

THEMATIC REPORT ON FAMILY LAW AND MUSLIM WOMEN'S RIGHTS IN UGANDA

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Submitted by:



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I. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family; the **Strategic Initiative for Women in the Horn of Africa (SIHA)**; **The Uganda Association of Female Lawyers (FIDA Uganda)**; and **The Islamic Women’s Initiative for Justice, Law and Peace (IWILAP)** submit this joint Thematic Report for consideration by the CEDAW Committee in its review of the Government of Uganda, reporting before the 81st CEDAW Session in February 2022.

This is the CEDAW Committee’s combined 8th and 9th engagement with Uganda, which ratified CEDAW in 1985 and last reported in 2010.

This report first outlines the Ugandan context in light of the COVID-19 pandemic. It then examines and makes recommendations regarding Uganda’s legal framework and practices that enforce *de jure* and *de facto* discrimination against women and girls, including Muslim women and girls, in the following areas of personal status and legal equality:

- Legal framework on marriage, separation and divorce
- Harmful laws, social norms and practices, such as polygamy, child marriage, bride price and unequal inheritance rights
- Violence against women and girls
- Access to justice

We hope the CEDAW Committee will utilise this report as a key resource during its Constructive Dialogue with the State party. In particular, we hope the Committee will use the recommendations to identify follow-up issues in its Concluding Observations.

II. COVID-19 CONTEXT

Women and girls in Uganda have been disproportionately impacted by COVID-19, which stems from structural and systemic inequalities that existed before the pandemic.

For instance, the increased risk and exposure to violence that women and girls are facing has begun to receive attention, but so far, little government action has been taken to address this issue. In fact, some COVID-19 response measures are exacerbating the problem. Because of a lack of gender-disaggregated data, we cannot know the full extent of the impacts the COVID-19 crisis has had on increasing violence against women and girls;¹ however, there is evidence that intimate partner violence in Uganda is on the rise in the face of the region’s strictest COVID-19 response measures. Within the first 14 days of national lockdown, the Ugandan police had already recorded 328 cases of domestic violence.²

¹ “We Demand Change: Violence against Women and Girls in the Greater Horn of Africa during COVID-19.” SIHA Network, 24 July 2020. https://issuu.com/halayassin/docs/vawg_during_covid_briefing_paper

² “Police records 328 cases of domestic violence during COVID-19 lockdown.” *The Independent*. (April 2020). <https://www.independent.co.ug/police-records-328-cases-of-domestic-violence-during-covid-19-lockdown/>

The strict COVID measures have caused severe income disruptions for many families, leading to home dynamics where lack of food, income, and freedom of movement gives way to rising tensions. Unjust yet common gender norms place the lion's share of responsibility for household maintenance, cleaning, cooking, and childcare on women. With so much responsibility to bear, women are often blamed for any misfortune in the house. A Ugandan woman who provides for her family by selling produce spoke to her experiences of this dynamic in her own home:

“Because there is no actual income my husband was bringing home, I feel he is threatened by me as the sole provider of the home and this makes him quarrel and beat me.”

As healthcare systems across the region are overwhelmed by COVID-19, services that prevent violence against women and girls (VAWG) or support survivors have largely been deprioritised. This is a direct result of the fact that none of the Greater Horn of Africa governments—including Uganda—have truly taken a gender-responsive approach to this crisis. The COVID-19 measures that restrict travel and all business deemed non-essential have made it difficult for women's rights non-governmental and community-based organisations, as well as VAWG prevention and recovery service providers, to continue their service provision and advocacy work.

When implementing measures necessary for public health, governments must implement them alongside complementary measures which use gender-responsive approaches to ensure that the equal rights of women and girls are fully protected. The State must therefore take new steps to address the disproportionate impact of COVID-19 policies on women and girls.

WE RECOMMEND THE CEDAW COMMITTEE URGES THE STATE TO:

- Address pandemic-related gaps and inadequate measures related to social protection, economic & fiscal policies, labour market and unpaid care.³ The Government of Uganda, development partners, and humanitarian organisations must acknowledge the gendered implications of COVID-19 and put in place gender-responsive COVID-19 prevention and response plans, as well as design long-term resilience and recovery programming, based on the collection and analysis of data disaggregated by sex, gender and diversity.
- Ensure that civil society and women's groups are meaningfully included and consulted in the COVID-19 response and recovery process.
- Acknowledge VAWG as a crisis within the COVID-19 crisis and fully address VAWG at all levels, including public education to prevent VAWG within homes, ensuring law enforcement officers prioritize VAWG more than before the COVID-19 crisis began, and ensuring that courts across the country remain open and accessible.

³ Women's International peace centre: Now and the future Gender Equality, Peace and Security in a COVID-19 World, 2020

III. KEY ISSUES, REFORMS, AND RECOMMENDATIONS

1. AMENDMENT OF THE MARRIAGE BILL

Article 16

Currently, family law matters in Uganda, including marriage, divorce, custody of children, and inheritance, are regulated by six marital regimes. The effort to consolidate them into a unified statutory law has taken decades without consensus being reached. The Marriage Bill, formerly known as the Marriage and Divorce Bill (2009), remains a crucial piece of legislation for Ugandan women, including Muslim women. It addresses women's property rights in marriage and women's right to negotiate sex on the grounds of health, sets the minimum age of marriage at 18, prohibits female genital mutilation (FGM) and criminalises widow inheritance, among other safeguards. The Bill is aligned to the Constitution of the Republic of Uganda 1995, whose Article 31 (1) sets the age for marriage at 18, provides for marriage by free consent, and provides for equality at, during and after the dissolution of marriage. The Article further obligates Parliament to enact appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.

The CEDAW Committee's Concluding Observations in 2010 called upon the State party to accelerate its law review process to harmonise—without delay and within a clear timeframe—its domestic legislation with its constitutional principles relating to non-discrimination and equality between women and men, and with its obligations under the Convention. It also called specifically to enact the Marriage Bill to address the disparities concerning minimum age and address the unfair rights and obligations of women upon marriage and at divorce⁴ that have been points of contention in the current legislation governing marriage and divorce. Unfortunately, to date the Bill has not been passed. The current 11th Parliament, which was elected in 2021, has not saved the Bill to be debated in the current parliament. This continues to demonstrate the State's non-prioritisation of gender bills and policies.

Muslims in Uganda are governed by a plural legal system of common, customary and Islamic law, with access to several matrimonial regimes: the Marriage Act,⁵ the Marriage and Divorce of Mohammedans Act,⁶ the Marriage of Africans Act,⁷ and the Customary Marriage (Registration) Act.⁸ The Marriage and Divorce of Mohammedans Act—initiated in 1906 and revised and consolidated by the Law Reform Commission of Uganda in 2000—takes precedence over the Marriage Act and the Marriage of Africans Act if both parties to the marriage are Muslim and neither is part of an existing marriage to a non-Muslim; it also allows for polygamy. Parliamentary efforts to unify and formalize divorce and marriage laws across religious communities through the Domestic Relations Bill (DRB) ultimately failed in 2015 when the DRB was withdrawn and split into two bills (the Marriage and Divorce Bill and the Muslim Personal Law/Qadhis Courts Bill) as a result of Muslim opposition on grounds of religious freedom. Neither bill has passed and the Marriage and Divorce of Mohammedan Act remains the relevant law for Muslim Ugandans. The Uganda Muslim Supreme Council (UMSC), while meeting legislators in 2021, requested for the

⁴ Para. 12 (a)–(c) of CEDAW/C/UGA/CO/7. Concluding observations of the Committee, 5 November 2010

⁵ The Marriage Act Cap. 251 (1904) (Uganda)

⁶ The Marriage and Divorce of Mohammedans Act Cap. 252 (1906) (Uganda)

⁷ The Marriage of Africans Act Cap. 253 (1904) (Uganda)

⁸ The Customary Marriage (Registration) Act Cap. 248 (1973) (Uganda)

prioritisation of the Administration of Muslim Personal Law Bill, which has remained a bill since 2008/2009.⁹

RECOMMENDATIONS:

- Pass the proposed Marriage Bill without further delay and enact an implementation plan, including an awareness-raising plan at national and sub-county level to ensure women and girls know of and can access their rights.
- Engage the Uganda Muslim Supreme Council and Uganda Registration Services Bureau to support the process of registration and documentation of Muslim marriages.
- Enact the Administration of Muslim Personal Law Bill to allow for the establishment of Qadhis courts that cater to Muslim marriages, divorce, inheritance and guardianship.
- Amend the Marriage and Divorce of Mohammedans Act to provide procedures for and forms of divorce, and, through research and consultation, identify one uniform school of thought that the majority of Ugandan Muslims follow to apply to divorce processes.
- Conduct national awareness-raising campaigns, including targeted campaigns amongst Muslim communities and especially in rural and hard-to-reach areas, on the reforms that increase the rights of and protections for women.

2. HARMFUL LAWS, NORMS & PRACTICES RELATED TO MARRIAGE AND FAMILY **Articles 5, 13, 15 & 16**

2a. Inequality in the family

- While Article 33 of the Constitution accords women "the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities," it also states that the "State shall protect women and their rights, taking into account their unique status and natural maternal functions in society," leading to practice that runs counter to that ideal.

Like the majority of women in Uganda, Muslim women find that discrimination against them is justified on religious and cultural grounds, making it more difficult for individuals and for NGOs to challenge, especially in a shrinking civil society space. Women face inequalities in the family as remnants of a male guardianship system and stemming from a patriarchal society which denies them the right to consent to their own marriages and justifies unequal inheritance practices.

⁹ Godfrey Olukya. "Muslims in Uganda call for Islam-friendly laws." Anadolu Agency, 4 November 2021. <https://www.aa.com.tr/en/africa/muslims-in-uganda-call-for-islam-friendly-laws/2411410>

For instance, while Article 31(3)(1) of the Constitution requires the consent of the bride and groom intending to marry, and the Marriage and Divorce of Mohammedans Act does not stipulate a need for a *wali* or guardian to consent to a marriage on behalf of the female party, in practice Muslim brides in Uganda must have the consent of a guardian as a pre-condition to their nikkah (marriage). Thus a number of marriages are conducted without the consent of women and girls, amounting to forced marriage. Those whose parents/guardians profess a different faith may request a Muslim guardian be appointed, in addition to their parent(s).¹⁰

The State party acknowledges that significant segments of the Ugandan population still hold gender stereotypes, citing that 81% of female respondents in the UBOS Time Use Survey (2017/18) believed that it was the woman's duty to take care of the household and do most of the caring for the sick and elderly.¹¹ However, there is little evidence of government policies or programmes to counteract such social attitudes. A number of existing laws accord Ugandan women equality, but many other reforms have not been enacted for years and consequently implementation has lagged.

RECOMMENDATIONS:

- Take affirmative action in favour of women and girls for the purpose of redressing imbalances that exist against them.
- Ensure that all laws, cultures, customs, and traditions which are against the dignity, welfare or interest of women are nullified, including those based on a male guardianship system.
- Engage in awareness-raising campaigns in partnership with traditional and religious leaders and institutions to ensure the legal rights of women and girls to consent to marry are respected.

2b. Polygamy

Polygamy continues to thrive in Uganda as a cultural practice among most, if not all, ethnic groups, and by some religious groups, including Muslims. It is authorised under customary and Islamic laws; in some ethnic groups, customs provide for men to 'inherit' the widows of their deceased brothers, something not prohibited by law.¹² Polygamy violates sections 33(4) and (6) of the 1995 Ugandan Constitution, which prohibits any laws, traditions, or customs that violate women's rights or reduce their equality with men.¹³ The majority of polygamous marriages are unrecognised/unregistered, which has many negative implications for the spouses and children of the union. Children in unregistered marriages may not have the same rights as children within legal unions. Where husbands die intestate there is limited legal protection provided for the

¹⁰ "Uganda: Overview of Muslim Family Laws & Practices." Draft prepared by the Islamic Women's Initiative for Justice, Law and Peace, in collaboration with Musawah, November 2021.

¹¹ Para. 36 of CEDAW/C/UGA/8-9. State Party Report, 11 December 2020

¹² "Uganda: Overview of Muslim Family Laws & Practices." Draft prepared by the Islamic Women's Initiative for Justice, Law and Peace, in collaboration with Musawah, November 2021

¹³ Article published by Global Press Journal on 10 September 2012

women, especially in instances where the unions are not legally recognised such as “cohabiting couples.” Additionally, not all children of these unions are accorded protection or rights in practice to inherit property from surviving relatives.

In the Qur’an, polygamy is authorised as an exception with limitations, including the requirement to marry only one wife if husbands are unable to uphold equality/fairness between multiple wives (*Surah an-Nisa’* 4:3)¹⁴. However, in practice, the reality is usually far from the justice that is religiously required, and is based on patriarchal interpretations of the Qur’an on the issue of justice and equal treatment.

Many women in polygamous marriages face formal and substantive inequalities within their marriage and lack basic financial security and stability. Many men in polygamous unions are unable to provide child maintenance and support for their families, so women and their children end up becoming destitute. Polygamy also has implications on domestic violence, particularly where women have become complicit in the violence against fellow women and children—especially in families where either the older wife or the younger wife holds more sway and she uses this position to instigate violence against her co-wife(ves) and her children.

RECOMMENDATIONS:

- Implement measures aimed at eliminating polygamy, as called for in the Committee’s general recommendation No. 21 (1994) on equality in marriage and family relations.
- Ensure women in polygamous marriages and their children are accorded and able to access protections of their legal marital rights.

2c. Child marriage

The practice of child marriage affects a significant portion of Ugandan girls: the Uganda Demographic and Health Survey 2011 estimated that among ever-married women aged 20-49, 49% were married by the age of 18, and over 15% were married by 15 years of age.¹⁵ While child marriage data on boys is limited, research suggests boys/men tend to marry at older ages than girls/women. The government enacted a National Strategy to End Child Marriage and Teenage Pregnancy (2014/2015-2019/2020). The strategy sought to improve policy and the legal environment to protect children and promote the rights of girls; improve access to quality sexual and reproductive health services, education, child protection services and other opportunities; change dominant thinking and social norms related to child marriage at the community level; empower both girls and boys with correct information to enable them recognize child marriage and early pregnancy as a gross violation of their rights and take mitigating action; and coordinate, monitor and evaluate mechanisms for the effective implementation of the strategy.

¹⁴ "Policy Brief 3: Ending Polygamy in Muslim Marriages." Musawah, 2021.

<https://www.musawah.org/resources/policy-brief-3-ending-polygamy-in-muslim-marriages/>

¹⁵ "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, December 2015.

<https://www.unicef.org/uganda/media/3901/file/Formative%20Research%20Ending%20Child%20Marriage%20and%20Teenage%20Pregnancy%20in%20Uganda.pdf>

Child marriage has many devastating consequences: to children's health, safety, education, employment, bodily autonomy, and overall well-being; resulting in violence and abuse, loss of rights, and lack of power in relationships; and leading to negative impacts in the family, society and economy.¹⁶ Yet for many, living in a community that has normalised the systemic inequalities and discriminatory religious beliefs, customs, practices and traditions denies girls their childhood and education. Anecdotal reports show that the number of girls who were forced to get married during the ongoing COVID-19 pandemic increased partly due to the induced financial constraints/increased poverty as a result of the government restrictions on mobility and no access to workplaces for non-essential workers; this has left some families without food, with women and girls shouldering the burden.

The CEDAW Committee in its 2010 Concluding Observations urged the State party to enhance its compliance with Article 10 of the Convention and to raise awareness on the importance of education as a human right and the basis for the empowerment of women. This also aligns with Article 16.2 of the CEDAW Convention, which calls on state parties to pass laws to prevent child marriage, and Article 31 of Uganda's Constitution, which sets the age of marriage at 18 years.

Despite that, Uganda's current legal and policy regime continues to present contradictions that condone child marriage, including among Muslim communities:

- Article 17 of the Marriage Act, Chapter 251, requires parties wishing to marry under the age of 21 to obtain written consent of the father, then mother, then guardian should the former be dead or of unsound mind or absent from Uganda. This can be misinterpreted to allow families to marry off their daughters without their consent and below 18 years.
- The Marriage and Divorce of Mohammedans Act, which governs Muslim couples, does not specify any minimum age of marriage.
- The Marriage of Africans Act does not give a minimum age but requires parental or guardian permission for marriage for minors.
- Section 11(a) of the Customary Marriage (Registration) Act allows for girls to be married at the age of 16 and boys at 18.

Ending child marriage is a crucial step towards protecting Ugandan women's and girls' right to a life of dignity. There is a strong case for banning child marriage to end the practice. A study that looked at 12 countries in Sub-Saharan Africa found that the prevalence of child marriage was 40% lower in countries with consistent laws against child marriage—including Uganda and neighbour Ethiopia—than in countries without, and the prevalence of teenage childbearing was 25% lower in countries with consistent minimum marriage age laws than in countries without.¹⁷

There also are arguments from within the Islamic framework to push back against child marriage. While the Prophet's marriage to Aisha is often used as a model for why child marriage is allowed, many recent studies have proven that Aisha was at least 19 years of age when they married. There is also substantial support within Islamic jurisprudence to end child marriage, including the requirement that spouses attain a level of maturity sufficient to give consent to marriage and manage one's affairs, and a principle that supports the best interest (*maslahah*) of

¹⁶ "Policy Brief 2: Ending Child Marriage in Muslim Family Laws." Musawah, 2020.

<https://www.musawah.org/resources/policy-brief-2-ending-child-marriage-in-muslim-family-laws/>

¹⁷ Maswikwa, Belinda, et al. "Minimum Marriage Age Laws and the Prevalence Of Child Marriage and Adolescent Birth: Evidence from Sub-Saharan Africa." *International Perspectives on Sexual and Reproductive Health*, vol. 41, no. 2, 2015, pp. 58–68. JSTOR, www.jstor.org/stable/10.1363/4105815.

the child and prevention of individual harm.¹⁸ Egypt's Sunni authority Al-Azhar wrote with UNICEF:¹⁹

The international consensus that the procedural definition of childhood should apply to humans up to the age of 18 years... is perfectly compatible with what Islam enjoins. Islam has nothing to do with the custom of child marriage; reference to early marriages can be found nowhere in the Qur'an. Instead of an age limit, we find an unchangeable standard, which is the attainment of maturity. The fact remains that where custom encourages early marriage, the practice stems from nothing but the norms of the people. Sharia has nothing to do with it.

RECOMMENDATIONS:

- Fully implement the National Strategy to End Child Marriage and Teenage Pregnancy and invest in prioritising mechanisms to address additional vulnerabilities that drive child marriage such as conflict, poverty, and displacement.
- Evaluate the impact of the National Strategy to End Child Marriage and Teenage Pregnancy (2014/2015-2019/2020) to inform the next strategy.
- Pass and thereafter enact the Marriage Bill 2017, which seeks to harmonise the existing laws and the legal inconsistencies therein and set the legal age of marriage at 18. The Marriage Bill is also aligned to Article 2 of the Convention, which holds these differences in minimum age of marriage between boys and girls unlawful and contravening the principle of equality between men and women.
- Conduct national campaigns to raise awareness about the criminalisation of child marriage to educate those who would be involved in, aid, conduct, or continue to promote child and forced marriages.
- Implement awareness-raising campaigns that engage with traditional leaders and clan leaders to clarify the opportunity cost of the practice in lost education, and opportunities for women and girls, as well as their communities, especially in rural, poor and economically disadvantaged areas.

2d. Bride price

Bride price, as a marriage rite, is commonly practiced in many African and other countries and is “a contract where material items (often cattle or other animals) or money are paid by the groom to the bride's family in exchange for the bride, her labour and her capacity to produce

¹⁸ Policy Brief 2: Ending Child Marriage in Muslim Family Laws.

¹⁹ “Children in Islam: Their Care, Upbringing and Protection.” Al-Azhar University in cooperation with the United Nations Children’s Fund (UNICEF), Cairo: 2005.
https://www.academia.edu/38492161/Children_in_Islam_Their_Care_Upbringing_and_Protection.

children”²⁰. In some rural areas, the practice has been linked to child marriage whereby daughters are sold off to older men as a means of family survival.²¹

Entering the marriage in this way establishes an unequal union, where a woman has a lesser status in the marriage with less bargaining power and decision-making ability that lasts not just throughout their lifetimes, but also impacts the lives of their children and traps them in generational poverty. This in itself is a driving factor for the practice of bride price. In addition to the increased vulnerability to violence, it introduces additional ways in which men can justify the abuse of women, male power over women, and the injustice of their own dreams unrealised. There are also economic opportunity costs to women and girls being deprived of education and being used as broodmares, both in the family, within society and to the economy.

Uganda has made strides in addressing the plight of women in relation to bride price. In the case of *Mifumi (U) Ltd. & Another v. Attorney General & Another*,²² an appeal from the Constitutional Court held that bride price does not fetter the free consent of persons intending to get married and, consequently, is not in violation of Article 31(3) of the Constitution. It, however, held that the custom of refunding bride price as a condition for the dissolution of customary marriage is unconstitutional and violates Articles 31(1) and (2)[3], and is accordingly prohibited. This judgement conflicts with many feminist views that the commoditization of wives has led to deleterious social impacts, especially in terms of increased domestic violence and male power over women. While this progressive jurisprudence exists, the implementation of the ruling is a distant reality for many women who still find themselves unable to leave violent marriages because the men’s families demand a return of bride price upon divorce.

RECOMMENDATIONS:

- Enforce the Court ruling to ensure that communities stop demanding refunds of bride price for the dissolution of a customary marriage.
- Initiate awareness-raising campaigns to educate communities that the refund of bride price is not a requirement for the dissolution of a customary marriage.
- Strengthen the capacity of Justice Law Order Sector (JLOS) actors like police to respond to cases on return of bride price appropriately.
- Engage in awareness-raising campaigns, in partnership with traditional, cultural and religious leaders and institutions, from the grassroots to the national levels to popularize the legal position on refunding bride price, and in the longer-term, to abolish the practice of bride price as part of the marriage process..

²⁰ Hague, Gill, Thiara, Ravi K. and Turner, Atuki (2011). “Bride-price and its links to domestic violence and poverty in Uganda: a participatory action research study.” *Women's Studies International Forum*, Vol.34 (No.6). pp. 550-561. doi:[10.1016/j.wsif.2011.06.008](https://doi.org/10.1016/j.wsif.2011.06.008)

²¹ UNICEF 2015.

²² [2015] UGSC 13

2e. Inheritance rights

In Uganda, property rights are protected in law, but not necessarily in practice. The Land Act of 2010 and the National Land Policy were adopted to improve women's access to land and property, but tradition continues to influence practice, and customary principles that link access to property to male relatives, clan elders or community leaders result in women losing property. Women have largely been excluded from owning property in their own right. Under common interpretations of Islamic laws, widows receive a smaller portion than widowers from their deceased spouses, and they may be even further limited by male relatives from either side claiming belongings, removing them from the property, or land grabbing.²³ Activists have reported cases where, when wills of deceased Muslim husbands are deemed to favour the surviving wife, they are disregarded or destroyed in favour of widows' smaller portions of inheritance. This amounts to a barrier to women owning property and assets in their own names, and to achieving financial independence, thereby trapping them and their families in cycles of poverty. Furthermore, women lack representation in decision-making bodies to change inheritance practices in communities.²⁴

The government has acknowledged "women often experience high level of discrimination" in relation to inheritance "partly because of patriarchal cultural laws and practices associated with land ownership and usage." The Uganda Land Act (1998) identifies four land tenure systems: Customary, Leasehold, Freehold and Mailo; the provisions of each are distinct and complex. Their parallel existence creates a complex system that women must understand and navigate to claim their rights, with preference often given to customary laws. Men may choose to pursue customary law, exploiting women's lack of knowledge about their rights and lack of access to legal support, which limits their ability to challenge these decisions.²⁵

Although Article 31 of the Constitution accords women "equal rights at and in marriage, during marriage and at its dissolution," and further notes that "Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children," this is not being implemented. Uganda's legal and policy framework also continues to include discriminatory provisions which civil society and women's rights organisations have challenged. In 2007, the Constitutional Court, in *Law Advocacy for Women in Uganda v. Attorney General*²⁶, ruled and declared that sections 2(n)(i) and (ii), 14, 15, 26, 27, 29, 43, and 44 of the *Succession Act*, Cap 162 and rules 1, 7, 8, and 9 of the Second Schedule of the Act inconsistent with and contravened Articles 21(1), (2), (3), 31, and 33(6) of the Constitution and, as such, were null and void.

- Sections 2(n)(i) and (ii) of the defined "legal heir" as a male heir, section 14 and 15 provided only for domicile of a wife during marriage but no provision for husband.
- Sections 26 and 29 and rules 1, 7, 8, and 9 of Schedule 2 to the act provided for occupancy of the matrimonial home in which a woman ceased to occupy the principal residential property if she married but was silent on men who remarry.

²³ Nampewo, 2016

²⁴ Hafiz Walusimbi. "Position paper on Islam and inheritance: A case study of the Muslim traditions versus the Ugandan legal regime." Muslim Centre for Justice and Law, June 2017. <http://www.mcjl.ug/wp-content/uploads/2018/10/Position-paper-on-Islam-and-inheritance-Dr-Haafiz-Walusimbi-3.pdf>

²⁵ Margaret Rugadya. "Women's Land Rights in Uganda: Status of Implementation of Policy and Law on Women's Land Rights for ECA, ACGS Addis Ababa." Maastricht University, 2010.

²⁶ Const. Petition Nos 13/2005 & 05/2006

- Section 27 had no provision for female intestate and under sections 43 and 44 of the Act, which provided for the appointment of the testamentary guardian, it was only a father who, by will, could appoint a guardian or guardians for his child during minority.

To this extent, the act was declared discriminatory on grounds of sex. The proposed Succession Amendment Bill (2021) seeks to address the lacuna in the law by amendments to the Act in order to accord equal rights between men and women and bring the Succession Act in conformity with the Constitution of Uganda.

RECOMMENDATIONS:

- Expeditiously pass the Succession (Amendment) Bill 2021 into law to amend existing discriminatory provisions in the law to give life to the progressive court rulings.
- Codify the Succession (Amendment) Bill 2021 by creating parameters for compliance that promote equality and justice, and protect the rights of girls and women.
- Engage with cultural and traditional leaders to include women on the land and inheritance governance structures.
- Implement a quota system to ensure women are included in all decision making spaces including as Area Land Committees, Land Boards and as Land and property mediators.
- Ensure judicial access and effective remedies, including legal aid and support services, for women who have been dispossessed of housing, land, and property in divorce, inheritance and widowhood disputes.

2f. Violence Against Women

Violence against women and girls is extremely common in Uganda, with 50% of women in 2018 reporting sexual or physical violence by intimate partner(s) in their lifetimes and 30% reporting violence within the last year.²⁷ In addition, social acceptance of gender-based violence and silencing or reprisal of survivors were contributing factors noted in the Uganda CEDAW 2010 report.

In 2010, one of two major pieces of legislation passed to protect women against violence was the Domestic Violence Act, 2010 and its regulations. The Domestic Violence Act²⁸ defines and prohibits domestic violence and establishes a penalty for domestic violence offences. The penalty for domestic violence is 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

²⁷ Proportion of ever-partnered women aged 15-49 years experiencing intimate partner physical and/or sexual violence at least once in their lifetime. Uganda Bureau of Statistics - UBOS and ICF. 2018. Uganda Demographic and Health Survey 2016. Kampala, Uganda and Rockville, Maryland, USA: UBOS and ICF.

²⁸ The Domestic Violence Act of 2010

have to provide monetary compensation to the victim. This law seeks to protect women who are not in formal unions as well as women in formal unions. While the women's movement celebrated this milestone, State resources towards the implementation of the law have been inadequate and the capacity of the enforcement officers is still weak.

The women's movement continued to lobby for yet another gender bill, the Sexual Offences Bill 2019, which sought to address sexual violence, including protecting sexual assault survivors' rights during criminal proceedings and criminalising sexual harassment by people in positions of authority. Whereas the parliament had passed the Bill, in August 2021, the president declined to sign the bill and deferred it back to parliament for consideration based on the fact that: (i) Several provisions of the 2019 Sexual Offences Bill are already included in the existing Ugandan Penal Code, and (ii) the amendment process should be carried out through "a *comprehensive review of all criminal related laws*," in the process already commenced by the Uganda Law Reform Commission that has never been finalised. This retrogression has created wide scrutiny of the bill, with LGBT activists demanding some clauses be deleted in the current bill because they criminalize consensual sexual acts between adults and fall short in the definition of consent in violation of international human rights norms.

For many conservative Muslim and non-Muslim women, and indeed traditional leaders, marital sex is considered a husband's right and a wife's duty, thus precluding even the possibility of marital rape as a concept.²⁹ However, for Muslim women, this goes against both broad principles and specific verses in the Qur'an, including 4:34 which is used to justify wife-beating, but in fact elsewhere denounces violence. Selective readings of certain passages ignore Qur'anic verses that call on husbands to treat their wives with kindness (Qur'an 4:19), and affection and mercy (Qur'an 30:21), as well as Prophetic *hadith* that denounce domestic violence, including marital rape: "The most perfect of the believers is the best of you in character; and the best of you are those among you who are best to their wives," and "Could any of you beat your wife as he would a slave, and then lie with her in the evening?"³⁰ So-called religious arguments cannot be used to justify violence against women in the family, including marital rape, instances of which are clearly admonished in our primary sources as being harmful to women and inhumane, and thus un-Islamic. Clear and comprehensive legal provisions would serve as a strong negation of the patriarchal social norms that allow for the perpetuation of marital rape under the guise of religion.

RECOMMENDATIONS:

- Conduct a review of the legal framework on violence against women, including on domestic and sexual violence, marital rape, and sexual harassment, with the aim of harmonising national laws and policies with CEDAW obligations that require full protection of women.
- Criminalise marital rape in all circumstances.
- Conduct specialised trainings for law enforcement to effectively deal with cases of

²⁹ Ali, Kecia. 2006. "The Best of You Will Not Strike": Al-Shafi'i on Qur'an, Sunnah, and Wife Beating'. *Comparative Islamic Studies* 2(2), pp. 143–155.

³⁰ "Domestic Violence" from "Compilation of Resources Related to Women's Rights in Muslim Family Laws." Musawah, 2016, pp.28-31. <https://www.musawah.org/wp-content/uploads/2018/11/CompilationofResources-2016.pdf>

violence against women, marital rape, and sexual harassment from a survivor-centred and trauma-informed approach.

2g. Access to justice

- Article 33 of the Constitution gives women “the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.”

Article 129(i) (d) of Uganda’s Constitution provides that “Parliament may enact a law to provide for the establishment of Qadhis courts to deal with Islamic matters of marriage, divorce, inheritance of property and guardianship. Although parliament has not yet enacted said law, in practice Muslims enforce Islamic law in property distribution of their estates. The Uganda Muslim Supreme Council (UMSC) appoints a Sheikh for every district in the country who handles property distribution in accordance with the Qur’an. The government is reluctant to make Islamic family law compliant with the Constitution and particularly the Succession Act, even when it is clear that the distribution under Islamic law of succession contradicts the provisions of the Constitution and the Succession Act especially for women, illegitimate and adopted children.

For Muslim women in Uganda, marital disputes, divorce and marriage legal issues may be adjudicated by the Uganda Muslim Supreme Council (UMSC) at the highest level and Qadhi courts locally, as part of an informal justice and conflict resolution system based on Shari’ah law. Although the Constitution established the Qadhis Courts under Section 129(1)(d) to deal with matters of marriage, divorce, inheritance and guardianship for Muslims, follow-up actions to operationalise it have not taken place. Thus, most Qadhi courts are informally and privately established at mosques and administered by imams and religious leaders, with minimal control and oversight by the Uganda Muslim Supreme Council (UMSC).³¹ Imams are not required to receive and many have not received specialised training on adjudication issues such as counseling, mediation or gender responsiveness, and their legal services and dispute resolution tend to rely on their individual interpretations of the Qur’an and Hadith, rather than rights-based standards of equality and justice, or even a thorough understanding of Ugandan laws. These Qadhi courts also tend to lack funding, contributing to low documentation and record-keeping standards.

NGOs such as FIDA-Uganda have been able to make use of strategic litigation before the Constitutional Court as a strong advocacy tool to challenge discriminatory provisions on inheritance and divorce. Yet promising case law does not necessarily lead to application in practice without accompanying law reform, thus the State party must take steps to remedy this. Two cases in the Ugandan High Court Family Division (*Sumaya Nabawanuka v. Med Makumbi* in 2011 and *Re Hamza Mohamed and Nashat Mohamed* (Minors) in 2012) upheld decisions and enforced rulings made by Qadhi courts. However, the informal nature of the Qadhi courts can perpetuate existing power dynamics and provide little recourse for women seeking to enforce their rights in civil courts. This is particularly problematic given that users of the Qadhi courts, according to a 2012 survey, were more likely to be female (55%), could not afford court fees (92%), did not receive written court documentation (93%), and the most common issue was

³¹ Zahara Nampewo. “Gender Responsiveness of the Muslim Adjudication System in Uganda.” Muslim Centre for Justice and Law, December 2016. http://www.mcjl.ug/wp-content/uploads/2018/10/Gender-Responsiveness-of-the-Muslim-Adjudication-System-in-Uganda_Research-Report.pdf

physical abuse of women by men (29%).³² Women are not allowed to be represented by a lawyer under a presumption that they have no to little knowledge of Shari'ah law, nor are there female judges on the panels, leading to concerns of bias and a lack of gender sensitivity to Ugandan Muslim women's lived realities. Activists report a frequent lack of privacy or confidentiality in the court spaces, and a lack of women assistants in the Qadhi courts exacerbates an already-difficult situation when women need to divulge sensitive and private domestic problems. The cost of legal fees and services can also be prohibitive, especially for poor or unemployed women or those without access to their own assets. When Muslim women try to access help or take their case to authorities, whether the police or imams/sheikhs within communities, they are turned away or told to bring their husbands—which makes seeking justice especially difficult in cases of domestic violence.³³

RECOMMENDATIONS:

- Set high minimum training standards amongst Qadhi court imams and officials, and standardise procedures to enhance accountability and provide gender-responsive service to the community.
- Provide for a well-equipped, government-owned shelter in each region in Uganda for SBGV survivors.
- Provide gender trainings for the Qadhis courts to ensure that Muslim women are able to access services that are not discriminatory, to promote inclusion, and to reduce bias in court proceedings for Muslim women seeking justice.
- Regulate the Qadhi courts, which continue to operate informally and are heavily based on judicial discretion which often violates constitutional guarantees of equality for Muslim women.

³² Omar Kalinge. "Access to Justice in Qadhi Courts in Butambala and Kampala: Baseline Survey Report." Muslim Centre For Justice and Law, Nov 2012. <http://www.mcjl.ug/wp-content/uploads/2018/10/BASELINE-SURVEY-ON-ACCESS-TO-JUSTICE-IN-QADHI-COURTS.pdf>

³³ Responding to Community Human Rights Needs in Uganda. SIHA, <https://sihanet.org/responding-to-community-human-rights-needs-in-uganda>.