marriage

Today, different marriages in Uganda are being governed by different sets of legislation, for instance, the church or civil marriages by the *Marriage Act (1904)*; Muslim marriage by the *Marriage and Divorce of Muhammedans Act (1906)*; Hindus Marriage by the *Hindus Marriage and Divorce Act (1961)* and customary marriages by the *Customary Marriage Act (1973)*⁸. *The Customary Marriage Act (1973)* is a culmination of the Commission of Inquiry into the Marriage, Divorce and Status of Women, also known as the *Kalema Report of 1965* which made candid recommendations for the institutionalization of some laws to govern customary marriages in Uganda.

Some of the relevant provisions of the *Customary Marriage Act (1973)* include: the establishment of marriage districts for registration of customary marriages; the appointment of registrar of customary marriages; the celebration of customary marriages; the processes that has to be followed and requirements that has to fulfilled for a customary marriage to be registered; customary marriage certification and other related aspects as well as the relationship between customary marriage and other marriages⁹. According to the Act, marriage districts are sub-counties, town councils and municipalities where the customary function took place. Sub-County Chiefs and Town Clerk would then act as marriage registrars and they are required to have in their possession a customary marriage registration book, where they also record the necessary settlements agreed and completed by the parties. Within six months, the married couple is expected to go to the office of the sub-county chief or town clerk to register the details of their traditional matrimonial union. The couple must be accompanied by two witnesses who are either parents, brothers, sisters, uncles or aunts of either of the parties, chiefs, clan heads or other persons of standing. This registration is subject to payment of a prescribed fee. An additional prescribed fine is levied if the registration is sought six months after the date of the customary marriage ceremony. When the couple, their witnesses and the marriage registrar append their signatures on the prescribed certificate form, the registrar then issues a customary marriage certificate to the parties. The certificate acts as evidence of customary marriage for all legal purposes.

In its entirety, this legislation is comprehensive blueprint for traditional marriages in Uganda. What makes it unrealistic in today's context revolves around the question of age of the female party which is clearly spelt in

⁸Damulira (2013). *The Uganda Customary Marriage (Registration) Act: A comment.*

⁹ Ibid

Section 11 that “a customary marriage shall be void if— (a) the female party to it has not attained the age of sixteen years”. This is clearly contrary to Article 31 (1) of the Constitution of the Republic of Uganda which states that “women and men above the age of 18 years have the right to marry and found a family and are entitled to equal rights in marriage, during marriage and after its dissolution¹⁰”. The law is also against other regional and international conventions ratified by Uganda such as Committee on the Elimination of Discrimination Against Women, African Charter on the Rights and Welfare of the Child among others.

Non-registration of customary marriages

The Uganda Registration Service Bureau (URSB) – the body in-charge of marriage registration in Uganda estimated in 2016 that up to 70% of couples under the age of 40 had not registered their customary marriages in their database. The actual figure could even be higher considering the fact that the majority of Ugandans, even the elites are oblivious about customary marriage registration.

As part of this study, the researcher conducted a survey on WhatsApp – a social media platform among 10 people who had conducted a customary marriage ceremony in the past 5 years. All of them (100%) didn't have any idea about the processes, relevance and legalities around customary marriage registration. 50% of the interviewees had wedded either in church or mosque, and were in possession of certificates issued by such religious institutions. They strongly believed that their marriage was registered according to the constitution of Uganda. One respondent argued that marriage is different from registration. *“Registration is not marriage per se. It is just a paperwork you do after finalizing a marriage ceremony.... My marriage is already registered by the Muslim Supreme Council”* he said.

But the Registrar General of URSB doesn't agree with my respondent as stated in a statement issued on the 6th June 2016, “certificates issued by churches, mosques and traditional institutions have no evidential value until the respective marriage is properly filed with the Registrar of Marriages. This is done by the marriage celebrant transmitting an official letterhead from the chief administrative officer, the duly licensed Church, Mosque, Temple or other authorized establishment; and a certified copy of the marriage certificate is extracted to URSB”¹¹. In fact, Section 10 of the Customary Marriage Act (1973) reiterates that “a certificate of a customary marriage issued under this Act or a certified copy of the certificate shall be conclusive evidence of the marriage for all purposes in any written law”.

30% (3) of the respondents who had completed their customary marriage rites thought they had just completed one aspect of their marriage but still left with a religious wedding to officially get married. 10% (1) respondent had been issued a customary marriage certificate from a traditional kingdom and he held a strong view that their matrimony was registered and recognized by the government.

The other respondent did not have any legal document (apart from visuals – photos and videos and a letter from the bride's father approving the marriage) proving that the customary marriage ceremony took place.

¹⁰ Constitution of the Republic of Uganda

¹¹Ainebyona E (2016). All Marriages in Uganda Must be Registered. Daily Monitor Newspaper, 6th June 2016.

The above responses present a fundamental information schism and public disinterest in customary marriage registration, an issue that must be addressed by the relevant state and non-state actors.

What explains this unacceptable public ignorance about customary marriage registration in Uganda? This is a confluence of many reasons, both social and political as illustrated below.

The overriding reason is *weak enforcement by the government*: One key role of the state is to deliberately create a constitutionally conscious citizenry and enforce strict adherence to the constitution. This can be done in many ways including but not limited to: sensitizing the general public about the existence of laws, how they can engage within legal parameters and why they should abide by given sets of law. This is the opposite of the realities on the ground on many fronts but for the purpose of this paper, when it comes to law pertaining customary marriage in Uganda. The predicament is further exacerbated by the fact that even the law enforcers are oblivious about their role in effecting the legal processes of customary marriage registration. I interviewed two sub-county chiefs and a town clerk in Kabale district, Western Uganda to understand the local context.

Their ignorance about customary marriage registration is startling. Neither had ever seen the customary marriage certificate form issued by the Uganda Registration Service Bureau for them to sign and stamp. Another sub-county chief with work experience spanning more than decade in that role has never received any formal orientation from the responsible government agencies about the existence and implementation of the law. *“Despite the existence of customary marriage functions in my sub-county almost every weekend, I have signed and stamped less than a dozen in my decade long service as the sub-county chief.”* he said.

It is generally true that marital legalization strengthens the position of women in their homes and lessens their likelihood of being unfairly divorced, and mistreated when it comes to property inheritance. In fact, the *Kalema Report of 1965* recommended customary marriage registration as an antidote to this conundrum. Being a highly patriarchal society, can it therefore be deduced that the prevailing public ignorance and apparent disinterest by men to register their customary marriage is a manifestation of the need to preserve the status quo and discriminate against women? Some documented examples can augment this argument. On 6th June 2016, Daily Monitor reported about a drama unfolded at All Saints Church of Uganda on the three days earlier when a one Ms. Nakkungu, a former wife to Mr. Sonko protested his wedding to his new wife Mrs. Ahimbisibwe claiming that she was still married to him under a customary traditional rite which was performed a decade ago¹². Ms. Nakkungu claimed she was denied her inheritance rights even though she had four children with Mr. Sonko. The church went ahead to wed Sonko and Ahimbisibwe claiming that Nakkungu and Sonko’s marriage was not registered with URSB.

Another High Court case involving Evelyn Achiro and Alfred Bongomin Vs Y.E Obina provides good example. The applicant, Evelyn, wanted the court to make an order barring Obina, the deceased father from administering the deceased’s estate¹³. The deceased had died intestate (dying without leaving a will). Obina claimed that Bongomin never married Achiro because his son had not finished the bride price payment and the marriage was not registered.

¹² Ainebyoona E (2016). All Marriages Must be Registered – Government. Daily Monitor Newspaper Article published on the 6th June 2016.

¹³Damulira (2013). The Uganda Customary Marriage (Registration) Act: A comment.

Towards a more progressive customary marriage legal framework

At the core of the 1995 Uganda Constitution was the need for equal representation and access to opportunities to all Ugandans regardless of gender, tribe, race, religion and political affiliation. As such, there was a fundamental decision to modify the existing laws, especially the Divorce Act (1904) and Succession (Amended) Decree (1972) which were discriminatory against women¹⁴. In 1994, the Uganda Law Reform Commission initiated the Domestic Relations Project aimed at amending marriage laws¹⁵. Ever since, the commission has implemented landmark initiatives that have played key roles in producing more gender sensitive laws.

In December 2009, a Marriage and Divorce Bill which will be the single most important legal framework for all marriages in Uganda was tabled on the floor parliament of Uganda by the then Minister for Constitutional Affairs, Dr. Kiddhu Makubuya for first reading and was seconded by the then Agriculture Minister, Ms. Hope Mwesigye. Since then, the Bill has been ferociously debated by both the Members of Parliament, the media, CSOs and the public. This proposed marital legislation has triggered debates with progressive women organizations, activists and feminists on the one side endorsing it as the needed law for promoting women's rights and economic empowerment and the conservatives on the other side are claiming it is a threat to the religious and cultural values of families.

Other contentious issues about this legislation included its name and other Clauses therein related to cohabitation which provides for the rights of cohabitees in sharing property after the termination of cohabitation, although it is not considered a form of marriage recognized in Uganda.¹⁶ In July 2017, a revised draft of the Bill was submitted to the Speaker of the Parliament of Uganda. In the new draft, the Bill had been renamed, the Marriage Bill away from the initial Marriage and Divorce Bill. The Clauses related to cohabitation had also been removed. By August 2017, the Marriage Bill had not yet been endorsed by the Parliament and the Chairperson of the Uganda Law Reform Commission had called upon the Speaker of Parliament to urge the Minister of Justice and Constitution Affairs to fast track the Marriage Bill. The speaker promised to ensure that the Marriage Bill is passed within the second session of Parliament which ends next year in June 2018¹⁷. Important to note is also that in the new Bill, all marriages in Uganda will have the same legal status.

Conclusion

The paper has shown that the relevance of customary marriage as a cultural and social rite cannot be disputed. If anything, this practice should be deliberately promoted in an era where cultural degeneration avalanche is becoming more unprecedented. The new Marriage Bill which will provide the legal modus operandi of all marriages in Uganda must however pay a special attention to customary marriage since it precedes most types of marriages in Uganda. Similarly, a clear guideline on the processes and registration of

¹⁴Ibid

¹⁵ Ibid

¹⁶<http://www.parliament.go.ug/index.php/about-parliament/parliamentary-news/165-house-considers-marriage-and-divorce-bill>

¹⁷Segewa N (2017). Marriage and Divorce Bill Renamed. Chimp Reports. <http://www.chimpreports.com/marriage-and-divorce-bill-renamed/>

such marriages must spelt out and responsible government ministries and agencies fully equipped to sensitize the public and enforce customary marriage registration. The public should also be about the benefits of a registered marriage which include among others: a safeguard tool for spousal benefits like insurance, pension, citizenship, immigration, emigration, family resettlements as well as inheritance of estates upon the demise of a spouse¹⁸. Most importantly, registration of customary marriages in Uganda must be viewed as a key tool for promoting gender equality and inclusive economic development.

¹⁸ URSB (2016). Press Statement on Registration of Marriages in Uganda. <http://www.jlos.go.ug/index.php/news-media-events/newsroom/latest-news/item/554-statement-by-ursb-on-registration-of-marriages-in-uganda>