

## UGANDA<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at March 2022)

Family Law Matters	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncodified? If codified,</i></p>	<p>Article 7 of the Constitution provides that “Uganda shall not adopt a state religion”.<sup>2</sup> However, Article 29(1) (c) of the 1995 Constitution gives every person the right to practice any religion and manifest such practice which shall include the right to belong to and</p>	<p>Carolyne Turyatemba &amp; 4 others Vs AG &amp; Another.<sup>8</sup></p> <p>The Supreme Court held that all persons are equal before and under the law in all spheres of political, economic, social, cultural and in any other respect and</p>	<p>The marriage &amp; Divorce Bill 2009<sup>9</sup>. The Bill seeks to reform and consolidate the law relating to marriage, separation and divorce; to provide for the types of recognised marriages in the country and marital rights and duties.</p>	<p>Under The Marriage and Divorce of the Mohammedans Act,<sup>10</sup> Section 3 provides for the appointment of registrars and prescribes their duties like keeping the books and registering marriages and divorces. It provides for the appeals from the Registrar under</p>	<p>In the case of Law and Advocacy for Women in Uganda v Attorney General<sup>11</sup>, FIDA-U and the organisation Law and Advocacy for Women in Uganda have initiated several cases before the Constitutional Court, successfully challenging discriminatory provisions of the Succession Act, as well as discriminatory practices. The Marriage and Divorce of the Mohammedans Act, Cap 252 is way too old and needs to be amended. Its</p>

<sup>1</sup> This country table was prepared by Mwanga Mastullah Ashah (Islamic Women’s Initiative for Justice, Law and Peace (IWILAP-[www.iwilap.org](http://www.iwilap.org) ) as a collaboration under the Campaign for Justice in Muslim Family Laws

<sup>2</sup> Article 7, 21, 29, 31, 33 of the 1995 Constitution of the Republic of Uganda as amended, Article 16(1) of the UDHR, Article 16, 23(4) of the CEDAW, Article 23(4) of the ICCPR), Article 3 of the African Charter on Human and People’s Rights (ACHPR), Article 6 of the Maputo Protocol

<sup>8</sup> Constitutional petition no. 2006/15 [2011] UGSC 13 (08 August 2011)

<sup>9</sup> The marriage & Divorce Bill 2009 and Marriage Bill, 2017

<sup>10</sup> The Marriage and Divorce of the Mohammedans Act, Cap 252, The marriage & Divorce of Mohammedan (Jurisdiction in Matrimonial causes) Instrument SI-252-3,

<sup>11</sup> Constitutional Petition-2005/13 [2007] UGSC 71 (05 April 2007), The Marriage and Divorce of the Mohammedans Act, Cap 252

<p><i>what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p>	<p>participate in the practices of any religious body or organization in a manner consistent with the constitution.</p> <p>Article 21. (1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.<sup>3</sup> Article 21 (2) 2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, creed or religion, or social or economic standing,</p>	<p>enjoy equal protection of the law.</p>	<p>Marriage Bill, 2017 The Bill is an attempt to:</p> <ul style="list-style-type: none"> <li>• align the law on marriage with the Constitution of Uganda;</li> <li>• to consolidate the laws on marriage;</li> <li>• to reflect in our law, the socio-economic realities of Uganda; and</li> <li>• to breathe life into rulings of Ugandan courts on matters of maintenance, grounds for divorce, bride price, widow inheritance and parental consent.</li> </ul>	<p>Section 11. Section 5 (1) provides for the registration for marriage and divorce to be made within one month from the date of the marriage or divorce.</p> <p>Section 8 (1) (a) of the Act provides that entries in the appropriate registers shall be signed by husband and wife of their agents and by two witnesses to the marriage.</p> <p>Section 9 provides that on completion of registration of any marriage or divorce, the registrar shall make an order or refuse, and record reasons for the order in a book.</p>	<p>Commencement on 15<sup>th</sup> April, 1906 thus it can't be that the family needs of Muslims in 1906 are the same to date. They can't be constant thus needs an amendment. Muslim Family laws aren't fair to women especially in regard to property rights.<sup>12</sup> The Mohamedan Act<sup>13</sup> is not detailed enough to cover every condition or formalities necessary for conducting or dissolving Muslim marriages. i.e if one is to marry or divorce, he or she is to look for legal provisions from the Holy Quran and Sunnah.</p> <p>The Act was enacted in 1906 and has never been amended up to date.</p>
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<sup>3</sup>The 1995 Constitution of the Republic of Uganda as amended.

<sup>12</sup> Per one Grade One magistrate Kamwenge District.

<sup>13</sup> The Marriage and Divorce of the Mohammedans Act, Cap 252

	<p>political opinion or disability Article 31 (1) of the Constitution provides that men and women of the age of 18 and above have the rights to marry and to found a family and are entitled to equal rights in marriage during and its dissolution.</p> <p>Article 33 pertains specifically to the rights of women and provides that “The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement”; that “Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic</p>			<p>Section 17 provides for the punishment for non-registration of marriage &amp; divorce and a person is liable on conviction to imprisonment for a period not exceeding one month and to a fine not exceeding 200/=</p> <p>Under Rule 2 of The marriage &amp; Divorce of Mohammedan (Jurisdiction in Matrimonial causes) Instrument SI-252-3, it provides that the Jurisdiction in all matrimonial causes under Mohammedan law, where the parties are in African of Uganda, is conferred upon subordinate courts over which there presides a magistrate of the first class and magistrate courts over which there presides a Chief Magistrate or magistrate grade one.</p>	
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	<p>and social activities”; and that “Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.”<sup>4</sup></p> <p>Marriage and Divorce of the Mohammedans Act<sup>5</sup>, affords recognition to marriages solemnized under Islamic law, provide for the registration of Muslim Marriages and Divorces and instruct the application of principles of personal law applicable to the parties involved, without substantive codification of the law.</p>				
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<sup>4</sup> Article 16(1) of the UDHR, Article 16, 23(4) of the CEDAW, Article 23(4) of the ICCPR), Article 3 of the African Charter on Human and People’s Rights (ACHPR), Article 6 of the Maputo Protocol, Article 7, 21, 29, 31, 33 of the 1995 Constitution of the Republic of Uganda as amended.

<sup>5</sup> Cap 252

	<p>Section 1 of the Marriage &amp; Divorce of Mohammedan Act is to the effect that; The Marriage Act &amp; the Marriage of African Act are not applicable to persons who profess the Mohammedan religion.</p> <p>Section 7 of the marriage &amp; Divorce of Mohammedan Act provides for the solemnization Divorce of Muslim Marriages According to rites and observances of Islam, there remains a problem that most of the laws governing this area are not codified. This creates problems for Imams, Courts, members of the Legal profession and ordinary and ordinary people on the question of procedures &amp;</p>				
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	<p>interpretation of the Sharia law.</p> <p>The Marriage Act<sup>6</sup>, -the Customary marriages (Registration Act<sup>7</sup></p>				
<p><b>Minimum and equal age of marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Is there a minimum age</i></p>	<p>Article 31 (1) of the Constitution<sup>14</sup> provides that men and women of the age of 18 and above have the rights to marry and to found a family and are entitled to equal rights in marriage during and its dissolution.</p> <p>The Marriage Act<sup>15</sup> provides that each party to an intended</p>		<p>The Draft AMPL Bill<sup>19</sup> under. Clause 22 placed the age for marriage for both men and women to be at 18.</p> <p>National Strategy To End Child Marriage And Teenage Pregnancy. Government has developed a National strategy to End Child Marriage and</p>	<p>National strategy to End Child Marriage and Teenage pregnancy<sup>21</sup>. The strategy aims at ending child marriage in Uganda for enduring prosperity and social economic transformation. It articulates the principles, strategic objectives, actions, coordination mechanisms, and</p>	<p>Since the Marriage and Mohammedan Act<sup>22</sup> doesn't specify the age, there is a danger of not specifying the marriageable age as some parents may force their daughters into marriage when they are below the age of 18. Such contradictions in the laws regarding minimum age hinder their effective enforcement and in the long term serve to perpetuate child and forced marriage in Uganda. Indeed, evidence shows that enforcement of the law on defilement has been very weak.<sup>23</sup></p>

<sup>6</sup> cap 251

<sup>7</sup> Cap 248

<sup>14</sup>Article 31 (1) of the 1995 Constitution of the Republic of Uganda as amended

<sup>15</sup> The Marriage Act Cap 251

<sup>19</sup>The Draft Administration of Muslim personal Law (AMPL) Bill 2008

<sup>21</sup> National strategy to End Child Marriage and Teenage pregnancy(2014/2015 -2019/2020).

<sup>22</sup>The Marriage and Divorce of the Mohammedans Act, Cap 252

<sup>23</sup> Bantebya et al., 2013; 2014; FIDH and FIHR, 2012; DELTA, 2011; Nordic Consulting Group, 2008).

<p><i>verification process before the marriage is concluded?</i></p>	<p>marriage (not being a widow nor widower) is 21 years old, or if he/she is under that age, the consent hereafter made requisite has been obtained in writing. The Marriage and Divorce of the Mohammedan Act<sup>16</sup> doesn't specify the age limits at which parties may contract a Muslim marriage. Section 11 (a) of the Customary marriage registration Act<sup>17</sup> contradicts the Constitution and provides that the marriage is void if the female party to it has not attained the age of sixteen years; The Marriage of Africans Act<sup>18</sup> 1904 also permits marriage</p>		<p>Teenage pregnancy.<sup>20</sup> The strategy aims at ending child marriage in Uganda for enduring prosperity and social economic transformation.</p> <p>The Republic of Uganda's submission for the 2016 Secretary General's Report on the implementation of the General Assembly Resolutions on Intensification of efforts to eliminate all forms of violence against women and girls, on Trafficking in women and girls, and on Intensifying global efforts for the elimination of female genital mutilations.</p>	<p>resources that will ensure effective implementation of the actions/interventions to end child marriage.</p>	
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<sup>16</sup> Cap 252

<sup>17</sup> Customary marriage registration Act Cap 248

<sup>18</sup> The Marriage of Africans Act of 1904

<sup>20</sup> National strategy to End Child Marriage and Teenage pregnancy (2014/2015 -2019/2020)

	for minors upon consent of their parents or guardians or registrar in case the parents are dead and no guardian is capable of consenting; but is silent about the age of consent.				
<p><b>Consent to marriage / Forced marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything</i></p>	<p>Article 31 (3)<sup>24</sup> provides that Marriage shall be entered into with the free consent of the man and woman intending to marry. Section 32. of Customary Marriage Act<sup>25</sup> provides for Consent to marriage of minors. If either party to an intended customary marriage, not being a</p>	<p>In Ayoob V Ayoob<sup>28</sup>, Sir Clement De lestant J, while commenting on the nature of the Islamic marriage said; Under Islamic Law, marriage is a civil contract, not a sacrament and Islamic law would recognize it as valid marriage contracted in accordance with the civil law, the</p>	<p>The Draft AMPL Bill<sup>29</sup> under Clause 24 (b) (c) provides for free consent of both men and women intending to marry.</p> <p>The AMPL under clause 24 (b) (c) provides for free consent of the man and woman intending to marry</p>	<p>Article 31 (1) (a)<sup>32</sup> a man and a woman are entitled to marry if they are each of the age of 18 years and above and are entitled to found a family.</p> <p>- After the marriage ceremony, the couple is supposed to appear with all the required documents and two witnesses before a sub-county chief of the</p>	<p>More than 34% of girls are married before their 18th birthday every year in Uganda, and 1 in 10 is married before turning 15 despite the law setting 18 as the minimum legal age of marriage.<sup>33</sup> Child rights organisations working within the Girls Not Brides Uganda National Partnership, warn that the rate of child marriage in the country is rising due to school closures, food insecurity, and economic uncertainty triggered by COVID-19. The laws on age of consent continue to operate alongside the old marriage</p>

<sup>24</sup> The 1995 Constitution of the Republic of Uganda as amended

<sup>25</sup> Marriage Act Chapter 148

<sup>28</sup> Ayoob V Ayoob (1968) EA at 77

<sup>29</sup> The Draft Administration of Muslim Personal Law (AMPL) Bill 2008

<sup>32</sup> *ibid*

<sup>33</sup> Ending Child Marriage and Teenage Pregnancy in Uganda. A Formative research to Guide the implementation of the National strategy on ending child marriage and teenage pregnancy in Uganda. UNICEF, Final Report - December 2015



<p><i>particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p>	<p>widower or widow, is under twenty-one years of age, the written consent of the father, or if he is dead or of unsound mind, of the mother, or if both are dead or of unsound mind, of the guardian of the party, must be produced annexed to the affidavit as aforesaid before a licence can be granted or a certificate issued. Other Ugandan laws that prevent child marriages; (the Penal Code [amendment] Act -CAP 120 2007; Children's Act - CAP 59 and 1996 Statute) (Republic of Uganda, 2007; 1996) and regulations – all of which set the age of marriage/age of consent at 18 years.</p>	<p>essential requirements, the consent of the parties satisfied.</p>	<p>The National Strategy on Ending Child Marriage and Teenage Pregnancy<sup>30</sup> is a holistic, comprehensive framework that reflects the commitment of the Uganda Government to end the practice of child marriage and other forms of violence against girls including teenage pregnancy as a consequence of child marriage.</p> <p>On April 8<sup>th</sup> 2021, Parliamentarians passed a motion to end teenage pregnancy, child marriages. Members of the Ugandan Parliament urged government to develop and enforce policies and</p>	<p>area where the ceremony took place or the town clerk, if the marriage took place in a town or municipality.</p> <ul style="list-style-type: none"> <li>- Approach the service desk and inform the attending officer your request to register your marriage.</li> <li>-Fill in the registration form and you should all sign the form for affidavit, i.e. the couple plus the witnesses.</li> <li>-Pay the recommended registration fees.</li> <li>-A certificate of marriage will be issued on payment of a fee. Thereafter, a copy of the certificate and a cover letter from the sub-county chief or town clerk, are brought to URSB offices for the</li> </ul>	<p>laws that are lax in regard to the age of marriage. The Director Civil Registration at URSB, Vincent Katutsi says that there are a number of marriages conducted in the Muslim faith but a few of them are registered. He says there are only about 7,000 registered Muslim marriages, accounting for 6 percent of the total number of marriages registered, which is estimated at 116,700.</p> <p>Although there is no data on how many Muslim marriages exist to compare with the registered ones, Katutsi says they anticipate the numbers are large especially that Muslims are by faith permitted to marry up to four wives. He says Muslims do not only fail to register marriages but also divorce.</p>
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<sup>30</sup> The National Strategy on Ending Child Marriage and Teenage Pregnancy (NSCM&TP) 2015

	<p>Article 33(6) of the Constitution<sup>26</sup> prohibits laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status.</p> <p>Chapter 4 of the Constitution provides for the protection and promotion of fundamental and other human rights and freedoms for all Ugandan citizens with specific provisions for the protection of women and girls in Articles 20, 21, 24, 33, 34 and 50. Other Ugandan laws that are potentially useful in the prevention of child marriage include the Anti-trafficking Act (2010), the Domestic Violence Act (2010), and the Anti- Female</p>		<p>strategies to protect girls against escalating cases of teenage pregnancy and child marriage during and after the COVID-19 pandemic. A motion to this effect was moved by Hon. Jovah Kamateka, Woman Representative Mitooma district and passed by the Speaker of Parliament Hon Rebecca Kadaga during plenary proceedings.</p> <p>Domestic relations law is underway – named as a Marriage and Divorce Bill (2009) (applicable to all but Muslim marriages) that proposes to reform and consolidate the old laws relating to marriage, separation</p>	<p>marriage to be registered and entered onto the Marriage Register.</p> <p><b>Required Documents</b></p> <ul style="list-style-type: none"> <li>-Proof of nationality for example a voters card, passport or national identification card.</li> <li>-An LC 1 letter to prove residence in Kampala district for at least 15 days.</li> <li>-A passport size photograph for identification.</li> <li>-Marriage affidavits that conform with S.10 of the Marriage Act</li> <li>-In case of foreign nationals, a letter from your Civil Registration or Vital Statistics Office</li> </ul>	
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<sup>26</sup> The 1995 Constitution of the Republic of Uganda as amended

	<p>Genital Mutilation Act (2010). The Anti-FGM Act<sup>27</sup> provides that anyone carrying out or facilitating FGM/C, including circumcisers (those who perform the procedure), parents or others, is subject to up to five years in prison and if the girl dies as a result of the procedure, those involved can be imprisoned for life (Republic of Uganda, 2010). Article 18 of the Constitution mandates the Government of Uganda to register all Marriages that occur in Uganda.</p> <p>The Uganda Registration Services Bureau (URSB) is the Government Agency</p>		<p>and divorce (which have remained in operation in contravention of the provisions of the Constitution). The Bill more explicitly grants equality within marriage or cohabitation and aims to provide for 18 years as the legal age of marriage and the consent of each party; to prohibit practices such as widow inheritance; and the demand for a refund of marriage gifts or bride wealth The Uganda National Development Plan (NDP) 2010-2014/15 acknowledges child marriage as a negative social cultural practice that increases the rate of early pregnancy, and as partly responsible for the country's</p>	<p>confirming that the party is not married.</p> <p>Where parties are between 18 and 21 years, they should in addition to 2 above submit:</p> <ul style="list-style-type: none"> <li>-A birth certificate to prove parentage.</li> <li>-A consent letter from the father or mother or legal guardian</li> <li>-A photocopy of the identification of the consenting authority</li> </ul>	
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<sup>27</sup> The Anti-FGM Act 2010

	<p>responsible for this function. URSB administers all the laws relating to marriage in Uganda.</p>		<p>persistent high poor health outcomes for women and children, especially maternal and infant mortality, and the high fertility rate, and therefore a major constraint to sustainable population growth; and also a constraint to girls education. The Uganda Gender Policy<sup>31</sup> under its 'gender and rights' priority area, government pledges to enact and reform laws to address gender-discriminatory practices, cultural norms and values; to develop and implement interventions to address GBV of all forms and at all levels.</p>		
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<sup>31</sup> Ministry of Gender, Labor and Social Development (MOGLSD), 2007

<p><b>Women's capacity to enter into marriage</b></p> <p><i>Is consent of a guardian (wali) required? Can the woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p>	<p>Article 31 (1)<sup>34</sup> 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.</p> <p>Article 31 (3) provides that Marriage shall be entered into with the free consent of the man and woman intend/ing to marry. Article 33, entitled <i>Rights of women</i>, provides that "The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full</p>	<p>Prof.J Oloka Onyango V AG<sup>36</sup> held that the manner in which this Act was passed didn't follow the required procedures for a Bill to be enacted into law and therefore the Act was held to be null and void.</p>	<p>The National Gender Policy adopted in 1997 and revised in 2007<sup>37</sup>, is the primary legal framework for gender equality and women's empowerment. Its primary objective is to mainstream gender concerns in national development processes through guiding resource allocation in all sectors to address gender equality including capacity to enter to marriage.</p>	<p>The bride makes a request in writing to Uganda Muslim Supreme Council (UMSC) for a guardian that professes the Islamic religion<sup>38</sup>. In this case, both the biological guardian and the one appointed by UMSC will attest and consent to the marriage of the bride in question.</p>	<p>Practically, Muslim brides in Uganda must seek the consent of a guardian as a pre -condition to their Nikkah<sup>39</sup> However, in cases where the bride does not profess to the Islamic religion, the guardian (parents or any other relative) cannot act as a guardian in such marriage. The bride must make a request in writing to Uganda Muslim Supreme Council (UMSC) for a guardian that professes the Islamic religion. In this case, both the biological guardian and the one appointed by UMSC will attest and consent to the marriage of the bride in question.</p> <p>Conclusively, where there is no consent of a guardian, such marriage is void. However, Uganda not being a potentially Islamic state, the constitution that is the supreme law only requires the consent of the intending bride and groom.</p> <p>The Marriage and Divorce of Mohammedan Act Cap 252 is silent about the issue of a bride seeking</p>
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<sup>34</sup> The Constitution of the Republic of Uganda 1995 as amended

<sup>36</sup> Constitutional Petition No. 08 of 2014 (un reported)

<sup>37</sup> GoU (ND), National Gender Policy, <http://www.gou.go.ug/about-uganda/government-policies/national-gender-policy>

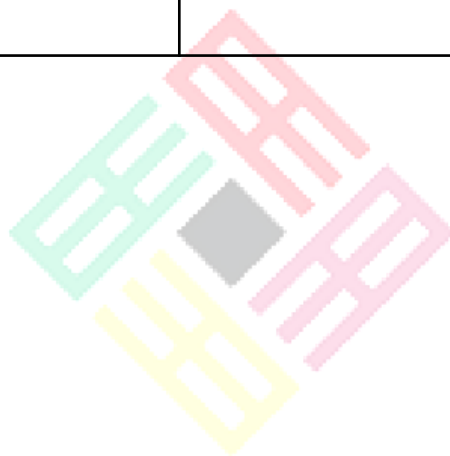
<sup>38</sup> Per one Sheik in the Directorate of Sharia-Uganda Muslim Supreme Council (UMSC), Article 31 and 2 of the 1995 Constitution of Uganda as amended


<sup>39</sup> Information obtained from the Uganda Muslim Supreme Council at old Kampala.

	<p>potential and advancement". The Marriage and Divorce of Mohammedan Act does not explicitly bring about the capacity of the parties to the intending marriage. However, marriage of people of the same sex in Uganda was prohibited by the Anti-Homosexuality Act 2014. Any intending bride is required to have the consent of a Guardian regardless of her age<sup>35</sup>. The Director of Sharia and the Secretary General of the Uganda Supreme council confirmed that any would-be bride must adduce two male witnesses and one of whom must be a Guardian to consent</p>				<p>consent from a Guadian/wali before marriage.</p>
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<sup>35</sup> Per interface discussion with The Director of Sharia and the Secretary General of the Uganda Supreme council

	on behalf of the prospective bride. If the Guardian refuses to consent, the two prospective bride and groom may seek redress from court.				
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<p><b>Polygamous marriage</b></p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? If conditions are required, under what conditions is polygamy allowed? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to register a polygamous marriage? Are temporary marriages recognised?</i></p>	<p>The Marriage and Divorce of Mohammedans Act doesn't expressly provide for polygamy. Under Section 2 of the said Act, it is stated that " All marriages between persons professing the Mohammedan religion, and all divorces from such marriages celebrated or given according to the rites and observances of the Mohammedan religion customary and usual among the tribe or sect in which the marriage or divorce takes place, shall be valid and registered as</p>	<p>Mifumi (U) ltd &amp; Anor V Attorney general and Anor.<sup>42</sup> Mifumi argued that polygamy denied the women rights to equality in marriage and was in violation of Article 21 (1) of the Constitution, which states that all people are equal before the law. Uganda's Constitutional Court dismissed a petition seeking to declare polygamy unconstitutional.</p>		<p>Cover letter from umbrella body under which the mosque where the marriage was conducted subscribes e.g UMSC , Kibuli Mosque, Tablique, Ismalia etc (signed and stamped)<sup>43</sup></p> <p>Duly filled and signed (should also be stamped) or certified copies of marriage certificates.</p> <p>Photocopy of identification document of the couple,</p> <p>Evidence of payments Fees UGX 35, 000 per copy for Nationals refugees</p>	<p>28% of married women in Uganda are in polygamous unions.<sup>44</sup> This shows a slight decrease from the 32 percent recorded in the 2000-2001 UDHS. The UN Committee on Elimination of Discrimination against Women urged the State party to address with more vigour harmful practices, such as polygamy, early marriages and the bride price.<sup>45</sup> The court's order in the Mifumi case was welcomed by respondents representing the Uganda Muslim Lawyers Association.<sup>46</sup> Polygamy is authorised under customary and Islamic laws and women in polygamous relationships have no protection in the event of dissolution of the union. In some ethnic groups, custom also provides for men to "inherit" the widows of their deceased brothers (<i>levirat</i>), which is not prohibited by law.</p>
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<sup>42</sup> Constitutional Petition no.12 of 2007

<sup>43</sup> <https://ursb.go.ug/filing-marriage-returns-by-muslims/>

<sup>44</sup> Uganda Demographic and Health Survey, UDHS, from 2006, UN Concluding observations of the Committee on the Elimination of Discrimination against Women Forty-seventh session, 4–22 October 2010, In observation 20,

<sup>45</sup> UN Concluding observations of the Committee on the Elimination of Discrimination against Women Forty-seventh session, 4–22 October 2010, In observation 20,

<sup>46</sup> The East African News-paper , Monday September 24<sup>th</sup> 2018, Robert Wyrod, "Between Women's Rights and Men's Authority: Masculinity and Shifting Discourses of Gender Difference in Urban Uganda," *Gender and Society*, 22:6 (2008): 799-823.

Alice P. Tuyizere, *Gender and Development: The Role of Religion and Culture* (Kampala, Makerere University / Fountain Publishers, 2007).



	<p>provided in this Act.” Thus the Act only states that as long as the marriage includes practices of Islam and Prophet Mohamad.</p> <p>Section 4(2) states that Customary marriages may be polygamos</p> <p>Section 36 of the Marriage Act<sup>40</sup> any person who is married under the marriage Act, or whose marriage is declared by this Act to be valid shall be incapable during the continuance of that marriage, of contracting a valid marriage under any customary law.</p> <p>Section 50 of the same Act; any person</p>			<p>USD 25 per copy for Foreign Guidelines</p> <p>The client or representative of a place of worship submits the above requirements at the front desk of Civil Registry URSB</p> <p>The client receives acknowledgement of receipt of the returns</p>	<p>It is noted that women’s rights activists say that polygamy already violates Sections 33(4) and (6) of the 1995 Ugandan Constitution, which prohibit any laws, traditions or customs that violate women’s rights or reduce their equality with men<sup>47</sup>.</p> <p>Under observation 48<sup>48</sup>, the Committee urges the State party to harmonize civil, religious and customary law with article 16 of the Convention and to complete its law reform in the area of marriage and family relations in order to bring its legislative framework into compliance with articles 15 and 16 of the Convention, within a specific time frame. To this end, the Committee calls upon the State party to review and amend, as necessary, the current version of the Marriage and Divorce Bill and the Muslim Personal Law Bill to ensure that these do not discriminate against women. The Committee also calls upon the State party to implement measures aimed at eliminating polygamy, as called for in the Committee’s general</p>
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<sup>40</sup> The Marriage Act of Uganda Cap 251

<sup>47</sup> According to an Article published by Global press journal on September 10, 2012,

<sup>48</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women Forty-seventh session, 4–22 October 2010

	<p>who having contracted marriage under this Act or any modification or re-enactment of this Act during the continuance of that marriage contracts a marriage in any accordance with customary law, commits an offence and is liable on conviction to imprisonment for a period not exceeding 5 years.</p> <p>Section 10 of the Marriage Act states that the Registrar shall not issue a certificate of marriage until he/she has been certified by affidavit that neither of the parties to the intended marriage is married by customary law to any person</p>				<p>recommendation No. 21 (1994) on equality in marriage and family relations, and to take all necessary measures to combat the practice of early marriages.</p> <p>The Ugandan Laws that provide for polygamous marriages requires the same to be registered. The Customary Marriages (Registration Act)<sup>49</sup> makes it an offence where parties to a customary marriage fail to register their marriage within a period of 6 months after the date of completion of the marriage and are liable to fine not exceeding 500 shillings. Further the Marriage and Divorce of Mohammedans Act<sup>50</sup> requires an Islamic marriage to be registered after one month from the date of completion of the said marriage.</p> <p>Temporary marriages are not legally recognized in Uganda. The Drove Act has clear provisions on dissolution of marriages.</p>
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<sup>49</sup> The Customary Marriages (Registration Act) cap 252

<sup>50</sup> Marriage and Divorce of Mohammedans Act Cao 252

	<p>other than the person with whom such marriage is proposed to be contracted. The Maputo Protocol<sup>41</sup> calls upon State Parties to enact appropriate national legislative measures to guarantee that monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family are promoted and protected</p>				<p>There is misunderstanding and wrong interpretation of the Quran on the issue of justice and fairness in polygamy. Justice means doing what a particular wife desires according to the means of the husband hence equality is not uniformity among wives.<sup>51</sup></p> <p>There is no need to seek consent of the first wife when marrying another wife since it is not an Islamic requirement but it's a good practice. However, all wives should be given prior notice at the wedding about the possibility of the husband marrying another wife in future.<sup>52</sup></p>
<p><b>Violence against women in the family</b></p> <p><i>Are there laws and practices that define what constitute domestic</i></p>	<p>The Domestic Violence Act<sup>53</sup> defines and prohibits domestic violence. The penalty for domestic violence is</p>	<p>Uganda Women Lawyers Association v. Attorney General (2003) and Law and Advocacy for Women in Uganda v.</p>	<p>Concluding observations of the Committee on the Elimination of Discrimination against Women,</p>	<p>Domestic violence complaints may be brought before local council courts ("LC courts") pursuant to the procedures outlined in</p>	<p>According to MGLSD's Ministerial Policy Statement<sup>57</sup>, during that period the Directorate of Gender and Women Affairs had only 10 staff members, a fraction of the workforce required.</p>

<sup>41</sup> Article 6(c) of the Maputo Protocol

<sup>51</sup> Per one Advocate and member of parliament.

<sup>52</sup> Per Imam

<sup>53</sup> The Domestic Violence Act of 2010

<sup>57</sup> MGLSD's Ministerial Policy Statement for Financial Year 2016/2017

<p><i>violence such as battery, female circumcision, marital rape and other forms of sexual assault, mental and other forms of violence that affects a women’s mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Are there support services for women who are the victims of aggression or abuses?</i></p>	<p>imprisonment not to exceed two years or the payment of a fine not to exceed forty-eight currency points, or both. At the Court’s discretion, the perpetrator may also have to provide monetary compensation to the victim. Romantic and other familial relationships are “domestic,” and marriage is expressly not required.</p>	<p>Attorney General (2007).<sup>54</sup> In Uganda Women Lawyers Association v. Attorney General (2003), the petitioners sued /to have several provisions of the Divorce Act declared void on the grounds that they discriminated on the basis of sex. The Court held that sections 4, 5, 21, 22, 23, 24 and 26 of the Divorce Act are void in so far as they discriminate on the basis of gender, so the grounds for divorce as listed are available to both sexes and the compensation for adultery, costs against a co-respondent,</p>	<p>Forty-seventh session<sup>55</sup> The Committee was concerned that the prevalence of violence against women and girls, such as widespread domestic violence and is particularly concerned at the inordinately high prevalence of sexual offences against women and girls</p>	<p>the DVA<sup>56</sup>, which require that the LC refer the matter to the police and local magistrate court if the perpetrator is a repeat offender, the perpetrator is likely to continue to harm the victim, and the LC court’s opinion is that police and magistrate court involvement is warranted. LC courts must also inform the police and magistrate if there are children involved in the domestic relationship. Appeals and other procedural details about LC court proceedings can be found in the Local Council Act of 2006. In complaints made to police officers, survivors have the right to give their statement</p>	<p>The Child and Family Protection Unit of the Uganda Police Force has only 645 police officers to cover 112 districts. This makes it hard for the police to respond to the numerous reported cases.</p> <p>A 2015 report by the International Justice Mission indicates that 40% of widows experience actual or attempted property grabbing in their lifetime. More than 30% of widows are victims of property grabbing. In many cases the widows spoke of perpetrators (usually relatives of their deceased husbands) threatening and physically assaulting them and sometimes making attempts on their lives and those of their children.</p> <p>Police crime reports from 2011 through 2017 also indicate that deaths resulting from domestic violence went down by a significant 54%—from 358 to 163—in this time.</p>
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<sup>54</sup> Constitutional Petition 2003/2[2004] UGSC1 (10<sup>th</sup> March 2004), Constitutional Petition 2005/13 [2007] UGSC 71 ( 05 April 2007)

<sup>55</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women Forty-seventh session, 4–22 October 2010

<sup>56</sup> The Domestic Violence Act 2010

		<p>alimony, and settlement are applicable to both sexes.</p> <p><i>The case of Advocacy for Women in Uganda v. Attorney General (2007) revealed that sections 4(1) and (2), 5, 21, 23, 24, and 26 of the Divorce Act discriminate on the basis of sex. This brings them into contact with articles 21 91) (2), 31 (1) and 33 (1) &amp; (6) all of which provide against discrimination on the basis of sex.</i></p>		<p>to an officer of the same sex. The DVA requires that magistrate courts follow the Family and Children Court Rules (from the Children Act of 2006) in domestic violence cases. Finally, the DVA sets parameters for interim and permanent protection orders. The DVA and the Penal Code do not criminalize a husband's rape of his wife, or so-called "marital rape." A proposed bill, the Domestic Relations Bill of 2003, would criminalize such actions, but Parliament has repeatedly declined to pass it.</p>	<p>At a press conference at the virtual International AIDS Society (IAS) Conference on HIV Science, Rose Apondi, MPH, an HIV-prevention specialist with the CDC in Kampala, Uganda, said that when compared with the 6-month period before the lockdown in 2020, the 6 months afterward showed a 24% increase in reports of rape and a 30% increase in sexual violence experienced by teenage girls. The same research indicated that an 18% reduction in the use of post-exposure prophylaxis, or PEP (OR 0.79, 95% CI 0.75-0.83), and more than 50% of the women who arrived at clinics for post-rape care after the 72-hour window for PEP had passed cited lockdown restrictions as the main reason for not coming earlier.</p> <p>In addition, there was a non-significant increase in teen pregnancies (OR 1.121, 95% CI 0.82-1.53).</p> <p>The research contends that the COVID-19 pandemic is associated with increased gender-based violence perpetration. However, the COVID-19</p>
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					<p>response did not prioritize gender-based violence services, negatively impacting post-violence care service access among girls and women in Uganda.</p> <p>In the pre-COVID-19 period, 593 girls reported being victims of sexual violence, and 73 reported teen pregnancies, compared with 880 and 117, respectively, during the lockdown period.</p> <p>The pre-COVID-19 period was defined as October 2019 through March 2020. In that period, she said, 17,702 women and girls reported for post-rape care and 3,274 received PEP. During the lockdown period of April 2020 to September 2020, 22,013 Ugandan women and girls sought post-rape care and 3,348 of those received PEP.</p> <p>Further, before the lockdown, 46 percent of women experienced some form of physical violence from their partners, but this increased to 56 percent by the first week of the first phase of the lockdown.<sup>58</sup></p>
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<sup>58</sup> Julius Omona, Uganda, COVID-19 and Domestic Violence in Uganda ([https://cdn.ymaws.com/www.istr.org/resource/resmgr/africa\\_network/Omona\\_COVID.pdf](https://cdn.ymaws.com/www.istr.org/resource/resmgr/africa_network/Omona_COVID.pdf))

					<p>Domestic violence is among the most frequently reported criminal offences in Uganda. In 2019, at least 13,639 domestic violence cases were reported to Police, and these accounted for 6.3 percent of the total criminal cases reported during the year.<sup>59</sup></p> <p>Notwithstanding the current legal framework, domestic violence remains rampant. According to the 2016 Uganda Demographic and Health Survey (UDHS), at least 22.5 percent of women aged 15-49 years had experienced physical violence during the past one year<sup>60</sup>.</p> <p><b>Men remain the main perpetrators of domestic violence:</b> Consistently for the five years under review, at least 80 percent of the accused in domestic violence case files lodged with the ODPP are men. The 2016 UDHS notes that among women who have experienced domestic violence, the most frequently cited persons committing the violence are: current husband/partner (59 percent), former husband/partner (29.2 percent) and</p>
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<sup>59</sup> Uganda Police Force, 2020),. Uganda Police Annual Crime Report 2019

<sup>60</sup> Uganda Bureau of Statistics and ICF. 2018. Uganda Demographic and Health Survey 2016. Kampala,Uganda and Rockville, Maryland, USA: UBOS and ICF

					<p>current/former boyfriend (5.6 percent). The corresponding distribution for men who have ever experienced violence is current wife/partner (53.5 percent), own friend/acquaintance (19.5 percent), former wife/partner (12.4 percent) and current girlfriend (6.4 percent).</p> <p><b>Low prosecution of domestic violence cases:</b> Notwithstanding the relatively large number of domestic violence cases reported, only a small proportion of the cases are prosecuted through the Courts of Low.</p> <p>The performance of the Uganda Police Force concerning reported GBV cases; only a small proportion of cases end up in court although the share of cases taken to court nearly doubled from 5.7 percent in 2017 to 10.2 percent in 2019. In carrying out investigations (UPF 2018). Besides, the withdrawal of cases by the complainants or their relatives who connive with their perpetrators and prefer to settle matters amicably contrary to following lengthy prosecution procedures cases in the courts of law is part of the</p>
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					problem (Kato 2017). (Kato, J. (2017). Why Gender Based Violence prosecution remains a challenge, Daily Monitor, December 01, pg.5.) <sup>61</sup>
<p><b>Family Planning (OPTIONAL)</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilization in the law, procedure or practice?</i></p>	<p>Article 21<sup>62</sup> Equality and freedom from discrimination (1). All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.</p> <p>(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground</p>	<p>Center for Health, Human Rights and Development (CEHURD) &amp; 3 Ors v Attorney General<sup>64</sup> Through this judgement, the right to maternal health care (and the right to health broadly) has been granted a place in Uganda's Constitution.</p>	<p>The National Policy Guidelines and Service Standards for Reproductive Health<sup>65</sup> and The National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights<sup>66</sup> are to the effect that; Reproductive rights embrace certain human rights that are already recognized in national laws and international human</p>	<p>There is no clear procedure in regard to consent of husbands to practices of family planning. However, there are well stipulated laws and procedure on prosecution of unlawful abortions as embedded in Section 141 and 142 of the Penal code Act.<sup>67</sup></p>	<p>The Constitution of the republic of Uganda<sup>68</sup> being the supreme law doesn't have an express article on the right to health as well as the consent of the husband to practice family planning, abortions and sterilization.<sup>69</sup></p> <p>However, Article 39 of the Ugandan Constitution as amended makes mention of the right to a clean and healthy environment which. Doesn't necessarily refer to the right to health but rather a healthy environment.</p> <p>It is only the Penal Code Act<sup>70</sup> being the criminal Code that has express provisions with the force relating to abortion together with strict</p>

<sup>61</sup> Access to justice for domestic violence cases in Uganda, Policy brief Issue No. 122, November 2020

<sup>62</sup> The Constitution of the Republic of Uganda 1995 as amended

<sup>64</sup> Constitutional Petition-2011/16) [2020] UGCC 12 (19 August 2020);

<sup>65</sup> The National Policy Guidelines and Service Standards for Reproductive Health 2001

<sup>66</sup> The National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, February 2006

<sup>67</sup> Penal code Act. Cap 120

<sup>68</sup> *ibid*

<sup>69</sup> The National Policy Guidelines and Service Standards for Reproductive Health 2001 and The National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights, February 2006

<sup>70</sup> The Penal Code Act of Uganda cap 252

	<p>of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.</p> <p>Article 31. (1) 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.</p> <p>Article 22(2), no person has a right to terminate the life of an unborn child except as may be authorized by the Law.</p> <p><b>Section 141<sup>63</sup>. Attempts to procure abortion.</b> Any person who, with intent to procure the</p>		<p>rights documents. These include:</p> <ul style="list-style-type: none"> <li>the right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children;</li> <li>the right to information and means to make the decisions as stated above;</li> <li>the right to attain the highest standard of sexual and reproductive health;</li> <li>the right to make decisions concerning reproduction, free of discrimination, coercion and violence.</li> </ul> <p>These policy guidelines aim at the promotion of these rights in Uganda.</p> <p>UN Concluding observations of the</p>		<p>punishments to deter unlawful abortions. However, it also does not provide for provisions on health and family planning.</p> <p>However, the Ministry of health has taken cognizance of the limitation of the law and has advanced its policy provisions to provide for guidance in respect to family planning as well as rights of a spouse to include consent of a husband in respect to family planning, abortion and sterilization.</p> <p>Regarding the lived experiences of Muslim women on family planning, majority find it difficult to conduct a free discussion with their spouses due to ignorance about the teachings of Islam and SRHR. Majority claim that Islam is against family planning.</p>
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<sup>63</sup> The Penal Code Act of Uganda cap 252

	<p>miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means, commits a felony and is liable to imprisonment for fourteen years.</p> <p>Section 142 penal code Act; any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any other means, or permits any such things or means to be administered to or used on her, commits a felony and is liable to imprisonment for seven years.</p>		<p>Committee on the Elimination of Discrimination against Women Forty-seventh session, 4–22 October 2010</p> <p>The Committee called upon Uganda to take all necessary measures to improve women’s access to health care and health-related services, within the framework of the Committee’s general recommendation No. 24 on article 12. It urged Uganda to strengthen its efforts to reduce the incidence of maternal and infant mortality and to raise awareness of and increase women’s access to health-care facilities and medical assistance</p>		
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<p><b>Divorce</b></p> <p><i>Is there an equal right to divorce? Can the husband divorce at will and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure e.g. are witnesses required or does the spouse need to go to court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage</i></p>	<p>Article 31. (1)<sup>71</sup> 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.</p> <p>Article 21 Equality and freedom from discrimination (1). All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.</p>	<p>Ugandan Association of Women Lawyers (FIDA-U) v Attorney General<sup>73</sup>. In this case, The petitioners sued to have several provisions of the Divorce Act declared void on the grounds that they discriminated on the basis of sex. The Court held that sections 4, 5, 21, 22, 23, 24 and 26 of the Divorce Act are void in so far as they discriminate on the basis of gender, so the grounds for divorce as listed are available to both sexes and the</p>	<p>Decisions by the supreme jurisdiction, although legally binding on lower courts, are not necessarily applied in practice, in the absence of law reforms implementing such decisions. The decisions concerning the Divorce Act and the Penal Code Act, are still awaiting law reform to give them full effect. However, on the basis of the decision on the Succession Act in 2006, the Law Reform Commission directed by the line Ministry (the Ministry</p>	<p>However, The Marriage and Divorce of the Mohammedans Act<sup>75</sup> does not provide details of the procedure of divorce. This implies that a Muslim should refer to the Quran and the traditions of the prophet Muhammad (PBUH) as the procedure discussed in the foregoing section. <b>Section 5(1) (b) (i)</b> considers the divorce other than Khula, by the man who has effected it to register the divorce. Form B of the schedule to the Act provides the format for the registration of divorce. The Form provides the details of</p>	<p>X<sup>76</sup> Khul'a is equal to a single irrevocable divorce. A man has no right to revoke it. It's according to the will of the woman. However, if the woman agrees to remarry the same man she can with the consent of the man. <b>Particular practice at the Uganda Muslim Supreme Council (UMSC) the umbrella organization of Sunni Muslims in Uganda.</b> In the event of the divorce, Muslims believe that an Islamic divorce is necessary to terminate the marriage contract, for complete assurance that they are divorced. Since the civil court cannot pronounce Islamic divorces, a Muslim must apply to the Qadhi court to obtain a <i>Sharia</i> based divorce. Imams work as judges in Qhadhi courts. Lawyers are not allowed to represent clients in these courts<sup>77</sup>.</p>

<sup>71</sup>The Constitution of the Republic of Uganda 1995 as amended

<sup>73</sup>Constitutional Petition-2003/2 [2004] UGSC 1 (10 March 2004)

<sup>75</sup> The Marriage and Divorce of the Mohammedans Act Cap 252

<sup>76</sup>Per Sheik Bbosa of the Directorate of Sharia-Uganda Muslim Supreme Council (UMSC)

<sup>77</sup> Per information obtained from The Sharia office at Uganda Muslim Supreme Council.

<p><i>contract? Is it mandatory to register a divorce? Are the procedures for divorce by women and men different?</i></p>	<p>(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.</p> <p>Before Ugandan Association of Women Lawyers (FIDA-U) v Attorney General (2003)., the grounds for divorce were;</p> <p>may apply by petition for the dissolution of e on the ground that plemnisation of the s wife has been guilty</p> <p>apply by petition to the e dissolution of her h the ground that since isation of the</p>	<p>compensation for adultery, costs against a co-respondent, alimony, and settlement are applicable to both sexes.</p> <p>In 2007, the Constitutional Court declared a provision of the Penal Code Act per Section 154 of the Penal Code Act concerning the crime of adultery, to be unconstitutional. The provision makes it lawful for a married man to have an affair with an unmarried woman but unlawful for a married woman to have an affair with an unmarried man.</p>	<p>of Justice) to work on revising legislation<sup>74</sup>.</p>	<p>the divorce, the manner in which it has to be implemented, names of the witnesses to the divorce, among other details.</p> <p><b>Section 8(l) (b) (ii)</b> provides that the register for the Khula divorce shall be signed by man and woman, or by her guardian and by the person identifying the man and woman (witness). If the man belongs to the <i>Shiah</i> sect, then two witnesses are required for the divorce to be effected.</p> <p>Particulars for the Khul'a divorce if effected; especially the amount of dowry, whether was acknowledged by the wife in person before the registrar and other details are contained in the Divorce Register under form B of the</p>	
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<sup>74</sup> Women's rights in Uganda: gaps between policy and practice

	<p>husband has changed profession of Christianity for the profession of some other religion, and gone through form of marriage with another woman; or has been guilty of—</p> <p>(i) incestuous adultery;</p> <p>(ii) bigamy with adultery;</p> <p>(iii) marriage with another woman with adultery;</p> <p>(iv) rape, sodomy or bestiality; (v) adultery coupled with cruelty; or</p> <p>(vi) adultery coupled with desertion, without reasonable excuse, for two years or upwards.</p> <p>However, Ugandan Association of Women Lawyers (FIDA-U) v Attorney</p>			<p>schedule to the Act under item 12.</p> <p><b>Divorce steps in Qhadhi courts</b></p> <ol style="list-style-type: none"> <li>1. Aggrieved party reports to UMSC office/mosque. District/region</li> <li>2. UMSC informs client on the requirements for divorce file</li> <li>3. The fees is 100,000/=</li> <li>4. Client is given an entry form that guides clients including grounds for marriage</li> <li>5. ID for both spouses</li> <li>6. Wedding photo</li> <li>7. Proof of previous interventions if any</li> <li>8. UMSC calls the opposite party</li> <li>9. Photocopy for him,/her grounds for divorce and ask them to respond.</li> <li>10. Sessions take off and are concluded in 1 month if it's the woman who</li> </ol>	
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	<p>General (2003) nullified the above grounds as unconstitutional.</p> <p><b>Section 5(1) (a)</b> of the Marriage and Divorce of the Mohammedan Act, requires the registration of divorce by the husband within one month from the date of divorce. The method of divorce to be carried out has to be in conformity with “rites and observance of the Mohammedan religion” as considered under <b>Section 2</b> of the Marriage and Divorce of the Mohammedan Act.</p> <p><b>statutory provision of khula</b></p> <p><b>Section 5(l)(b)(ii)<sup>72</sup></b> provides for registering the <i>Khul’a</i> divorce by the man</p>			<p>reported and 3 months if it's the man seeking Divorce</p>	
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<sup>72</sup> The Marriage and Divorce of the Mohammedans Act

	and woman jointly or by her guardian ( <i>Vakill/Wali</i> ) <b>Section 5(2)</b> provides that nothing shall prevent a woman to register the divorce if the man fails. This means that a woman can proceed to register her divorce even though the husband is not willing to do so.				
<p><b>Women's financial rights after divorce</b></p> <p><b>Matrimonial property</b> <i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman's role as wife and mother recognised as contribution to</i></p>	<p>Article 31(1) of the Constitution entitles men and women to equal rights in marriage, during marriage and at its dissolution</p> <p>Section 38 of the Land Act as amended protects a spouse's</p>	<p>Rwabinumi v Bahimbisomwe<sup>79</sup> court held that a spouse can own individual property as per Article 26 or jointly with his/her spouse. Further that Article 31 (b) of the Ugandan Constitution guarantees equal equality in treatment</p>	<p>Marriage Bill<sup>82</sup> provides for types of marriage, marital rights and duties, separation and divorce.</p> <p>Regarding Matrimonial rights, the Bill under clause 16 includes:</p> <ol style="list-style-type: none"> <li>1. conjugal rights;</li> </ol>	<p>Protection Order Section 18 of Divorce Act.<sup>83</sup> Any woman in whose property the husband has acquired an interest by virtue of the marriage may, if deserted him, apply by petition to the court for an order to protect any property which she may have obtained or</p>	<p>The law relating matrimonial property is hinged on the concept of marriage. This law only and strictly applies to marriage and or formally married persons.<sup>84</sup></p> <p>In Uganda, matrimonial property is understood differently by different people. There is always property which the couple chose to call home. There may be property which may be acquired separately by each spouse before or after marriage. Then there</p>

<sup>79</sup> Civil Appeal -2009/10 [2013] UGSC 5 ( 20 March 2013)65779

<sup>82</sup> The Marriage Bill, 2017

<sup>83</sup> Section 18 of Divorce Act Cap 249 as amended

<sup>84</sup> Herbert Kolya v Erikiya Mawemuko Kolya, Civil Suit No. 150/2016, Rwabinumi v Bahimbisomwe (Civil Appeal-2009/10) [2013] UGSC 5 (20 March 2013)



<p><i>acquisition of assets?</i></p> <p><b>Maintenance</b> <i>What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a 'gift' upon divorce (muta'a)?</i></p>	<p>occupancy of family land.<sup>78</sup></p> <p>Section 39 of the Land Act restricts transfer of family without spousal consent for any transaction involving the land on which they live or use for sustenance, but does not provide for automatic co-ownership between spouses. Any decision that unconstitutionally disfavors the property rights of women and children is invalid. The Act also requires that land management mechanisms have at least 1/3 female members.</p> <p><b>Maintenance</b></p>	<p>in either the husband or wife at divorce, it doesn't require that all property either individually or jointly acquired before or during the subsistence of the marriage should in all cases be shared equally upon divorce. It was concluded that whether individual property became joint matrimonial property and whether it should be divided equally on divorce depends on the facts of each individual case. However, where a spouse makes a substantial contribution to the property, it shall be considered matrimonial property.</p>	<ol style="list-style-type: none"> <li>2. property rights;</li> <li>3. right to citizenship;</li> <li>4. right to make medical decisions;</li> <li>5. right to receive the deceased spouse's social security and pension benefits; and</li> </ol> <p>joint parental rights.</p>	<p>may obtain after the desertion against him and his creditors or any other person claiming under him.</p>	<p>is property which a husband may hold in trust for the clan. Each of these can and should be considered differently. The property to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to.</p> <p>The Land Act also fails to require customary land tenure systems to permit women to act as co owners/managers of customary land, and creates weak protections for widows who seek to inherit their husband's land,</p> <p>Herbert Kolya v Erikiya Mawemuko Kolya, Civil Suit No. 150/2016 This case helps solve the practice of husbands bequeathing matrimonial property to an heir which in effect, upholds a woman's equal rights during and after marriage. In most cultures, women are alienated upon a husband's demise and all property is taken by the husband's relatives or they purport to hold it in trust for her. With this kind of decision, the High Court affirms the</p>
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<sup>78</sup> The Constitution of the Republic of Uganda 1995 as amended; The Land Act cap 227 as amended; Divorce Act cap 249 as amended

	<p>Section 24 Divorce Act <u>Permanent Alimony</u> On a decree absolute declaring a marriage to be dissolved or on a decree of Judicial separation obtained by a wife, the court may order the husband to secure to the wife such some of money as, having regard to her fortune, if any, to the ability of the husband, and the conduct of the parties, it thinks reasonable.</p> <p>Section 24 (2) of Divorce Act, the court may direct the alimony to be paid either in a lump sum or yearly, monthly or weekly payment for any period not exceeding the life of the wife, and for that purpose may cause a</p>	<p>The contribution may be direct and monetary or indirect and non-monetary.</p> <p>High Court's Family Division in <i>Herbert Kolya v Erikiya Mawemuko Kolya</i><sup>80</sup>, in the decision by His Lordship Judge Godfrey Namundi, delivered on July 3, 2020, touches on other aspects of family law relating to wills and administration of estates.</p> <p>It was held that the deceased husband to bequeath the property to his heir was unconstitutional, as offending Articles 21(2) and 32(2) of the Constitution of Uganda, 1995 and Article 5 of the Convention on the Elimination of All</p>			<p>wife's right to own the property and deal with it as she pleases.</p> <p>Conclusively, this is a welcome decision given it especially settles the rights of women to exclusively own matrimonial property and deal with it without any external influence. What remains to be seen is whether its rationale shall be respected and upheld in light of the strong cultural practices that shun the rights of women, especially in the event of the demise of the husband.</p>
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<sup>80</sup> Civil Suit No. 150/2016

	proper instrument to be executed by all necessary parties.	Forms of Discrimination against Women, 1979 since it was a cultural practice that offended the dignity of women and further discriminatory on the ground of sex.  Kazibwe V Kazibwe <sup>81</sup> . In this case, the court considered Eng. Kazibwe had lost his job and he was granted alimony pendente lite.			
<b>Custody of Children</b> <i>Do parents have equal rights over the custody of their children? If no,</i>	Article 31(4); it is the right and duty of parents to care and bring up their children. <sup>85</sup>	Rwabuhema Tim Musinguzi V Harriet Kamakume <sup>87</sup> The Supreme court stated that parents	The children (Family and Children's Court Rules) <sup>91</sup>	Regulation 19(1) and (2) of The children (Family and Children's Court Rules) <sup>93</sup> provide that an application for	Both parents have similar and equal rights with regard to their child. Children may not be separated from their families (parents) or the persons entitled to bring them up against the

<sup>81</sup> D.C 3/2003

<sup>85</sup> The Constitution of the Republic of Uganda 1995 as amended; The Children Act (Amendment Act 9) 2016; The African Charter on the Rights and Welfare of the Child (ACRWC)

<sup>87</sup> Supreme Court Civil Appeal no.142/2009

<sup>91</sup> The Children (Family and Children's Court) Rules; The Uganda National Parenting Guidelines, 2018; The National Adolescent health policy for Uganda 2004; The social sector development plan (SDSP) 2016/16-2019/20

<sup>93</sup> The children (Family and Children's Court Rules)

<p><i>who has priority rights over the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p>	<p>c Article 34 (1); Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.</p> <p>Section 3(1) of the Children Act as amended (Amendments Act, Act 9 2016); the welfare of the child shall be of paramount consideration whenever state, a court, a tribunal, a local authority or any other person determines any question in respect to the upbringing of a child.</p> <p>Section 6 of the Children Act as amended 2016,</p>	<p>have a fundamental right to care and bring up their children. This is a constitutional right. Of course it is not considered in isolation. The welfare of the child is a consideration to be taken into account, and at times may be the paramount consideration. A parent can only be denied the right to care for and raise her children when it is clear and has been determined by a competent authority, in accordance with law, that it is the best interest of the child that the child be separated from the parent.</p>	<p>Under The Uganda National Parenting Guidelines, 2018. The government of Uganda recognizes the Critical importance of parenting as a foundation that all children in the country realize their full potential to include the right of the child to be cared for by his/her parents.</p> <p>The National Adolescent health policy for Uganda 2004 stipulates that parents have the primary responsibility towards the proper upbringing of their children and young people.</p> <p>C The social sector development plan<sup>92</sup> outlines the</p>	<p>an order of custody shall be made to the family and children's court and shall be supported by an affidavit.</p>	<p>will of their parents or those persons except in accordance with the law. Besides that, the guiding principle is the child's welfare which is of paramount consideration in custody to include ascertainable wishes and feelings of the child with due regard to his/her age and understanding, physical, emotional and educational needs, the child's needs, sex, age and any other relevant in the matter; any harm that that the child has suffered or is at risk of suffering; the capacity of the child's parents in meeting the needs of the child. The courts in Uganda have done a great job in custody matters to ensure that the welfare of the child is at the forefront in all matters concerning children. Courts have made it a principle that where the child is of tender years, the custody of such child should be given to the mother which I believe is justified. Given the cultural set up of Uganda where the factors that affect girls are far different from those of the male children, the law is justified when it does take in consideration that girl children of tender age should in most</p>
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<sup>92</sup> SDSP) 2016/16-2019/20

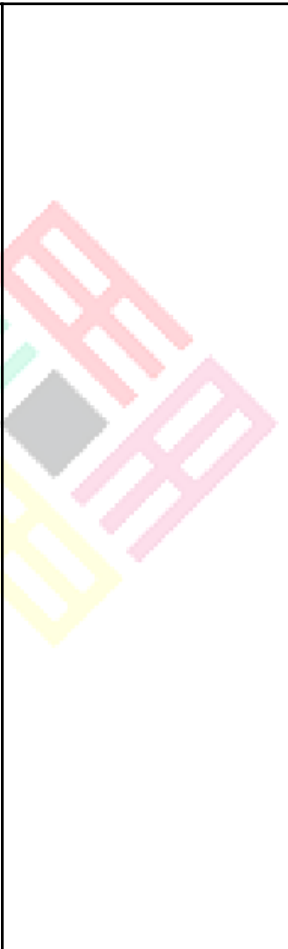
	<p>provides that every parent shall have parental responsibility for his, her child</p> <p>Section 3 (3)<sup>86</sup> provides that in determining any question relating to children, court or any other person shall have regard to;</p> <ul style="list-style-type: none"> <li>a) The ascertainable wishes &amp; feelings of the child concerned with due regard to his/her age &amp; understanding.</li> <li>b) The child's physical, emotional and educational needs</li> <li>c) The likely effects of any change in a child's circumstances</li> </ul>	<p>In the cases of Bishop David Kiganda V. Hadijja Naseje Kiganda<sup>88</sup></p> <p>Baguma v Mbabazi<sup>89</sup> Court confirmed the position of the lower court that the welfare of the children was taken care of. Further, the court added that the trial Magistrate was mindful of the children's needs to the extent that when the children were asked whom they wished to stay with, they expressly stated that their preference was with the Respondent being the mother.</p>	<p>importance and strategies for parenting as well as modalities for strengthening families and communities to provide care and support to children.</p>		<p>cases be given to the mother and not the father in custody matters.<sup>94</sup></p>
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<sup>86</sup> The Children Act as amended 2016

<sup>88</sup> HC Divorce Case Number 42/2011

<sup>89</sup> (HCT-00-CV-CA-2016/3) [2017] UGHCFD 4 (23 March 2017)

<sup>94</sup> Per one Senior Advocate at Musangala Advocates and Solicitors, Kampala, Uganda

	<p>d) The child's sex, age, background and any other circumstances relevant in the matter.</p> <p>e) Any harm that the child has suffered or is at risk of suffering</p> <p>f) Where relevant, the capacity of the child's parent, guardian, or any other person involved in the care of the child, and in meeting the needs of the child.</p> <p>Section 73 of the Children Act as amended, provides that the court may, on application by a sole applicant or joint applicants, grant custody of a child on such conditions as</p>	<p>In the case of Samwiri Massa versus Rose<sup>90</sup>, Justice Ntagoba observed that;</p> <p><i>"It's trite law that where issues of custody of child is between the father and its mother and taking into account the paramount interest of the child, custody of such child, especially when it's of tender years must be granted to the mother..."</i></p>			
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<sup>90</sup> Achen [1978] HCB 297

	<p>may be determined by the court.</p> <p>Section 73A, provides that a probation and social welfare officer, mother, father or guardian of a child may apply to the family and children court for the interim custody order pending the determination of the custody of the child by the Court.</p> <p>Section 73B, the parents of a child may enter into a written agreement to determine which of them shall have custody of the Child. (2) The Court may recognize an agreement made between the parents of the child giving the custody of the child to one of the parents, except where the court finds that</p>				
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	<p>enforcing the agreement would not be in the best interest of the child.</p> <p>The African Charter on the Rights and Welfare of the Child (ACRWC)</p>				
<p><b>Guardianship of Children</b></p> <p><i>Is there an equal right to guardianship? If not, who has priority rights over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p>	<p>Article 34 (1); Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up<sup>95</sup></p> <p>Section 3 (3) <sup>96</sup> provides that in determining any question relating to children, court or any other person shall have regard to;</p>	<p>Re Trevor Mugumu ( child)<sup>98</sup> Family Cause 68/2019 The court stated that even in matters concerning guardianship of a child, the welfare principle is of paramount consideration and that guardianship should be given to biological parents if still alive or not incapacitated and other people who</p>	<p>The National parenting Guidelines<sup>99</sup> target the parents, guardians and caregivers as primary users in ensuring that the role of parenting is duly fulfilled. In addition, the duty bearers have a responsibility of planning, equipping and monitoring and resource mobilization to enable the smooth</p>	<p>Section 43 B of the Children Act<sup>100</sup> as amended provides that;</p> <ul style="list-style-type: none"> <li>a) Legal guardianship of the child may be made by any person above the age of 18 years</li> <li>b) Shall be made to the High court</li> <li>c) Shall be by petition in form 1 set out in the 3<sup>rd</sup> schedule and</li> <li>d) Shall be accompanied by a report of the</li> </ul>	

<sup>95</sup> The Constitution of the Republic of Uganda 1995 as amended

<sup>96</sup> The Children Act (Amendment Act 9) 2016

<sup>98</sup> Family Cause No.68/2019

<sup>99</sup> The Uganda National Parenting Guidelines, May 2018

<sup>100</sup> *ibid*



	<ul style="list-style-type: none"> <li>g) The ascertainable wishes &amp; feelings of the child concerned with due regard to his/her age &amp; understanding.</li> <li>h) The child's physical, emotional and educational needs</li> <li>i) The likely effects of any change in a child's circumstances</li> <li>j) The child's sex, age, background and any other circumstances relevant in the matter.</li> <li>k) Any harm that the child has suffered or is at risk of suffering</li> <li>l) Where relevant, the capacity of the child's parent, guardian, or any other person involved in the care of the child,</li> </ul>	<p>have demonstrated that their intention is for the welfare of the child.</p>	<p>implementation of the guidelines.</p>	<p>probation and social welfare officer</p>	
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	<p>and in meeting the needs of the child.</p> <p><b>Customary guardianship</b> Section 43 (c) (1)<sup>97</sup> family members may appoint a guardian of a child in accordance with their customs, culture or tradition;</p> <ul style="list-style-type: none"> <li>a) Both parents of the child are deceased can't be found</li> <li>b) The surviving parent is. Incapacitated</li> <li>c) The child has no guardian or any other person having parental responsibility for him/her.</li> </ul> <p>Section 43D. Guardianship by agreement. The parent of the child</p>				
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<sup>97</sup> The Children Act (Amendment Act 9) 2016

	<p>may, by agreement or deed, appoint any person to be guardian.</p> <p>43D (2), the appointment shall not take effect unless the agreement or deed is dated and signed by the parent in the presence of two witnesses, one of which must be probation and social welfare officer, and the other must be a local councilor at LC1 level</p> <p>Section 43F(1); Conditions for guardianship The court shall before making a guardianship order satisfy itself that;</p> <ul style="list-style-type: none"> <li>a) There is no known relative or next of kin t of the child</li> <li>b) The relative or next of kin are</li> </ul>				
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	<p>unwilling or unable to take parental responsibility of the child</p> <p>c) All alternative care options available to the child have been exhausted</p> <p>d) The child is suffering or likely to suffer significant harm under present custody</p> <p>e) Consideration has to be given to the wishes of the child having regard to the age and understanding of the child, where in the view of the court, the child is able to understand guardianship proceeding</p> <p>f) Where the child is twelve years of age or above, his/</p>				
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	<p>her consent to the guardianship has been obtained, unless it is impossible for the child to express his/her consent.</p> <p>Section 43H, All persons appointed as guardians have parental responsibility for the child.</p>				
<p><b>Inheritance</b></p> <p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p>	<p>Succession Act<sup>101</sup> Section 1 provides that: except as provided by this Act or by any other law for the time being in force, the provisions in this Act shall constitute the law of Uganda applicable to all cases of intestate or testamentary succession.</p>	<p>Abbasi Magunda &amp; Anor V Sulaiman Senoga &amp; others<sup>102</sup></p> <p>The petitioners in this case petitioned court for a declaration that a will left by a Muslim testator was invalid because the testator was a Muslim who should not have made a will but</p>	<p>The National Land Policy<sup>103</sup></p> <p>The objectives of the new land policy include:</p> <ul style="list-style-type: none"> <li>• harmonizing and streamline the complex tenure regimes in Uganda for equitable access</li> </ul>	<p>The effect of the Succession Act is that there is a conflict of law between Islamic law and the Succession Act. The application of the Succession Act on Muslims has led civil courts to construe provisions of Islamic law through the lenses of civil law.<sup>105</sup></p>	<p>In cases where a Moslem believer makes a will and it is deemed to favour some children, the will is disregarded (destroyed) and the property is distributed according to Sharia law.<sup>106</sup></p> <p>Such has been the court's position on the legal pluralism of succession in Uganda. Evidently the national laws take precedence. However, the situation is different in communities where customary and religious</p>

<sup>101</sup> The Succession Act Cap 162

<sup>102</sup> 1995) IV Kalr 172

<sup>103</sup> The National Land Policy, 2011

<sup>105</sup> Uganda Law Reform Commission. Study Report On The Review Of Laws On Succession In Uganda. July 2013

<sup>106</sup> Per Secretary general Uganda Muslim Supreme Council and Director General Sharia UMSC;

	<p>The Succession Act does not have specific provisions for Muslim succession; the current position is that a Muslim may apply for exemption from the provisions of the Succession Act under Section 334(1). The section provides that;</p> <p><i>The Minister shall have power from time to time, by statutory order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act, any class or classes of persons, in Uganda or any part or parts of such class or classes to whom he or she may consider it</i></p>	<p>relied on Sharia Islamic law for succession. Justice Okello held that the law of succession in Uganda had been codified largely under the Succession Act as amended. Therefore, there was no such thing as customary or religious law of succession. She added that the deceased had opted out of Sharia law when he chose to make a will. Law and advocacy for women in Uganda V AG Const petition no.13 of 2006, court held that S. 27 was inconsistent with the constitution as it was</p>	<p>to land and security of tenure;</p> <ul style="list-style-type: none"> <li>to redress historical injustice to protect land rights of groups and communities marginalized by history or on the basis of gender, religion, ethnicity and other forms of vulnerability to achieve balanced growth and social equity;</li> </ul> <p>By a Legal Notice<sup>107</sup> Mohammedans were excluded from the operations of part V of the Succession Ordinance of 1906 which provided for distribution of an intestate's property. Therefore, the Mohammedans were</p>		<p>practices of succession are preferred to the statutory laws to the prejudice of women and children. There is a need to understudy the effects of these customary and religious practices of the application of the law of succession and come up with a clear and settled position on the hierarchy, relevancy and applicability of each of these seemingly competing practices.<sup>107</sup></p> <p>According to A study by Women and law in East Africa ' <i>Muslim women in marriage and household resource management in Uganda</i> revealed a conflict between the application of statutory law and religion. Some religious practices which discriminate against women in the distribution of property where females are entitled to half of what their male counterparts receive contravene the Constitution which is the supreme law of the land hence rendering them null and void <i>ab initio</i> contrary to Art. 33 (2) of the 1995 Constitution of the Republic of Uganda</p>
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<sup>107</sup> A study by Women and law in East Africa; The World Factbook: Uganda (2005), <http://www.cia.gov/cia/publications/factbook/geos/ug.html> (last updated Jan. 10, 2006) [CIA World Factbook: Uganda], Islamic Law and Exploitative Practices Deprive a Woman of her Home and Property ; VALERIE BENNETT, GINGER FAULK, ANNA KOVINA & TATJANA ERES: Inheritance Law In Uganda: The Plight Of Widows And Children

	<p><i>impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order</i></p> <p>Section 27 of the Succession Act provides a guide as to who has a beneficiary interest in the estate of the deceased.</p>	<p>unfair to women. However, courts use this section to guide them on who has the beneficiary interest in the intestate of the deceased.</p>	<p>entirely left to rely on the Sharia law in cases of intestate.<sup>104</sup></p>		<p>Islamic Law and Exploitative Practices Deprive a Woman of her Home and Property.<sup>108</sup></p> <p>Approximately sixteen percent of Uganda's population are Muslims. Islamic women in Uganda often face the same fate as women in customary societies. This is characterized by Property grabbing which is so common in Muslim communities in Uganda. According to research conducted by; Valerie Bennett, Ginger Faulk, Anna Kovina &amp; Tatjana Eres: Inheritance Law in Uganda: The Plight Of Widows And Children, it was noted that A Muslim Sheik said that when a man dies, tribesmen come in and take a lot of things: property, chattels, housewares, etc.</p>
<p><b>Nationality</b></p> <p><i>Does a wife have the right to confer citizenship</i></p>	<p>Article 21<sup>109</sup> Equality and freedom from discrimination</p>		<p>The Uganda Citizenship Regulations, 2009.<sup>110</sup></p>	<p>Section 15 of The Uganda Citizenship and Immigration Control Act<sup>111</sup> provides</p>	<p>The Constitution of Uganda<sup>112</sup> is elaborate on acquisition of citizenship by marriage, this gives a right to a wife to confer citizenship on foreign</p>

<sup>104</sup> Laws of Uganda 1951 Vol 7 , Subsidiary Legislation caps 31-101 and Buganda native Laws

<sup>108</sup> According to the CIA, The World Factbook: Uganda (2005), <http://www.cia.gov/cia/publications/factbook/geos/ug.html> (last updated Jan. 10, 2006) [CIA World Factbook: Uganda],

<sup>109</sup> The Constitution of the Republic of Uganda 1995 as amended

<sup>110</sup> The Uganda Citizenship Regulations, 2009

<sup>111</sup> Section 15 of The Uganda Citizenship and Immigration Control Act, Cap 66

<sup>112</sup> The Constitution of Uganda 1995 as amended

<p><i>on foreign born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p>	<p>(1). All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.</p> <p>(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability</p> <p>Article 12(2)(a); Every person married to a Ugandan citizen upon proof of legal and subsisting marriage of three years or such other</p>		<p>These regulations provide procedures on acquisition of citizenship in Uganda.</p>	<p>for the Procedure for registration of citizenship.</p> <p>(1) Any person to whom section 14(1) or (2) applies may apply to the board in writing in the prescribed form, and the board shall, on proof to its satisfaction that section 14 applies to that person, register that person as a citizen.</p> <p>(2) (1) issue a citizen (3) or she— (a) (b) (c)</p> <p>The board shall upon registration of any person under subsection to that person in the prescribed form a certificate of registration as of Uganda.</p> <p>A person shall not be registered as a citizen of Uganda unless he has made a declaration in writing in the form</p>	<p>born husbands and children. This is also reiterated in other laws subordinate to the constitution to wit The Uganda Citizenship and Immigration Control Act, Cap 66. As this process continues to evolve, the objective of all stakeholders working to expand the access to citizenship should continue to embrace Uganda's ethnic and cultural diversity and support the progressive integration of Uganda's domestic citizenship laws alongside broader regional and international initiatives that support access to citizenship rights. Such efforts will ensure that citizenship does not remain symbolic, as it tends to throughout various African states. Rather, policies and practices should be spearheaded in a manner which continuously expand the right to belong to a nation, and that the social, economic, and legal benefits which are associated with the right to claim citizenship and maintain a tie to a State are enjoyed by all populations, and in this case, by all Ugandans.</p> <p>There must be equality for all, especially for girls who aren't given.<sup>113</sup></p>
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<sup>113</sup> Per advocate and Senior Grade one magistrate, Kamwenge.



	<p>period prescribed by parliament.</p> <p>Article 15 provides for Dual Citizenship where a Citizen of Uganda of 18 years and above voluntarily acquires citizenship of another country other than Uganda may retain the citizenship of Uganda subject to the Constitution and any other law enacted by parliament. A citizen of Uganda may on acquiring the citizenship of Uganda, subject to this constitution and any other law enacted by parliament, retain the citizenship of another country.</p> <p>Article 15 (2); A person who is not a citizen of Uganda may, on acquiring citizenship of Uganda, subject to</p>			<p>specified in Form B of the Third Schedule to this Act renouncing any other nationality or citizenship he or she may possess; has taken the oath of allegiance specified in the Fourth Schedule to the Constitution and set out in Form A in the Third Schedule to this Act; has made and registered a declaration of his or her intentions concerning residence as specified in Form C of the Third Schedule to this Act. (4) in respect of the registration of citizens by registration not inconsistent with the Constitution or this Act.</p>	
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	<p>the constitution and any other law enacted by Parliament, retain the citizenship of another Country.</p> <p>Article 15 (5); where the law of a country, other than Uganda, requires a person who marries a citizen of that country to renounce the citizenship of his or her own country by virtue of that marriage, a citizen of Uganda who is deprived of his or her citizenship of that marriage, shall on the dissolution of that marriage, if he/she thereby loses his or her citizenship acquired by marriage, become a citizen of Uganda.</p> <p>Article 12(4), where a person has been registered as a citizen of Uganda under</p>				
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	<p>Clause (2)(a) and the marriage by virtue of which that person was registered is;</p> <p>a) Annulled or otherwise declared void by court or tribunal of competent jurisdiction; or</p> <p>b) Dissolved</p> <p>That person shall, unless he or she renounces that citizenship, continue to be a citizen of Uganda.</p>				
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### ACCESS TO JUSTICE

SYSTEM	PROCEDURES & TIMELINES	CHALLENGES FOR WOMEN	GOOD PRACTICES IN COURT SYSTEM
<p><b>How do Muslim family law (i.e. marriage and family related) cases get administered in your country? (E.g. Do you have a Quazi/Kadhi court system, family courts or civil</b></p>	<p>Briefly describe procedures for filing a divorce or any other family law related cases.</p>	<p>What are some key challenges that Muslim women face in accessing justice on family law matters? (E.g. <i>lack of accessibility, bad procedures, delayed processes,</i></p>	<p>Are there any good practices, procedures or policies that you would like to share pertaining to how courts in your country deal with family law cases? (E.g. <i>prioritising certain types of cases, timely</i></p>

<p><b>courts?)</b></p> <p>Article 129<sup>114</sup> recognises Qadhi courts which are courts that administer justice using Islamic laws. However, the courts have never been opened formally by the government and hence operate informally through structures of Islamic leadership.</p> <p>The Domestic relations Bill<sup>115</sup> in parliament. The DRB called for different reactions from the public especially Muslims about its contents and the nature of its operations. One of the views advanced by Muslims was that the DRB couldn't effectively administer Muslim personal affairs like marriage and divorce as such matters had to be handled by Qhadhi courts as per the constitution. Muslims argued that the DRB had clauses that were not in conformity with the principles of Muslim marriages. The MPs recommended for enactment of Qhadhi courts Act.</p>	<p>Article 129<sup>121</sup> provides that, 'judicial powers shall be exercised by Courts of Judicature which include Qhadhi's Courts for marriage, divorce, inheritance of property and guardianship.</p> <p>Sessions take off and are concluded in 1 month if it's the woman who reported and 3 months if it's the man seeking Divorce.<sup>122</sup></p> <p><b>Divorce steps in Qhadhi courts at the Uganda Supreme Council</b></p> <ol style="list-style-type: none"> <li>1. Aggrieved party reports to UMSC office/mosque. District/region</li> <li>2. UMSC informs client on the requirements for divorce file</li> <li>3. The fees is 100,000/=</li> <li>4. Client is given an entry form that guides clients including grounds for marriage</li> </ol>	<p><i>gender insensitive judges, etc?)</i></p> <p>There is no female judge on the committee/panel of Qhadhi courts which brings in challenges of bias and no access to justice for women as stated by the Director of Shari UMSC</p> <p>Majority of women have no capacity to afford the 100.000/= legal fees paid in Qhadhi courts for divorce since the majority of housewives are not employed.</p> <p>There is no privacy in the courtrooms. For the case of the court at UMSC, it is one room where both the aggrieved party and mother litigants be thus while one is stating her divorce ground to the judge, the other litigants are listening which may lead to a wrong judgment based on wrong facts.</p> <p>The Directorate of Sharia at UMSC</p>	<p><i>delivery of decisions, clear procedure, etc)</i></p> <p>There is a Proposal for constitutional amendment of the UMSC constitution that may bring some women judges on the Board /committee of Qhadhi courts.</p> <p>There is a well-established hierarchy of the court system that potential clients in these courts use even in cases of appeal. The Qhadhi courts are arranged in the descending order of below;</p> <ol style="list-style-type: none"> <li>1. National level (headquarters of UMSC)</li> <li>2. Regional Level</li> <li>3. District</li> <li>4. Twale</li> <li>5. Mosque.</li> </ol> <p>The good practice with this system is that an aggrieved party may appeal to the higher rank in case they fail to get justice in a lower court of Jurisdiction.<sup>126</sup> It's in tandem with the teachings of Islam. regardless of an enabling law to operationalize the existence of Qhadhi</p>
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<sup>114</sup> Article 129 of the 1995 Constitution as amended

<sup>115</sup> 2003 (DRB)

<sup>121</sup> Article 129 (d) of the 1995 Constitution of the Republic of Uganda

<sup>122</sup> Per information obtained from Registry of the Directorate of Sharia office at Uganda Muslim Supreme Council.

<sup>126</sup> Per information obtained from Registry of the Directorate of Sharia office at Uganda Muslim Supreme Council

<p>The UMSC (main body governing Muslim Affairs in Uganda) made a petition to the speaker of parliament against the DRB arguing that it constituted a threat to the principles of freedom of worship as enshrined under article 29(1) © of the Constitution.</p> <p>The Draft Administration of Muslim personal Law Bill 2008. Following failure of negotiations with the Muslim Leadership on the DRB, parliament directed the Uganda Law reform Commission (ULRC) to break down the DRB such provisions touching on Muslims to be left out.</p> <p>Another Bill for non-Muslim called the marriage &amp; Divorce Bill 2009 came. Into existence. This Bill was removed from the Legislative process in 2013 due to some of its contentious provisions. To date, the said Bill is not anywhere close and among the other parliament Bills let alone on the Parliament website.</p> <p>As a result, ULRC requested UMSC to prepare a draft for the Muslim personal</p>	<ol style="list-style-type: none"> <li>5. ID for both spouses</li> <li>6. Wedding photo</li> <li>7. Proof of previous interventions if any</li> <li>8. UMSC calls the opposite party</li> <li>9. Photocopy for him/her grounds for divorce and ask them to respond.<sup>123</sup></li> </ol>	<p>is poorly funded with a general lack of basic equipment and transport means like cars to access women in hard-to-reach places where most women reside. Women are instead expected to walk or move long distances to UMSC headquarters.<sup>124</sup></p> <p>The non-existence of these Qhadhi courts affects mainly women and the wider Muslim community since some people would wish to resolve their issues in Qhadhi courts especially if Nikkah was done in the mosque.<sup>125</sup></p>	<p>courts, their operationalization is well established and laid in the Holy Quran<sup>127</sup>.</p>
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<sup>123</sup> Obtained from an interface meeting with Sharia office registry at Uganda Muslim Supreme Council.

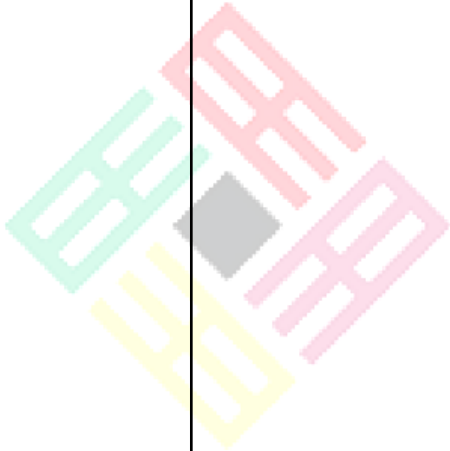
<sup>124</sup> Per information obtained from Registry of the Directorate of Sharia office at Uganda Muslim Supreme Council

<sup>125</sup> Information obtained from the Deputy Chief Justice, Uganda

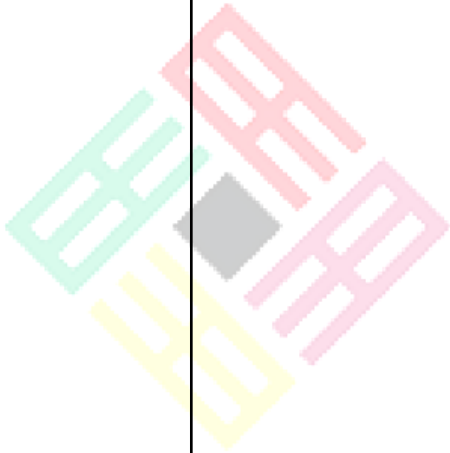
<sup>127</sup> As stated by one Advocate and also member of parliament who is a Muslim.

<p>law. UMSC constituted a technical committee to draft the Muslim Personal Law Bill. i.e. Administration of Personal Muslim Personal law Bill 2008 (AMPLB). Draft Bill was forwarded to the AG for further analysis but couldn't proceed and was removed from the legislative process in 2010.</p> <p>Currently, there is a draft bill on Qhadhi's courts but has not yet been presented to parliament because of the ongoing government consultations on its content.</p> <p>According to the Administrator General, as soon as there is consensus on the consultations and content of the bill, it shall be submitted to Cabinet for approval and introduction in Parliament.<sup>116</sup></p> <p>There is a delay in the establishment of Qhadhi's Courts and an enabling law envisaged under article 129 of the Constitution of the Republic of Uganda.</p> <p>According to former Nakaseke North MP, Hon. Syda Bbumba, she said that</p>			
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<sup>116</sup> Information obtained from Sharia office Registry Uganda Muslim Supreme Council.

<p>that the public was not made aware of any consultations in that regard especially the main stakeholders who are the Muslim authorities. “Nobody has consulted the Uganda Supreme Council in Old Kampala, Kibuli or Nakasero; it has taken 12 years for the government to do anything about this issue,”<sup>117</sup></p> <p>Many in the Muslim community are greatly encumbered by the absence of the Qhadhi’s Courts to help them resolve issues like inheritance and divorce. The way the Administrator General handles matters of inheritance is against the stipulations of the Islamic faith and the same goes for divorce,</p> <p>Justice by Islamic law faces several challenges because of the lack of uniform interpretation. There is a need to come up with interpretations that can be used in the administration of justice and the said laws should be harmonized with the laws of Uganda.</p>			
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<sup>117</sup> <https://www.parliament.go.ug/news/5096/mps-fault-government-establishment-Qhadhi’s-courts>

<p>For instance, while Islam talks about a woman getting a share of family property upon divorce, it doesn't specify how much. Women in such situations prefer to go to conventional courts for fear that they might not be treated fairly when they use Islamic channels.</p> <p>Government needs to put Qadhi Courts in place such that Islamic Laws are properly implemented and their decisions recognized in the justice system.</p> <p>Appeals from Chief Magistrates Courts are reviewed by a High Court Judge whether or not is familiar with Muslim personal law issues.</p> <p>It should be noted that the regulations are not detailed enough to cover the procedure necessary to bring the suit to court as it is found under the Divorce Rules. The Divorce Act provides the Divorce Rules and the forms. The Divorce Rules provide the format for the Divorce petition and summons. Lack of detailed rules under the marriage and Divorce of Mohammedan Act bring problems to any party who would wish to petition for any order of the court.</p>			
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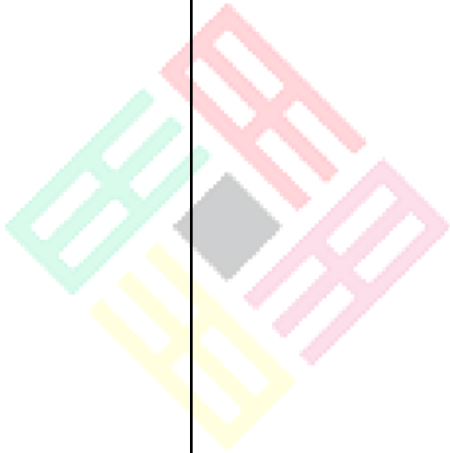


<p>The implication of these cited cases is that an order made by the Sharia court is enforceable and on limited occasions, the civil court may reverse such a decision issued by such a religious court unless it is central to natural justice.</p> <p><b>Nabawanuka v Makumbi</b><sup>118</sup> On 16th January 2012, the Respondent filed his reply refuting the allegations in the Petition and by way of a preliminary objection applying that the Petition be dismissed because it is re-judicata since the matter before Court had been finally determined by the Sharia Court of the Muslim Supreme Council in Divorce Cause No. SC/MDO 65/10/2011. At the commencement of the hearing, indeed Counsel for the Respondent-John Mike Musisi raised a preliminary objection to the effect that the matter before Court is res-judicata. In his submission he relied on Section 7 of the Civil Procedure Act Cap 71 which is to the effect that a matter is res-judicata if the</p>			
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<sup>118</sup> (Divorce Cause-2011/39) [2013] UGHCFD 3 (13 February 2013)

<p>issue before Court is directly and substantially the same as an issue between the same parties which has already been determined by a Court with competent jurisdiction to try the suit. Mr. Musisi went on to urge that a Sharia Court is a court of competent jurisdiction as provided for Under Article 129 (1) (d) of the Constitution 1995. He further contended that the Sharia Court of the Muslim Supreme Council is such Court that is envisaged under the Marriage and Divorce of Mohammedans Act Cap 252 Law of Uganda.</p> <p>Mr. Musisi further urged that the Petition was incompetent in as far as it sought reliefs under the Divorce Act Cap 249 even though the marriage between the parties was celebrated under Mohammedan law. He relied on Section 18 of the Marriage and Divorce of Mohammedan Act Cap 252 which specifically excludes the application of the Divorce Act in granting reliefs under that Act where the marriage between the parties has been declared valid under the Marriage and Divorce of Mohammedans Act.</p> <p>In her reply, Ms Harriet Nabankema Learned Counsel for the Petitioner refuted the assertion that the Sharia Court of the Muslim Supreme Council is</p>			
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<p>a Court of competent jurisdiction as envisaged under Article 129 (1) (d) of the Constitution. She urged that Parliament has not yet operationalized Art. 129 (1) (d) of the Constitution which requires Parliament to establish Qadhi's courts and that if there are such Courts in operation they are operating outside the dictates of Art.129 and are consequently incompetent. Counsel further urged that in absence of a forum for dissolving Mohammedan Marriages, recourse should be by invoking the provisions of Section 8 of CPA which gives Court inherent powers to give remedies to all aggrieved parties before it. Counsel for the Respondent-John Mike Musisi argues that Whereas indeed it's true that Qadhis Courts envisaged under Art 129 (1) (d) of the Constitution have not yet been established, he didn't agree with Ms. Nebankemas view that the Sharia Courts currently operating are operating outside the law. His position is premised on the import of Article 274 of the Constitution which provides that <i>"Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of the Constitution but the existing law shall</i></p>			
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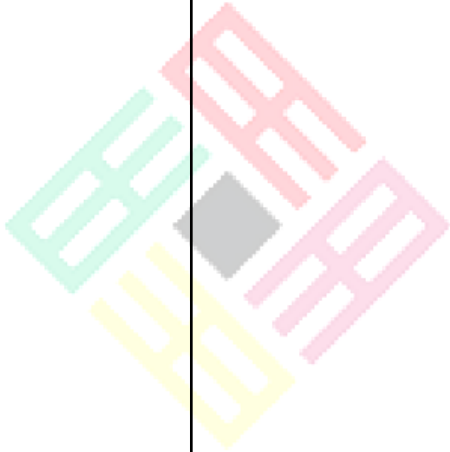
<p><i>be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this constitution”.</i></p> <p>The judge held that the matter was heard and determined by a competent Court and an attempt to resurrect the matter in his Court would surely run foul of Section 7 of CPA. Accordingly, it was held that this matter is res-judicata. Although the holding above effectively disposes of the PO, the judge added that it’s pertinent to touch on the issue of the competence of this Divorce Cause as filed. The judge added that; “In his submissions Mr. Musisi urged that reliefs sought by the Petitioner are those under the Divorce Act. On her part Ms. Nabawanuka urged that Cap 252 has not barred the High Court from determining this case which under Sections 14 and 33 of the Judicature Act Cap 13 is given unlimited original jurisdiction in all matters.</p> <p>Accordingly since the orders sought for from this Court by the Petitioner from this Court are not in sync with Section 18, he agreed with Learned Counsel for the Respondent that the Petition in</p>			
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<p>Divorce Cause No. 39 of 2011 is incompetent. In the result the preliminary objection succeeds and the Petition is dismissed with costs to the Respondent. Re hamza Mohamed and Nashat Mohamed (minors) HC (Family) Misc App No 89 of 2012 (Hon. Mukibi). The High Court upheld the decision of the Sharia Court's decision granting divorce to the parties and custody of two children to the wife until they reach the age prescribed by Islamic Law. His Lordship noted that Sharia court has jurisdiction and is competent to grant divorce as relief and is equally competent to grant orders relating to custody of the children. Since the Sharia Court had already made a valid custody order, it was not necessary for the High Court to determine the application on merit and the application had been overtaken by events at the Sharia Court.</p> <p><b>How many courthouses/court rooms around the country that administer Muslim family law cases?</b></p> <p>The Uganda Muslim Council has no statistics regarding the number of courthouses in the country. The general</p>			
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<p>presumption is that all mosques may act as courthouses.<sup>119</sup></p> <p><b>How many Muslim family law-related judges? Are there women working within the court system as judges/marriage registrars e.t.c?</b></p> <p><b>Do lawyers represent clients?</b> Please take note that lawyers are not allowed to represent clients in Qhadhi courts under the presumption that they have no or little knowledge on Sharia law.</p> <p><b>Recommendation.</b> There is need for activists to push for the establishment of Qadhi courts because their establishment is long overdue. There was an attempt to re-introduce this subject in 2020 by one Member of Parliament but still faced resistance from a number of people including Muslims and non-Muslims who believe that Qhadhi courts may be against their way of life.<sup>120</sup></p>			
<p><b>Observations from key stakeholders</b></p> <p>Qhadhi courts are a welcome development if the law is to be</p>			

<sup>119</sup> Per information obtained from Registry of the Directorate of Sharia office at Uganda Muslim Supreme Council

<sup>120</sup> Per one Advocate and Director legal and Parliamentary affairs of Uganda Parliament.

<p>implemented. However, the way it was structured under Article 129 (d) of the constitution of the Republic of Uganda is not specific on their establishment since the Article under paragraph b (d) mentions subordinate courts such as Qhadhi courts.</p> <p>There is no political will on the side of the government to operationalize Article 129 (d) despite the efforts that have been mad.</p> <p>There is reluctance on the part of Muslim members of Parliament. Foristance they should have brought a private members bill to have a Muslim personal Law Bill. The good news is that there are discussions currently to bring. A private members bill to operationalize Article 129 (d).<sup>128</sup></p>			
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<sup>128</sup> Parliamentarian and Imam parliament of Uganda