

## UGANDA

### 1. Discriminatory family code

Since 1964, the government of Uganda has been debating bills – in various iterations – that would reform and consolidate laws relating to marriage, separation, and divorce amongst its diverse religious and ethnic communities.<sup>1</sup> Drafted in 2003, the Domestic Relations Bill attempted to address these issues, but failed to pass.<sup>2</sup> After being withdrawn for consideration in 2005, the Domestic Relations Bill was split into two parts: the Marriage and Divorce Bill and the Muslim Personal Law/Qadhis Courts Bill.<sup>3</sup> The Muslim Personal Law Bill would establish Qadhis Courts to handle marriage, divorce, property, guardianship, and inheritance issues in the Muslim community.<sup>4</sup> The Marriage and Divorce Bill (drafted in 2009) handles laws relating to civil, Christian, Hindu, Bahai, and customary marriages and, following its predecessor, aims to reform the laws relating to marriage, separation and divorce; to provide for the types of recognized marriages in Uganda, marital rights and duties, recognize cohabitation in relation to property rights, outline grounds for breakdown of marriage and rights of parties on dissolution of marriage; and to criminalize marital rape, the practice of widow inheritance, and bride wealth.<sup>5</sup> At the time of review (November 2013), the Ugandan parliament was still considering the Marriage and Divorce Bill.

Under current law (Constitution, Children Act and Amendment to the Penal Code)<sup>6</sup>, the minimum **legal age of heterosexual marriage** is 18 years for men and women.

However, despite the constitutional provision against **early marriage**, Uganda's marriage and family laws contradict with this constitutional provision. For instance, in the 1973 Customary Marriage Act (Chapter 248)<sup>7</sup>, which provides for registration of customary marriages and types of marriages (both monogamous and polygamous, see Articles. 4 – 1, 2), the age of consent is set much lower at sixteen years old for women (Article 11a) and eighteen years old for men (Article 11b). It also requires the consent of the father, mother or guardian for the marriage of minors and prohibits inbreeding (incest) (see Article 11d, schedule 11) among others.

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<sup>1</sup> World Pulse (2012)

<sup>2</sup> Excerpts of the Domestic Relations Bill (2003), accessed 29 November 2013: [http://www1.chr.up.ac.za/undp/domestic/docs/legislation\\_19.pdf](http://www1.chr.up.ac.za/undp/domestic/docs/legislation_19.pdf); CEDAW (2009), p. 15; Struensee, V. von (2008), p. 1-10

<sup>3</sup> CEDAW (2010), p 8

<sup>4</sup> CEDAW (2010), p. 23

<sup>5</sup> Draft of the Marriage and Divorce Bill (2009), accessed 29 November 2013: [http://www.parliament.go.ug/new/images/stories/bills/Marriage\\_Divorce\\_bill\\_2009\\_1.pdf](http://www.parliament.go.ug/new/images/stories/bills/Marriage_Divorce_bill_2009_1.pdf); Hore, Rosie (2013)

<sup>6</sup> CEDAW (2010), p. 22

<sup>7</sup> Uganda Legal Information Institute (n.d.)

This law contradict the constitutional provisions of the age of consent and freedom of consent for both men and women. In addition, arranged marriages for minors still exist especially in rural areas.<sup>8</sup>

Yet Article 2(2) stipulates that if any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

Regarding **parental authority**, there are no known laws which stipulate that men must be heads of households.<sup>9</sup> However, marital practices are governed by different customary legal systems, which determine family law. Many of these discriminate against women, although civil law prevails where customary law violates Constitutional protections.<sup>10</sup>

Although the Children Act (1997) stipulates that both parents are responsible for supporting their offspring, customary law holds that men retain sole parental authority in Uganda in the event of **divorce**.<sup>11</sup> The Constitution guarantees a woman's equal rights within marriage, even in the event of a divorce, but the law currently does not enforce this right.<sup>12</sup>

Under the Marriage Act, widows have the right to inherit 15% of a deceased husband's property; however customary law dictates that women do not have the right to inherit.<sup>13</sup> Customary law is particularly important in regard to women's **inheritance** rights, since, according to the Food and Agriculture Organisation (FAO), over 75% of land in Uganda is held under customary land systems.<sup>14</sup> As a result data included in the 2006 Ugandan Demographic and Health Service (DHS) and a recent World Bank report found that nearly half of all Ugandan widows find themselves dispossessed of at least some property.<sup>15</sup> A 2011 Chronic Poverty Research Centre report indicates that only 36.41% of widows inherited the majority of assets after their spouses in 2006.<sup>16</sup> According to the Uganda Bureau of Statistics, widows made up 11% of the population in 2009/2010.<sup>17</sup> It is worth noting that 78% of the population of Uganda is below 30 years old and half of the population is under 15 years old.<sup>18</sup>

In some areas, widow inheritance is practised, whereby if a man dies, his brother can 'inherit' the man's widow – a custom that, as indicated above, is addressed in the pending Marriage and Divorce Bill.<sup>19</sup> Under the pending Marriage and Divorce Bill, women's rights to land and other types of property prior to, during, and following marriage would be protected (though because the Bill does not apply to Muslim marriages, it is unclear how it would affect Muslim women's

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<sup>8</sup> FIDH (2012)

<sup>9</sup> World Bank (2013a) Women, Business, and the Law

<sup>10</sup> Knox, A., N. Duvvury, and N. Milici (2007), p. 2, 10

<sup>11</sup> Part II, Article 6 of the Children's Act, adopted 1 August 1997 in CEDAW (2000) pp.52, 68

<sup>12</sup> Knox et al. (2007), p.5

<sup>13</sup> CEDAW (2000), p. 69-70

<sup>14</sup> FAO (n.d)

<sup>15</sup> UBOS and Macro International (2006); World Bank, Food and Agriculture Organization, and International Fund for Agricultural Development (2009), p.143

<sup>16</sup> Chronic Poverty Research Centre (2011), p.20

<sup>17</sup> UBS (2010)

<sup>18</sup> UNFPA Uganda and the Republic of Uganda (2013), p. 84

<sup>19</sup> CEDAW (2010), p 22-23.

inheritance rights, if at all). In addition, the Constitutional Court has declared provisions of the Succession Act (which governs inheritance in the event of a person dying intestate) as unconstitutional, and as of its last report to The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the government was considering amendments to the act to bring it into accordance with the law.<sup>20</sup>

### **More**

According to the Divorce Act (Chapter 249) a husband may apply by petition to the court for the dissolution of his marriage on the ground of adultery. A wife may initiate **divorce** on several grounds: her husband has changed his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or has been guilty of incestuous adultery, bigamy, rape, sodomy or bestiality and desertion.

## **2. Restricted physical integrity**

In November 2009 Parliament passed the country's first bill criminalizing **domestic violence**, the Domestic Violence Act, which was signed into law in 2010. The bill provides a thorough definition of domestic violence that includes physical, sexual, emotional, verbal, psychological, and economic violence as well as harassment. In addition, the bill provides protection orders for abused women, which had not previously existed in Ugandan law.<sup>21</sup>

**Rape** is a criminal offence in Uganda under Chapter 14 of the Penal Code, which also prescribes the death penalty for those convicted of rape.<sup>22</sup>

Spousal rape is not currently recognised as a criminal offence, but the Marriage and Divorce Act and the draft Sexual Offences (Miscellaneous Amendments) bill of 2004 (both pending) recognize spousal rape as a crime and mandate imprisonment, fines, and compensation to the victim as punishment if the partner's refusal to have sex is on basis of poor health, surgery that affects the capacity to engage in sexual intercourse, childbirth, or "reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm".<sup>23</sup>

However, the inclusion of marital rape in the Marriage and Divorce Act has been a source of heavy controversy, with media reports indicating that the controversy is one of the major contributors to the delay in the passage of the Act,<sup>24</sup> with others arguing that the failure to pass the Marriage and Divorce Act affects the realization of the Domestic Violence Act, rendering it an Act in "name only" and failing to protect women.<sup>25</sup>

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<sup>20</sup> CEDAW (2009), p. 13, 16-17, 66

<sup>21</sup> The Republic of Uganda (2010)

<sup>22</sup> Uganda Penal Code Act 1950

<sup>23</sup> Marriage and Divorce Act and also CEDAW (2009), p. 16

<sup>24</sup> Hore (2013)

<sup>25</sup> World Pulse (2012)

According to the US Department of State's human rights report for 2012, the law is not effectively enforced; most rapes go unreported, and police lack the resources and capacity to investigate cases of rape.<sup>26</sup>

Rape is very common in Uganda, and enforcement of existing laws is sporadic. There is no national-wide data, According to the 2011 DHS, 51% of women reported having experienced some form of sexual and/or physical violence in their lifetime.<sup>27</sup> Among ever-married women, the victim's husband or partner was the perpetrator in more than 55% of these cases, reflecting a widely held belief that spousal rape is a husband's prerogative.<sup>28</sup>

**Sexual harassment** is a criminal offence, with penalties of up to 14 years of imprisonment, but the law is not effectively enforced.<sup>29</sup> According to the US Department of State, sexual harassment is reportedly widespread in schools, hospitals and workplaces.<sup>30</sup> 2011 Allegations that female students at Makerere University were expected to provide sexual favours in return for good grades were being continuing to be investigated, according to the Department of State's 2012 human rights report.<sup>31</sup>

Certain groups of women in Uganda are at special risk of violence and discrimination, including: older women, women with disabilities and lesbian and transgender women. A Joint NGO Report to The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) described several areas of discrimination against older women, including widows being subject to property grabbing and widow inheritance, which leaves them even more vulnerable to poverty, as well as sexual and domestic violence.<sup>32</sup> In a letter to the CEDAW committee ahead of Uganda's 2010 review, Human Rights Watch describes the stigma, isolation, sexual and gender-based violence, increased vulnerability to HIV/AIDS infection, as well as obstacles to accessing justice, experienced by women with disabilities in Uganda.<sup>33</sup> And the US Department of State reports that lesbian, gay, bisexual and transgender (LGBT) individuals face discrimination, harassment, violence, and legal restrictions, given that homosexuality is illegal in Uganda and LGBT persons' rights are not protected under law.<sup>34</sup>

### **More**

While **abortion** is not expressly prohibited in Uganda's constitution, Article 22(2) provides protection for the right to life and criminalises the killing of an "unborn child". However, abortion is legally allowed when termination of a pregnancy is necessary to save a woman's life. This includes cases where the woman's mental or physical health is in danger.<sup>35 36</sup>

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<sup>26</sup> US Department of State (2013), p 24-25.

<sup>27</sup> UBOS and Macro International (2011), p. 239

<sup>28</sup> UBOS and Macro International (2006), Table 18.5

<sup>29</sup> US Department of State (2013), p. 26

<sup>30</sup> US Department of State (2013), p. 26

<sup>31</sup> US Department of State (2013), p. 26

<sup>32</sup> Joint NGO Report (2010)

<sup>33</sup> Human Rights Watch (2010)

<sup>34</sup> US Department of State (2013), p. 33

<sup>35</sup> UN (2011)

<sup>36</sup> Centre for Reproductive Rights (2012)

Although there is little reliable data on the topic, it is estimated that close to 300,000 abortions are performed annually, and that 85,000 women are treated each year for complications due to unsafe abortions.<sup>37</sup> In addition, 2011 data shows that teenage pregnancy is significant in Uganda.<sup>38</sup> Associated reasons are social, economic, as well as linked to traditional practices and cultural norms.<sup>39</sup> For example, there are underlying assumptions that a girl who has menstruated is ready to become pregnant and has reached the adult stage.<sup>40</sup>

Restrictions on women’s **reproductive rights** are also violations of women’s physical integrity. In practice, according to a study by the Centre for Reproductive Rights, laws surrounding the termination of pregnancy are “inconsistent, unclear, and often contradictory.”<sup>41</sup>

In addition to confusion over the laws surrounding abortion, there is a high level of unmet need for birth control that makes unsafe abortion a frequent practice in Uganda.

Rape and other forms of sexual violence have been ongoing features of the **conflict** in northern Uganda over the past two decades.<sup>42</sup> The Lord’s Resistance Army – also active in neighbouring Democratic Republic of Congo, the Central African Republic, and Sudan – has made consistent use of rape, sexual mutilation, and the abduction of male and female children for sexual slavery.<sup>43</sup> In addition, according to the Uganda Human Rights Commission, the Foundation for Human Rights Initiative, and the African Centre for Treatment and Rehabilitation of Torture Victims, there are cases of rape being used by security forces as a means of torture and intimidation.<sup>44</sup>

In 2010, the government passed The International Criminal Court Act, which categorizes rape, forced marriage and sexual slavery as war crimes chargeable under the Uganda legal system.<sup>45</sup>

In 2014, an Anti-Pornography Bill was passed.<sup>46</sup> The law was criticized as infringing on women’s rights and freedoms, and called the “mini-skirts bill”.<sup>47</sup> The bill bans “indecent” dressing including any skirt that falls above the knee and any form of dress that may “sexually excite”.<sup>48</sup>

### 3. Son bias

The male/female **sex ratio** for the working age population (15-64) in 2013 is 1.02 while the ratio at birth is 1.03.<sup>49</sup>

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<sup>37</sup> IRIN News (2013)

<sup>38</sup> Uganda Bureau of Statistics (2011)

<sup>39</sup> Gideon, Rutaremwa (2013)

<sup>40</sup> ODI (2013)

<sup>41</sup> Centre for Reproductive Rights (2012)

<sup>42</sup> CEDAW (2000), p. 28; Arieff (2009), p.1

<sup>43</sup> Arieff, Alexis (2009), p.3

<sup>44</sup> US Department of State (2011)

<sup>45</sup> CEDAW (2010), p. 15

<sup>46</sup> Parliament of the Republic of Uganda (n.d.)

<sup>47</sup> New Vision (2014)

<sup>48</sup> BBC News (2014)

<sup>49</sup> Central Intelligence Agency (2013)

There is evidence to suggest that Uganda is a country of low concern in relation to **missing women** due to AIDS mortality.

#### 4. Restricted resources and assets

Discriminatory customary practices persist in regard to women's land rights, despite the government's recent adoption of the Land Act of 2004 designed to improve women's **access to land** and grant them the right to manage their property.<sup>50</sup> According to the International Monetary Fund (IMF), although approximately 70% of women are employed in agricultural activities, only 20% of women own land.<sup>51</sup> Further, decision-making powers are typically granted to men, and most female landowners have no power to administer their land holdings as the law does not include a co-ownership clause. Instead, it specifies a warning indicating that a property is subject to consent before it can be sold or transferred.<sup>52</sup> Passage of the Marriage and Divorce Bill will change existing land laws significantly.

As noted above, women's land rights are curtailed largely due to customary law. Recent developments in terms of processing land titles for customary land has left women more vulnerable and gravely limited their access to land. There are no specific laws or policies protecting women's rights. In addition, increase in commercial farming in Northern Uganda has reduced women's access and control over productive land.<sup>53</sup>

In Uganda's Jinja District, Slum Women's Initiative for Development (SWID) identified widespread corruption in land distribution and the denial of women's rights to land. As a result, the grassroots women leaders created a savings club for women to take out loans and establish credit with banks. This enabled 35 women to receive land titles in less than 14 months, and 120 women have submitted their documentation to start the titling process. For 2014 and beyond, with the support of Huairou Commission and UNDP, SWID will work to expand the successes achieved in Jinja to other provinces in the country.<sup>54</sup>

The Constitution upholds women's rights to have **access to property other than land**. Theoretically, women are free to administer their property without their husbands' consent, but customary laws prevent women from exercising these rights.<sup>55</sup>

Discriminatory practices that prevent women from accessing land are a major obstacle to women's **access to credit**, as most commercial banks will not approve loans unless women hold title deeds as a guarantee.<sup>56</sup> The majority of employed women in Uganda, between 75% and 80%, work in the agricultural sector as unpaid subsistence labourers, and therefore cannot acquire the documentation or collateral necessary to obtain a bank loan.<sup>57</sup> According to the latest data from the World Bank, only 15.1% of women had bank accounts at formal financial

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<sup>50</sup> The Land (Amendment) Act of 2004

<sup>51</sup> IMF (2010)

<sup>52</sup> Land (Amendment) Act of 2004; CEDAW (2000), p. 56; CEDAW (2009), p. 14-15

<sup>53</sup> Action Aid International Uganda (2012), p. 23 and p. 44

<sup>54</sup> SWID, <https://sites.google.com/site/swiduganda/>

<sup>55</sup> Article 246 (4) of the Constitution of the Republic of Uganda, 1995 in CEDAW (2009), p. 14

<sup>56</sup> CEDAW (2000), p. 52

<sup>57</sup> UBOS and Macro International (2006), Table 4.7.1; CEDAW (2009), p. 40; CEDAW (2000), p. 42, 57

institutions in 2011, compared with 25.8% of men. During the same year, 8.6% of women received a loan from a financial institution, compared with a slightly higher percentage (9.1) of men.<sup>58</sup> In 2012, women made up slightly less than half of microfinance borrowers (43.92%) – out of 9 microfinance institutions reporting.<sup>59</sup>

## 5. Restricted civil liberties

Concerning **access to public space**, there are no reported legal limitations on women’s freedom of movement, and women’s right to travel is guaranteed under the Constitution.<sup>60</sup> However, on a day-to-day basis, women may have to seek permission from their husbands in order to travel: according to data from the 2006 Ugandan Demographic and Health Survey (DHS), 35.8% of married women who were interviewed reported that their husbands had the final say as to whether or not the wife could leave to visit family or relatives, a percentage that slightly increased according to the 2011 DHS data, which found that 39.9% of married women were the main decision-makers in respect of visits to family members.<sup>61</sup>

Freedom of speech, association and assembly are protected by law, but in practice, the government is increasingly intolerant of criticism, and NGOs and other groups face restrictions on their activities in the form of onerous registration requirements (although remain outspoken and critical of government policy).<sup>62</sup> There appears to be an active and engaged women’s rights movement in Uganda, working particularly on issues relating to violence against women, as well as pushing for legislative changes to protect women’s rights.<sup>63</sup> Lesbian, gay, bisexual and transgender (LGBT) organizations working for lesbian and transgender women’s rights, however, have been under specific threat. According to the US Department of State’s 2012 human rights report, LGBT-related organizations have been denied official NGO status and the government has closed meetings and workshops organized by LGBT groups, sometimes detaining participants.<sup>64</sup>

Women have the same rights to vote and stand for election as men in Uganda. According to a 2007 Pew survey, 65% of respondents believed that men and women were equally capable as political leaders, while 27% thought that men were better than women.<sup>65</sup>

Regarding **quotas**, the government has also taken special legislative measures to increase women’s political participation. These include a Constitutional article (78, 1) that states that parliament should have one women representative for each of the 112 districts in Uganda, and a 2006 Electoral Law that requires that these representatives be selected from an all-women ballot.<sup>66</sup> In addition, Article 180 (2) of the Constitutions mandates that women must make up

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<sup>58</sup> World Bank (2013)

<sup>59</sup> Microfinance Information Exchange (2013)

<sup>60</sup> Constitution, Article 29 (2); World Bank (2013a)

<sup>61</sup> UBOS and Macro International (2006), table 15.4.1; UBOS and Macro International (2011)

<sup>62</sup> Freedom House (2010)

<sup>63</sup> See US Department of State (2011)

<sup>64</sup> US Department of State (2013), p 23, 33

<sup>65</sup> Pew Research Centre (2007), *Q.43*

<sup>66</sup> The Quota Project (2013)

one-third of local councils, which share jurisdiction with magistrate courts on decisions pertaining to local customs.<sup>67</sup> As a result, women now have a less costly alternative to the formal legal system to resolve disputes, and one where they believe that they can get a fairer hearing.<sup>68</sup>

### ***More***

Under Section 3 of the Employment Act (2006), women are entitled to sixty work days of paid **maternity leave** at 100% of wages paid for by their employer, although leave can be extended in the event of illness of the mother or child.<sup>69</sup> The Employment Act (sections 6, 17) also protects pregnant women from unjust dismissal and guaranteed the right to return to their old jobs.

In addition, women are protected from **discrimination in the workplace** based on race, colour, sex, religion, political opinion, national extraction or social origin, and HIV status under the Employment Act.<sup>70</sup> However, these protections do not apply to the large percentage of employed women in Uganda who work in the informal and agricultural sectors - 42% of women in the labour force are unpaid family workers and women account for 75% of agricultural workers – which means that the majority of Ugandan women are vulnerable to employment discrimination and ineligible for maternity coverage.<sup>71</sup>

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<sup>67</sup> The Quota Project (2013)

<sup>68</sup> World Bank et al. (2009), p. 145-146, 151

<sup>69</sup> ILO (2011)

<sup>70</sup> ILO (2011)

<sup>71</sup> EPRC Policy Brief (2011)



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