

**GETTING THE DOMESTIC RELATIONS BILL BACK ON THE
LEGISLATIVE TRACK; CHALLENGES, POTENTIAL
INTERVENTIONS AND STRATEGIES**

Abstract

This dissertation examines in detail the so far ill-fated journey of Uganda's ambitious Domestic Relations Bill ("DRB"). Generally, the Bill seeks to improve and harmonise, to some extent, domestic relations between men and women under various marriage and 'quasi-marriage' regimes which subsist in civil, customary and Islamic law. Using several interwoven methodologies, especially the Women's Law, Grounded Theory and Human Rights Approaches, the writer gathers (using a variety of methods) and analyses a vast array of relevant data from the many parties involved in the birth (in 1994) and progress (or, rather, lack of progress) of the Bill until its lapse before Parliament in 2005. The writer suggests resuscitating and promoting its proposed reforms in diverse ways in the hope that they may eventually become law.

BY

LILLIANNE NAMUBIRU KIWANUKA

Supervisor: Professor Julie Stewart

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DEDICATION

It has been a challenge but I have the testimony that God has worked in mysterious ways to see me through. I am forever indebted to all those who have stood by me through it all. To Michael and Stephanie, I never could have done it without you two. Mums, Dad, Jules, Sue, Andrew and Vee, you are the best pillars of strength ever. Naama and Florence thanks for the encouragement and the prayers. To the Uganda Law Reform Commission, thank you for everything. The staff of SEARCWL, I will never forget your generosity and kindness and to the class of 2007, we are here at last, thank you for the never ending support. Finally to NORAD, the sponsors of the program, I thank you in my native Luganda, mwebale nnyo.

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Introduction

The atmosphere in Uganda today is ripe for the passing of the Domestic Relations Bill, which is a much needed piece of legislation. Following the ratification of the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Universal Declaration on Human Rights, the Convention on the Elimination of all forms of Discrimination Against Women and the African Charter on Human and Peoples Rights, many positive developments have taken place within Uganda and they include: progress towards Constitutionalism and Democratic leadership, people's involvement in decision making processes, recognition of Children's rights, granting of press freedoms and progress in human rights awareness as well as steps towards gender mainstreaming and women's emancipation.

The coming into power of the National Resistance Movement in 1986 brought into play several efforts towards gender mainstreaming and women empowerment, including the ratification of several treaties that guarantee the protection of the rights of women¹ and the improved visibility of women in Parliamentary and local Government politics².

Whereas the ratification of the international instruments seemingly guarantees a bright future for the Ugandan woman in terms of among others: guaranteeing

¹ Such as the Convention on the Elimination of all forms of Discrimination Against Women(CEDAW), the International Covenant on Economic Social and Cultural Rights(ICESCR), and the Protocol to the African Charter on Human and Peoples Rights.(Women's Protocol)

² Local Government Act CAP 243 Provides under section 23 that one third of the membership of each local government council shall be reserved for women.

equality between women and men³; abolishing existing laws customs and practices that constitute discrimination against women⁴; recognition of non monetary contribution⁵; recognizing equality in marriage⁶ and in issues of separation or divorce⁷; guaranteeing the right to health including protection against sexually transmitted infections (STI's)⁸ and; the protection of widows from being subjected to inhuman humiliating or degrading treatment, nothing has so far been achieved in real terms beyond the domestication of some of the international documents within the Constitution⁹.

As such the majority of women in Uganda are still grappling with: unequal treatment in polygamous unions, lack of secure access to land;¹⁰ inequitable power relations of women's subordination and men's domination¹¹; gender inequalities in decision making¹²; inequalities in the gender division of labour¹³ and the prevalence of domestic violence¹⁴, among others.

The operative legislation regarding marriage, divorce and property laws, which largely defines the status and legal position of women in Uganda, still takes the substance and form of the laws that were handed down by the colonialists and is

³ African Charter on Human and Peoples Rights 19.

⁴ CEDAW Article 2(f)

⁵ CEDAW Article 14

⁶ CEDAW Article 16

⁷ Protocol to the African Charter Article 7

⁸ Protocol to the African Charter Article 14(d)

⁹ Constitution of the Republic of Uganda , Articles 31,32 and 33.

¹⁰ The Co-ownership clause was omitted from the Land Act 1998.

¹¹ Law Uganda study 2000, Project Report on the study of Domestic Violence.

¹² According to the Uganda Demographic and Health survey,(2000), 40% of women employed for cash participate in household decisions. This is in comparison with the 22% of women not employed for cash and the 14% of the unemployed women.

¹³ Women predominate in the informal sector which is characterized by ;being unaided, unorganized, unregulated and unrecognized by the state; not benefiting from labour legislation resulting into poor conditions of work; operating under conditions of easy entry and due to low entry costs and exit due to undercapitalization and intense competition; extremely low levels of remuneration, ;low levels of technology/labour intensive methods of production.

(The DRB and the PEAP, Exploring the linkages (2005) at page 5).

¹⁴ The Uganda Law Reform Commission study report on Domestic Violence (unpublished) at page 35

thereby, tainted by colonial, patriarchal, religious and cultural attitudes on the subordinate position of women.

This can be illustrated by some of the subsisting provisions within the marriage and property laws of Uganda. In the first instance, the proposed co-ownership clause that was intended to protect the property rights of women within marriage through equal ownership of the family land was technically omitted in the most recent land amendment process¹⁵. Secondly, the Customary Marriage Registration Decree not only recognizes polygamy but also the payment of bride price as a prerequisite for the conclusion of a customary marriage thereby undermining the status of women within the marriage¹⁶. Thirdly, until a recent judicial pronouncement declaring the provision unconstitutional,¹⁷ the Divorce Act of Uganda prescribed unequal standards for men and women in divorce proceedings. The gap that exists between the protections guaranteed within the regional and international human rights framework, the national Constitution and the laws of Uganda constitutes discrimination against the women of Uganda.

The Domestic Relations Bill is the product of a multifaceted approach that permitted a critical and rigorous examination of various factors including legal norms, cultural practices, social and developmental elements, political and economic changes which influence individual communities and national perceptions about domestic relations in the changing Ugandan society¹⁸.

¹⁵ Land Act 1998.

¹⁶ The law recognizes customary marriage according to the rites and practices of each community. In *Uganda vs. John Ekudu* (1975) HCB at 359 the court held that since bride price had not been paid in full, no customary marriage subsisted between the complainant and her husband.

¹⁷ *Uganda Association of Women Lawyers and others Vs the A.G.*(2006)

¹⁸ Uganda Law Reform Commission, *A study Report on the Reform Of The Law on Domestic Relations* pp.17

In recognition of the fact that the law changes with changing times, the framers of the proposed DRB made proposals that were representative of the developing trends and simultaneously emerging needs of the Ugandan society and thus the proposed law on Domestic Relations is an attempt to put an end to many of the problematic areas identified within the legal regime governing marriage, the family and related issues.

Some of the proposals to this effect include: The creation of marriage districts to make the registration of marriages easier; the recognition of non monetary contribution of either spouse; the provision of irretrievable break down of marriage as a sole ground for divorce; the recognition of marital rape as an offence; the provision for a uniform age of marriage at 18; the prohibition of widow inheritance and the prohibition of the demand for the return of marriage gifts during customary divorce.

In spite of the urgent nature of the proposals within its contents, the draft proposal has been on and off the agenda of Parliament for over 10 years. Also important to note is that there has been a considerable uproar against the bill by some sections of the public in Uganda, including written memoranda, negative media and press reviews and public demonstrations among others. Among the many reasons advanced for the protracted passage of the bill include the opinion that the Bill does not reflect the true position of the people and that the background consultations made prior to its drafting were inadequate.

This study seeks to analyze these criticisms and assess their significance in the delay of the progress of the Bill and also to investigate and establish why the Bill has failed to pass to date. This study shall also propose ways and means to ensure that the Bill is passed into law.

1.1 Statement of the problem

Uganda is very much in need of a domestic relations law for a number of reasons. In the first place, the existing law on domestic relations is based on the 1904 Marriage Act which is archaic. Although a few changes have been made within the law, they are insufficient to fulfill the ever changing needs of the present times.

It may be argued that the majority of Uganda's population is reliant on customary law for resolving social issues of marriage, divorce and property rights and this being the case, there is no urgency for passing a new law for the same purpose. However, it is important to note that there is very little by way of written customary law to be relied upon in the dispensation of justice.

The existing Customary Marriage Registration Decree (1973) does not deal with substantive law but merely provides for the registration of customary marriages. Issues such as marital rights and duties, property rights, divorce and separation are not addressed. The same law still provides for the marriage age of boys at 18 and for girls at 16. This position has long been over taken by the Constitution of the Republic of Uganda which prescribes a uniform age of marriage as 18. It is also a contentious state of affairs as the Judicature Act places written law as prevailing over the customary Law position¹⁹. As such the legal position of those whose marriages, and related affairs are reliant on custom are faced with uncertainty and ambiguity that may be manipulated to their disadvantage.

Whereas it may be argued that the law cannot be looked to for solutions to all the social injustices faced by women, it is my belief that the groundwork for true equality and emancipation of women lies in legislation as is stated by Carol Smart:

¹⁹ Judicature Act Cap 13. Section 15

“Law reform is an essential first step by way of laying down the necessary foundation on which to construct a platform for true emancipation”²⁰.

I therefore believe that the Domestic Relations proposal is an urgent matter that needs to be handled as a top priority by the Government of Uganda.

1.2 Point of departure

Several criticisms have been advanced for the failure of the bill and among them is the criticism about the methodological approach. Proponents of this view point allege that the consultative process was not done thoroughly and thus the study’s findings and recommendations do not represent the true position of the Ugandan majority and that they are a product of foreign interests that are alien to Ugandans²¹. It has further been argued that the Bill advances the positions of elitist women lawyers whose views contrast sharply with those of their counterparts within the peasant majority²².

Another point of view is that the delay has been occasioned by the nature of the reform process that is slow and tedious. In view of the fact that the Bill has to undergo cabinet consultations and Parliamentary consideration, the agenda and time limits for these cabinet meetings cannot be pre-determined and as such those interested in the progress of the bill have only to wait. Other reasons advanced include: poor methodological approaches, failure of advocacy

²⁰ Smart, Carol (1986), *Feminism and the Law: Some problems of Analysis and Strategy*, in *International Journey of Sociology of Law*, Vol.14, no.2, 109-123

Uganda Law Reform Commission, *Report of Consensus Building Workshop Held at Entebbe on the 20th May 2005*

²² DRB Coalition Report on the Background study for restructurising for enactment of an equitable family law for Uganda at page 16

strategies, lack of awareness, religious differences, chauvinism and patriarchy as well as a lack of political will.

This study seeks to consider and assess the significance of these explanations for the failure of the Bill and whether they have merit or whether they are mere pretexts to conceal more serious issues of patriarchy, chauvinism and political will among others. This will better inform the law reformers and other interested stakeholders of what needs to be tackled in order to secure the passing of this long overdue piece of legislation.

1.3 Objectives of the study

1. To establish and investigate inadequacies in the methodologies employed in the initial processes of the domestic relation laws reforms.
2. To assess the shortfalls within the advocacy strategy employed from the time the domestic study report was made public in 1998 until the current period.
3. To investigate and establish the possible extraneous factors responsible for the delay of the passing of the DRB such as political, cultural, customary, social - economic factors and religion among others.
4. To suggest possible alternative strategies to achieve the passing of the Domestic Relations Bill.

CHAPTER TWO

WHAT THE DOMESTIC RELATIONS BILL IS ALL ABOUT

2.0 Introduction

In this chapter, I will give a detailed account of the history of the Domestic Relations reform in Uganda. I will thereafter briefly explain the salient provisions of the Bill and the mischief that they intend to address and illustrate how these proposals attempt to incorporate the international Human Rights Framework within the Marriage Laws of Uganda. I will thereafter briefly discuss the contentious clauses within the Bill and the basis from which these contentions stem.

2.1 Historical account of domestic relations reform in Uganda

The Domestic Relations project was embarked on in 1994, following a request to the Law Reform Commission in 1994 by the then Attorney General and Minister for Justice and Constitutional affairs for a new family Law.

Law reform is a fundamental aspect of any country's social, economic and political progress and development. From the pre-colonial era, the law has been a vital instrument for bringing about changes in society. Post independent Uganda like several other African states remained with a legacy of legal pluralism comprising of colonial ordinances, native customary Law and in some cases religious laws. In the wake of Colonialism a multiplicity of efforts were made to deal with this situation including constitutional²³and substantive law reform.²⁴ Among these were attempts to reform the laws of domestic relations.

²³ Independence Constitution of Uganda in 1962

²⁴ 1972 Amendment to the Succession Act CAP 139 by Succession Amendment decree no.22 of 1972 .This decree applied to the African population in Uganda and provided for intestate succession. Also, the Customary marriages registration decree No. 16 of 1973 provided for the registration of customary marriages.

In 1964, a Commission on Marriage and Divorce was set up and charged with a duty

“To consider the laws and customs regulating marriage, divorce and the status of women in Uganda , bearing in mind the need to ensure that those laws and customs, while preserving existing traditions and practices as far as possible, should be consistent with justice and morality and appropriate to the position of Uganda as an independent nation; and to make recommendations’.

The Commission carried out extensive consultations all over Uganda, and prepared a comprehensive report with recommendations on matters concerning marriage, divorce and succession. However, no action was taken on the recommendations until the early seventies. Among the reforms made included the amendment of the Succession Act to provide a formula for intestate succession and the enactment of the Customary Marriage Registration decree to provide for registration of customary marriages and setting the minimum age of customary marriage at 16 for females and 18 for males.

In 1974, the Marriage and Divorce Laws Reform project under the department of Law Reform in the ministry of Justice was set up. This culminated in a working document that is commonly referred to as the draft Domestic Relations Bill of 1980. No further action was taken on this document. Initiatives were also undertaken by various advocacy groups such as FIDA-U, the Ministry of Women in Development, and Action for Development (ACFODE), resulting in a concise report in 1993.

The coming into power of the NRM government saw an advent of affirmative action for women as well as other women friendly developments including the introduction of the National Women’s Council and a Ministry of Gender and

Community Development. In 1994, the Commission was requested by the Attorney General to draft a new Domestic Relations Bill. Although the draft document on domestic relations law existed, it had been prepared in the late seventies and therefore had been overtaken by changes for example, it did not reflect the position of the 1995 Constitution, International obligations and emerging gender and socio economic trends.

This request was made in response to a concise report on issues related to Domestic relations prepared by the then Ministry of Gender and Community Development. This report had reviewed the report of the Kalema Commission, the report of workshops held by the Uganda Association of Women Lawyers (FIDA-U) to establish the position of women in Uganda under Domestic Relations in 1990, and the report of a workshop organized by the Ministry of Gender in Tororo to the same end. The Concise report registered broad differences on crucial issues relating to Marriage, Divorce and Inheritance in the recommendations of the three reports.

The Commission was unable to formulate recommendations on the basis of the concise report due to the conflicting positions in the three reports. Instead, the Commission decided to conduct a nationwide research and formulate recommendations on the basis of the findings. The nationwide study was conducted in 18 districts. Thereafter, the Commission synthesized the available reports and the recommendations which were handed over to the Ministry of Justice to compile a draft bill.

The Bill was first presented to the 7th Parliament on 9th December 2003. It was referred to the committee on Legal and Parliamentary Affairs by the House. However, the Bill was not brought back to the house until May 2nd 2005. It was at this point that the bills progress was brought to a standstill. Government

requested Parliament to postpone the general debate on the DRB on the basis that further consultations needed to be made with some interest groups to ensure that the enactment was made after consideration of their views. Parliament then requested the executive to furnish them with the areas of objection, specifically those raised by the Muslim community which strongly opposed the Bill. On 9th May 2005, the Attorney General presented the details of objections by the Muslim community to Parliament.

The Committee on Legal and Parliamentary Affairs had concluded its consideration of the Bill and prepared a report in which it proposed several amendments to the Bill. The second reading was adjourned to enable exhaustive consultations with those opposed to the Bill.

The Attorney General also reported to Parliament that other interest groups including representatives of indigenous communities, the Uganda Joint Christian Council, and the DRB Coalition had raised concerns about the Bill. He further reported that government had received an assurance of cooperation from the Muslim leadership and that consultations about the Bill were soon to commence with them and other stakeholders. The Attorney General reported that consultations would be exhaustive and would ensure reconciliation of the interests of stakeholders so that the enactment of the proposed law would ensure peace, order, development and good governance in accordance with the provisions of the Constitution.

In May 2005 consultations began with the parties that were opposed to the Bill. The Uganda Law Reform Commission held a one day meeting with the Uganda Joint Christian Council. According to the ULRC, the dialogue was constructive and consensus was reached on a good number of the contentious issues. In June 2005, the ULRC attempted consultations with the Leadership of the Muslim

Community but no consensus was reached on any of the contentious clauses. The Muslim leadership was not willing to proceed with any discussion on the Bill without a response from the Speaker of Parliament to their written Memoranda of February 2004 and March 2005.

All of this was overtaken by the urgency of the new political dispensation and Parliament spent the rest of its term debating and passing laws to allow it to come into existence. According to the rules of Parliamentary procedure, even though the Domestic Relations Bill had been tabled for the second reading, it had lapsed with the 7th Parliament and would have to be reintroduced in the 8th Parliament.

According to a study carried out to assess the progress of the Bill²⁵, the general view was that a lot of the important clauses were going to be watered down or traded off in order for the law to be enacted. Chances were slim that the Bill would pass in its gazetted form.

2.2 Overview of the Domestic Relations Bill

The Domestic Relations Bill is a proposal: to reform and consolidate the law relating to marriage separation and divorce; to provide for the types of recognized marriages in Uganda; to provide for marital rights and duties, grounds for breakdown of marriage, rights of parties on dissolution of marriage and for other connected purposes.

The Bill is a product of a nationwide study carried out by the Commission to solicit views on issues of Domestic Relations within Uganda. The purpose of this study was to formulate a proposed law that: is fair and achieves social justice; addresses issues of poverty; protects the human rights of all members in the

²⁵ Domestic Relations Bill Coalition Report on Background study for restructurising for enactment of an equitable family Law in Uganda at page 3.

family; protects the institution of marriage and the family; is enforceable and accessible to the Ugandan population; and is in line with the Constitution and International obligations of Uganda.

The Bill seeks to cover all types of marriage in Uganda by consolidating and replacing the existing family laws of Uganda namely; The Customary Marriage (Registration) (Cap 248); The Divorce Act (Cap 249), The Hindu Marriage and Divorce Act (Cap250), The Marriage Act (Cap 251), The Marriage and Divorce of Mohammedans Act (Cap 252); and the Marriage of Africans Act (Cap 253).

The Bill provides for: the essential elements of marriage; preliminaries to marriage, solemnization of marriage; matrimonial rights and obligations including: conditions for polygamy, property rights, responsibility for maintenance, sexual rights within marriage, the offence of marital rape and the offence of adultery. It prohibits: the demand for the return of marriage gifts, widow inheritance and mixed marriages. It further provides for breakdown of marriage including: the provision of irretrievable breakdown of marriage as a sole ground for divorce; separation and alimony. The Bill also provides for marital offences and penalties.

From the above listed provisions we can see that the Domestic Relations Bill brings to life the Constitutional guarantee²⁶ that promotes the observance of equality within marriage. It further serves the purpose of protecting and promoting the rights of women that have been grossly abused within the auspices of culture and customs governing the institution of marriage. Discrimination against women in the legal system has its most significant base in the area of family law. In some instances, the family law of some minority ethnic groups which is usually based on indigenous custom or religion may seriously

²⁶ Article33 of the Constitution of the Republic of Uganda

prejudice women's rights in the family²⁷. The Domestic Relations Bill among other things highlights and prohibits the customary and religious practices that fall short of the standard of equality of persons. It also spells out rights and duties of spouses within a marriage that were previously not prescribed in the laws on marriage. This proposal is therefore an initial attempt at prescribing the do's and don'ts of marriage outside the ambit of religion and culture.

In highlighting the salient features of the Bill, I will restrict myself to a few of the provisions that were not previously catered for in any of the marriage laws of Uganda. I shall do this because the greater part of the Bill is a consolidation of the currently operational marriage laws of Uganda. The majority of the provisions that I will highlight directly embody the International Human rights frameworks pertaining to the promotion of equality of women and the protection of the rights of women within the institution of marriage. Featuring among these are some of the proposals that have proved contentious among certain categories of the Ugandan society.

I have illustrated the salient provisions in a table format. The table reproduces the clause in one column and gives the rationale behind the particular proposal in another column. There is a column demonstrating how each of the proposals fit into the international human rights frameworks. The purpose of this table is to demonstrate the origin and purpose of the key proposals in the Domestic Relations Bill and whence they derive their authority.

²⁷ Savitri Gooneskere "Sri Lanka: Legal status of women", in Schuler Margaret (Editor) "Empowerment and the law; Strategies of Third World Women". OEF International 1986. at page 52-57.

**TABLE TO ILLUSTRATE SOME OF THE SALIENT PROPOSALS
WITHIN THE DOMESTIC RELATIONS BILL**

<i>PROVISION</i>	<i>DETAIL OF PROVISION</i>	<i>PURPOSE THE PROPOSAL</i>	<i>LINKAGE WITH HUMAN RIGHTS FRAMEWORKS</i>
Clause 65	Matrimonial property shall be owned in common.	This provision will serve to elevate the status of women in the marital home by awarding them some level of decision making power over property within the home. Although their contribution is not tangible, it should be recognized. The rationale of this proposal is to ensure that their contribution is realized through equal ownership of matrimonial property.	The CEDAW provides under article 14 that “State parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in economic survival of their families including their work in non-monetized sectors of the economy”
Matrimonial Property	This includes the matrimonial home and household property within that home and any other moveable or immoveable property acquired during the subsistence of a marriage deemed to be matrimonial property. It also includes immoveable property owned by either	It is important to consider the fact that most land in Uganda is acquired through inheritance and yet most traditional institutions in many parts of Uganda prohibit women from	

	spouse which provides the basic income for the family.	ownership, a fact that reduces their bargaining power within the household ²⁸ . The law can be used as an important tool to improve women's economic and social position. Through legislation, the state can effectively allocate resources among men, women and institutions. It can determine who gets what, how and when ²⁹ .	
PROVISION	DETAIL OF THE PROVISION	PURPOSE OF PROPOSAL	LINKAGE WITH INTERNATIONAL HUMAN RIGHTS FRAMEWORK
Clause 63	Non- monetary contribution shall be taken into account when determining a spouse's contribution to the maintenance of the family	The subordination of women is partly brought about by the syndrome of dependency which stems from the fact that women are not considered as partners in the family resources. As a result, decision making is left to the owner of the property and the status of the wife is	Article 13 of the Protocol to the African Charter provides that state parties shall take the necessary measures to recognize the economic

²⁸ UWONET, The Domestic Relations Bill and the Poverty Eradication Action Plan , Exploring the linkages. At page 12

²⁹ Women and Customary Law Athaliah Molokomme in Schuler Margaret (Editor) "Empowerment and the law; Strategies of Third World Women" at page 26.

	subordinated.	value of the work of women within the home.
	Dependency has also been established as a major cause of domestic violence ³⁰ .	
Polygamy	<p>A person intending to take on a subsequent wife is required to make an application to the district registrar of marriages showing that he is economically capable of maintaining his wives and children at the same level as at the time of making the application.</p> <p>He is also required to show that he has made provision for a separate matrimonial home and that he is capable of</p>	<p>Proposals on the practice of polygamy were limited to regulating those involved to ensure that the rights of those within the polygamous marriage are protected. The Bill provides conditions to be satisfied before a polygamous union can be permitted.</p> <p>The background study to the Bill considered the enforceability of prohibiting the practice of polygamy and recommended that this would not be enforceable in light of the status quo.³¹</p> <p>The proposal to regulate polygamy was made with the intention of discouraging the practice.</p>
		<p>Article 16 of the Universal Declaration of Human Rights provides that;</p> <p>“Men and Women of full age, without any limitation due to race, nationality or religion have the right to marry and are entitled to equal rights in marriage, during marriage and at its dissolution”</p> <p>The Committee on the Elimination of all forms of Discrimination against Women makes specific reference to</p>

³⁰ ULRC study report on Domestic Violence,2006. Unpublished.

³¹ Study report supra at page 150.

giving the same treatment to all the wives.

polygamy under comment 14 (d) and states that:

“Polygamous marriages contravene a woman’s right to equality with men and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited”.

**Clause 12:
Cohabitation**

Parties may during the subsistence of cohabitation register the fact of cohabitation and the particulars of any monetary and non monetary contribution each party may

The background report to the DRB proposal explains that the practice of cohabitation impacts more adversely on the woman upon separation or if the man dies before the woman because a woman within such a situation is not recognized at law or at custom. The death of a

The Protocol to the African Charter provides under article 1(b) that;

“States shall undertake corrective and positive action in

have made during the male cohabitee would negatively impact on a those areas where cohabitation. woman with regard to property, custody and discrimination against women parental rights³², in law and in fact continues to exist”

Cohabitation needs to be placed in context because the available statistics place the percentage of married persons in Uganda at 47% of persons between 15 and 60 years.

However these statistics do not distinguish between marriage and cohabitation therefore making it difficult for one to establish what percentage is actually married.

The reality of a family law that does not address cohabitation would be that it would be made for a minority³³. (Less than 47%).

³² ULRC Background study report to the Domestic Relations Bill at page 212

³³ Domestic Relations Bill Coalition Report supra.

**Clause 13:
Cohabitation
giving rise to
marriage.**

Where a man and woman have cohabited for ten years or more they shall be presumed to be married to each other if the parties have the capacity to be married to each other.

The Uganda Law Reform Commission study established that 90% of the respondents were opposed to a presumption of marriage or inheritance rights for cohabiting partners. However, this position was proposed in a cabinet meeting. I was unable to obtain information for the rationale.

**Clause
61:Marital
rape**

The Domestic Relations Bill provides for this under a heading, sex without the consent of the other spouse.

The study recommends that the law should continue to recognize a presumption of consent to sexual intercourse. However, a spouse may refuse sexual intercourse on reasonable grounds. These Include; Poor health after childbirth or other medical health condition; Evidence or reasonable fear that engaging in sexual intercourse is likely to cause injury or harm to

Article 14 1(d) of the Protocol provides that states parties shall ensure that the right to the health of women including sexual and reproductive health is respected and promoted. This includes the right to self protection and to be protected against sexually transmitted

Clause 20:	Marriage Gifts shall not be an essential requirement for any marriage.	the spouse refusing intercourse or such other circumstances as may be determined by the court.	infections including HIV/AIDS.
Marriage Gifts	Marriage Gifts shall not be an essential requirement for any marriage.	The status of women, even before the payment of bride wealth, is subordinate to that of men (even among cohabiting partners). The payment of bride wealth exacerbates this control and domination of women ³⁴	CEDAW article 2(f) provides that;
		To this end, the study recommends that the term bride wealth which connotes purchase of an item should be substituted by the term marriage gifts to do away with the element of commodification of women	“.. State parties undertake to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women...”
Clause 20 (1)	Where marriage gifts have	This was outlawed to do away with the	The Protocol to the African

³⁴ Background study to the Domestic Relations Bill supra at page166

<p>Demand for the return of marriage gifts</p>	<p>been given by any party to a marriage under this act, it shall be an offence to demand the return of these marriage gifts.</p>	<p>element of wife purchase and also r to promote equality in marriage. A woman’s choice to leave a marriage should not be tied to the return of bride wealth.</p>	<p>Charter provides under article 1(b) that; “States shall undertake corrective and positive action in those areas where discrimination against women in law and in fact continues to exist”</p>
<p>Clause 16: Widow Inheritance</p>	<p>A man shall not marry a widow through the custom or practice of widow inheritance</p>	<p>The practice of widow inheritance is closely linked to the payment of bride wealth that is regarded as creating a relationship between the bride and the clan of the husband. It is believed that this relationship is not severed by the mere fact of death of the husband.</p>	<p>CEDAW article 2(f) provides that; “.. State parties undertake to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination</p>
	<p>Without prejudice to subsection (1), a man may marry his relative’s widow where both the man and the</p>	<p>The clan is believed to have a right to the widow until the bride wealth is returned. This is contrary to dignity and welfare of women guaranteed by Article 33 of the Constitution.</p>	

widow, with their free consent, adopt any form of marriage provided for under this Act.

against women..."

Widow inheritance is prohibited.

Clause 78 Irretrievable break down of marriage to be a sole ground for Divorce.	The Bill provides for irretrievable break down of marriage as the sole ground for divorce. Either party to a marriage may petition for a Divorce ³⁵ and the	Prior to a recent judicial pronouncement ³⁶ , the ground for Divorce in Uganda was not leveled. Customarily, divorce was recognized only upon the return of bride price ³⁷ . While under the Divorce Act, the grounds for seeking Divorce were more for women than they were for men ³⁸ . Following a petition that challenged	Article 7 of the Protocol to the African Charter provides that states parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or
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³⁵ Clause 78(1).

³⁶ Uganda Association of Women Lawyers and others Vs The Attorney General

³⁷ **Katumungo Vs Katuramu (1992) Kampala Law Reports 12.** A customary marriage is dissolved by agreement from both sides and by the return of bride price. **In Bisanga vs. Achulu (1976) HCB .282.** Under the Iteso custom , once a marriage is dissolved, bride price must be returned. A husband thus on desertion is entitled to return of dowry. Once dowry is established to have been paid, the court would require formal proof by the parties that they have agreed to live apart and a decision by the father t accept his daughter back .

³⁸ Prior to this case, a woman petitioning for Divorce was under a duty to give two grounds including adultery as a reason for Divorce. While for a man, only the fact of adultery warranted him to obtain a Divorce in the courts of law.

petition to Divorce shall be on the constitutional of several sections of the annulment of marriage.
the sole ground that the Divorce Act³⁹. It was unanimously held in this
marriage has broken down case that;
irretrievably.

“The grounds for Divorce stated in section 4(1) and (2) are now available to both sexes. Similarly, the damages or compensation for adultery (s.21), costs against the correspondent (s.22), alimony (s.23and 24) and settlement under section 26 are now applicable to both sexes”

Clause 16:	(1) A man shall not marry	This practice is closely linked to the payment of	Article 20 of the Protocol to the
Widow	a widow through the	bride wealth that is regarded as creating a	African Charter provides that
Inheritance	custom or practice of	relationship between a bride and the clan of her	States Parties shall take
	widow inheritance.	husband. It is believed that this relationship is	appropriate legal measures to

³⁹ FIDA Uganda and others vs. Attorney General, Constitutional Petition No.2 of 2003.

- (2) Without prejudice to subsection (1), a man may marry his relative's widow where both the man and the widow, with their free consent, adopt any form of marriage provided for under this Act.
- (3) Widow inheritance is prohibited.
- not severed by the mere fact of death of the husband. The clan is believed to have a right to the widow until the bride wealth is returned⁴⁰
- ensure that widows enjoy all human rights through the implementation of the following provisions: That widows are not subjected to inhuman , humiliating or degrading treatment; a widow shall automatically become the guardian and custodian of her children , after the death of her husband, unless this is contrary to the welfare of the children and a widow shall have the right to remarry and in the event , to marry a person of her choice.

⁴⁰ The Domestic Relations Bill report Supra at page 282

In order to fully understand why the Domestic Relations Bill is a topical issue it is necessary to point out the provisions that have caused controversy within some parts of Ugandan society and why this is the case.

2.3 Some of the proposals within the Domestic Relations Bill that have raised controversy

It is a fact that some of the proposals within the Domestic Relations Bill raised controversy against the Bill among certain categories of people. Among these were Muslim and Christian organizations which communicated their dissent to the Legal and Parliamentary Committee of Parliament. I will briefly discuss some of the controversial clauses identified thereby.

- a) **Polygamy:** The Bill takes into consideration the Islam and cultural observances of the practice of polygamy. The Christians advance the argument that polygamy is discriminatory and unacceptable in Christian society and should be abolished. They further argue that women in polygamous unions are held within an impossible marital situation where equal treatment is never achieved⁴¹. On the other hand Muslims advance the argument that polygamy is part and parcel of their way of life according to the Koran. They argue that;

“Muslims should be left alone to organize and manage their family life according to the teachings of Islam and without any interference from any other quarters⁴².”

Whereas it is understandable that the two groups hold divergent views on the issue of polygamy, it is apparent that the two parties do not appreciate the mischief that the Bill intended to address which briefly was to ensure that those

⁴¹ UJCC and EFU Recommendations Proposed To The Parliamentary Committee Regarding The Domestic Relations Bill 2003

⁴² Response to the Domestic Relations Bill 2003 from the Shariah Directorate, February 2004.

contracting polygamous marriages would have the capacity to maintain their families.

b) Divorce

The Bill provides for irretrievable break down of marriage as the sole ground for divorce. Under this is a system the spouses will no longer need to establish that a marital offence has been committed as is the case in the fault based system. All that needs to be proved is that the couple is incompatible and that the marriage is incapable of working out.

The fault based system currently applies under Civil marriages while the no fault system applies to Customary and Islamic Marriages. Churches in Uganda do not recognize Divorce. The Domestic Relations Bill makes an attempt at making a uniform system of divorce.

It was observed by the Commission that a considerable number of persons who wish to undergo divorce resort to the informal processes that make use of the no fault system⁴³.

The Christians argue against this proposal claiming that the Bill is only going to promote the practice of Divorce;

Uganda does not have a crisis from divorce being difficult to obtain. The current proposals are in many ways worrying and they are western in their make up. It is also disturbing that Christian marriages will be dissolved by the courts on the sole ground that the marriage has irretrievably broken down. Wedding vows do not provide for this ground. They go against it. A marriage is supposed to last for life. To legislate 'irretrievable break down of marriage as a ground for Divorce in

⁴³ DRB study report supra at page 262

Christian marriages in effect attacks Christian beliefs and the freedom of religion guaranteed by the Constitution⁴⁴.

The Muslims on the other hand advance the argument that the Shariah lays out principles to be followed in the process of Divorce and that these cannot be questioned or altered in any way.

c) Cohabitation

The position of the Directorate of Sharia, and the Christians is that cohabitation should not appear in the Bill. It is said to be in contradiction with all the norms of the different creeds.

The report by the committee on Legal and parliamentary affairs stated that the proposal offends moral values and undermines the whole institution of marriage.

“The concept of cohabitation should be deleted wherever it appears in the Bill. Our society should seek a moral code that encourages people to become decently married than condone and engage in such relationships. The presumption of marriage should be a discretionary power left to court to handle rights of affected persons at either separation or succession matters or upon the death of a partner. Otherwise we would be forcing legal protection on those who by choice desire no protection”⁴⁵.

d) The co- ownership of matrimonial property

The Christians are of the view that there is no need to legislate on this position because the Christian Marriage vows provide for it.

“In the Christian Marriage, property, belongings, money and declared debts owned by those getting married are seen to be joint from the date of the wedding. There are some provisions on property which go against the

⁴⁴ Uganda Joint Christian Council and Evangelical Fellowship of Uganda Briefing Document on the Domestic Relations Bill 2003. at page 4.

⁴⁵ Report of the consultations by the Legal and Parliamentary Committee on the Domestic Relations Bill at page 3,

grain of Christian teaching and the marriage vows to share all they own. Christianity is more liberating for spouses. The provisions that prescribe how property should be shared should therefore not apply to Christian marriages.

Muslims are of the view that;

There must be a satisfying explanation for the sharing of matrimonial property for both parties. The provisions on common ownership of matrimonial property breach the fundamental matrimonial rights of a wife to property because Muslim women assume absolute rights over the husband and their properties. Islam gives women absolute rights to own, sell, receive a gift or manage property.

e) Marital Rape

This provision is one of the most unpopular within the Domestic Relations Bill. According to the DRB Coalition report, the position on sex without consent of the other spouse is unanimous for the UJCC, EFU and the Directorate of the Sharia⁴⁶ They agree that violence and fear in marriage are unacceptable but they advance the argument that criminalization is not a solution. They propose that courts should issue injunctions and counseling should be promoted over punishment in cases where it is proved that there was forceful sexual intercourse between spouses.

The Legal and Parliamentary Committee proposes that the Concept of Marital Rape should be deleted from the Bill wherever it appears. The Committee was of the view that proof of the offence and the sanctions imposed cannot be sustainable where the marriage is still a growing concern. They propose that it should instead be a ground for divorce.

According to the report by Domestic Relations Bill Coalition ⁴⁷

⁴⁶ Domestic Relations Bill Coalition Report on the Background study for re-strategising for the enactment of an equitable family law for Uganda at page 22.

⁴⁷ Ibid at page23

“The notion that there can be no marital rape is based on outdated English Jurisprudence that no longer applies even in its country of origin. “

Sir Matthew Hale, CJ of England in the 17th Century stated;

“The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent, the wife hath given herself unto the husband which she cannot retract.”

The issue of marital rape should not be dismissed without proper consideration of some issues such as the AIDS scourge which greatly challenges Uganda.

2.4 Conclusion

We can see from the abovementioned discussion that the Domestic Relations Bill seeks to advance the promotion of human rights within the family. It is however faced with many challenges including the fact that some of its provisions conflict with certain religious beliefs and practices. The challenge lies in finding a middle ground between the promotion of human rights standards and the observance of the right to practice religion.

CHAPTER THREE

METHODOLOGY

3.0 Introduction

As earlier mentioned, the purpose of my study was to investigate and establish the underlying reasons why the Domestic Relations Bill has not been passed to date.

3.0.1 Demarcation of the study

In order to properly investigate, it was necessary for me to capture: the experiences of those that were involved in preparing the Bill; the experiences of those that were involved in advocacy programs concerning the Bill; the opinions and attitudes of the legislators; the opinion and attitudes of those for and those against the Bill; as well as, the opinions of some members of the executive. It was my belief that armed with these responses, I would be able to make out the *real*⁴⁸ reasons behind why the Domestic Relations Bill is still a bill to date.

To establish this, it was necessary for me to seek opinions from key informants whom I pre-determined to include: members of the general public; Members of Parliament; academicians; members from the civil society; religious leaders; officers from the Ministry of Justice as well as officers of the Uganda Law Reform Commission.

I undertook the study in Kampala Central. This is the capital city of Uganda as well as the administrative centre which is home to the National Archives, Government offices, Non-governmental organizations, Civil Society Organizations, Religious Institutions education centers and private law firms that were the target of my research are located. Considering that I was focused

⁴⁸ My emphasis

on finding out the attitudes and views and opinions on the Domestic Relations Bill mainly of the top decision makers, I established that all key personnel including religious leaders, members of the executive, the legislature and heads of civil society are located in the centre.

While it would have been important to do so, I was not able to investigate the position of cultural leaders on the Bill beyond the extensive consultations which had been carried out in the cultural studies that were conducted prior to the drafting of the Bill. This would have necessitated my interviewing a representative number of respondents in order to correctly capture the diverse cultures in Uganda. This was not viable because of limited time and resources. It was also my assumption that since all cultural regions in the country are regionally represented by electoral constituencies which are represented by Members of Parliament, the cultural issues, if any, would be adequately captured by the Hansard debates on the Domestic Relations Bill.

I also undertook records research which involved looking at, among others: study reports of the Uganda Law Reform Commission, parliamentary hansards, formal communications to Parliament, advocacy reports from civil society organizations, minutes of consultative meetings, advocacy work plans and newspaper records. This information was necessary to inform me about: the background consultations prior to the drafting of the Bill; the steps taken in promoting awareness about the Bill; the consultations undertaken with those opposed to the Bill, as well as the strategies under taken to advance the progress of the Bill.

The study originally seemed to be one of legal research focusing on the limitations faced in the progress of a draft Bill. However, the nature of the Bill dictated a much broader approach that required that I investigate the interwoven

social issues responsible for the delayed progress of the Bill such as patriarchy, religion and women's emancipation. As a result, the research expanded and necessitated that I employ social research methods such as an in-depth analysis of the role of religion and culture among others on the progress of the Bill.

I also observed how the interplay of the patriarchal nature of society, culture and religion and the potential of the proposed legislation to positively or negatively impact these areas influenced the stance taken by the key decision makers towards the Bill.

I engaged several approaches in carrying out the study. The following are the approaches I employed:

3.1.0 Women's Law Approach

I considered the provisions of the Bill in the light of how they would serve to promote the status of women in Uganda. For instance, the Bill proposes: the recognition of the non-monetary contribution of women towards the property in the home; it proposes the abolition of bride price and widow inheritance; and, it proposes restrictions on polygamy with a view to discouraging the practice.

I used the women's law approach to assess whether the key decision makers appreciated the potential that some of the proposals within the Bill had to improve the status of women and whether this factor was prioritized by them in the debates about the Bill in view of other issues advanced to challenge the Bill such as religion, culture and politics.

3.1.1 Actors and structures

I considered the fact that the majority of the key decision makers in Uganda are men. Therefore, I found it necessary to assess what the impact of male

domination in key decision making profiles would be on the progress of this type of legislative proposal.

I looked at the Parliamentary records to establish the overall number of male and female parliamentarians, especially considering those that participated in the Legal and Parliamentary Affairs committee's discussion of the Bill. I also took into consideration the nature of the comments and issues that were raised about the Bill during the male dominated discussions.

3.1.2 Grounded theory

One of the several reasons advanced as to why the Bill faced resistance from some sections of the public is that the Bill is considered to be a women's Bill⁴⁹. I set out to test the veracity of this and the various other reasons advanced by members of the public. In order to achieve this, I interviewed all the respondents to establish why they thought the Bill has not been passed to date.

I set out to capture the voices of the key decision makers and those within the executive as those who wielded power of life and death over the Bill. I did this in order to establish the extent to which the responses advanced by them were tainted with the bias that the Bill would unfairly privilege women at the expense of men.

This was juxtaposed against the opinions of the technocrats, including those who carried out consultations and those who carried out lobbying and advocacy programs, such as civil society, to establish what they thought were the reasons for the delay in the passage of the Bill and whether these had any linkages with the anticipation that the Bill was for the benefit of women.

⁴⁹ Interview with Rose Ssemakula

I juxtaposed the varied responses against each other and made an effort to establish the story that these variations told.

3.1.3 Human Rights Approach

I established during my background research that the Domestic Relations Bill reflected the values contained in several Human Rights Instruments that seek to promote and protect especially the rights of women. I therefore steered my interviews towards evaluating and establishing whether or not the key decision makers had considered the Domestic Relations Bill as a representation of key human rights concerns for women and whether this concern was being addressed by these key persons in opposing or supporting the Bill.

3.1.4 Gender Law and Power

It is my observation that most of the key decision making positions in Uganda are held by men. These include positions within the executive, Parliament and also in religious institutions. I felt that this state of affairs impacted on the progress of the Bill in view of the fact that the provisions within the Bill serve to promote the status of women within the institution of marriage. As such, the male majority among the decision makers would not be very enthusiastic about enacting a law that would greatly alter the status quo.

I perused Hansards and Parliament records to establish the number of men and women involved in the discussion of the Domestic Relations Bill at the committee stage. I intended to discover whether this actually impacted on the committee's report. I also wanted to establish whether men were on board in the advocacy campaign regarding the Bill and how their presence or absence in the advocacy program impacted upon the progress of the Bill.

I also considered workshop reports, minutes of meetings and parliamentary Hansards to establish the views advanced for and against the Bill and the extent to which they were influenced by gender dimensions.

3.2 Assumptions

I designed assumptions to guide my research. These were based on my personal analysis of the possibilities as to why the passage of the Domestic Relations Bill (“DRB”) had been so difficult. They are as follows:

- 1) The DRB may not have been passed to date because of possible inadequacies in the methodologies employed in the initial processes.
- 2) The DRB has not been passed to date because of possible inadequacies within the lobbying and advocacy strategies employed prior to its reading in parliament.
- 3) The DRB has not been passed to date possibly because of inadequately considered factors external to the assumed law reform process, such as lack of political will, culture, custom and religion among others.

3.3.1 Research Questions

I formulated research questions to test my research assumptions. I used these questions to prepare an interview guide to aid my interviews. This I used to solicit answers for the pre-identified respondents. Although I used this guide for all of my interviews, I asked the questions selectively based on the role of the respondent in the progress of the Bill.

3.3.1.0 Interview guide

1. Who were the key actors in the preparation of the DRB and what was their role in its preparation and development?

2. Who were the key actors after the initial preparation of the DRB and what was their role in its progress?
3. As an instrumental person in the drafting/advocacy of the DRB, do you recall any milestones in the process after the initial draft was tabled?
4. Did you receive any form of support from other institutions, organizations, government officials regarding the progress of the Bill?
5. Which institution(s)/organization(s) offered this support?
6. How useful was the support given by the institutions/organizations mentioned above?
7. In light of the developments ensuing from the tabling of the DRB (e.g., Muslim opposition, Reaction of Parliamentarians and key government leaders, women groups, and the general public) do you think that the methodologies employed in the background research could have been done any differently? (Possibly to attain a better response?)
8. Do you believe that there were any loopholes in the consultation process responsible for the delay in the passing of the Domestic Relations Bill?
9. What if any was the advocacy strategy employed subsequent to the drafting of the DRB?
10. Do you believe this advocacy strategy was appropriate in the light of the contents of the provisions of the Bill?
11. What do you think was the consequence of this advocacy strategy on the overall outcome of the Bill?
12. Do you believe that there are any extraneous factors responsible for the delay in the passing of the DRB?
13. If so, what are they?
14. Were these extraneous factors considered by you and other key players prior to the tabling of the bill?
15. If so, how did you propose to deal with them?

16. To what extent do you think your action/inaction (dealing with extraneous factors) impacted on the overall outcome of the Bill?
17. What alternative strategies if any can you propose to achieve the passing of the Domestic Relations Bill?

3.3.2 Evaluation of the methodology used

The key informant interviews served the purpose of obtaining the information I required for the research. However, it was difficult to reach the respondents, most of who are top government officials and members of Parliament. I therefore was unable to consult some of my pre-identified respondents because of their busy work schedules.

The records research served the purpose of filling in the gaps where I could not obtain information directly from the respondents. The workshop and advocacy reports gave me an insight into the views and positions taken on the Domestic Relations Bill by some of the respondents that I had not been able to reach.

The grounded theory approach I used helped me to discover key respondents that I had not initially anticipated as relevant to my study. These respondents gave me a broader picture of other initiatives that had been undertaken regarding the progress of the Domestic Relations Bill.

The interplay of the various research methods illustrated above including the human rights approach and the women's law approach, actors and structures and gender law and power helped me to successfully obtain a broader perspective of the issues raised and a better understanding of the issues pertaining to the progress of the Bill.

CHAPTER FOUR

THE STUDY FINDINGS

4.0 Introduction

In the following chapter, I will present the study findings. These are the responses obtained from the key informant interviews. I have categorized these responses according to the assumptions I made prior to the study. The responses were obtained in response to research questions that I designed to test the study assumptions.

4.1 Assumption 1

The DRB may not have been passed to date because of possible inadequacies in the methodologies employed in the initial processes.

In order to give a clear assessment of the initial processes, I found it necessary to give a detailed account of what took place prior to the formulation of the draft proposals

4.1.0 Methodology employed in the initial process

The Law Reform Commission made the reform of the Domestic Relations Law one of its priority projects and embarked on the project with the following objectives:

- a) To create avenues at the grass roots, through which the public, particularly the rural population, could present views and recommendations about the law on domestic relations;
- b) To incorporate recommendations from previous domestic relations research;
- c) To eliminate anomalies in the law, stemming from the dual nature of the legal system and conflicting sources of law, i.e., customary, statutory and Islamic, by drafting one law of Domestic relations

- d) Reform the DRB in line with the 1995 Constitution, and with relevant international instruments ratified by Uganda since independence.

The Commission embarked on extensive consultations among the masses to ensure a high level of representation and participation based on the observation that the draft Domestic Relations Law would require a general consensus. It was hoped that this would:

“Increase transparency and therefore credibility of the process and thus ensure acceptance of the goals as well as willingness to comply. To this end, views from women and men, rural and urban, and people from all social classes were sought...⁵⁰”

The survey which covered a total of 1016 respondents was carried out in 10 districts of Uganda from January to May 1996. The districts covered were: Kamuli, Mbale and Kapchorwa in the Eastern Region, Kasese, Kabarole and Kisoro in the Western Region. Gulu and Lira in the Northern Region and Masaka and Mukono in the Central Region. Arua district was selected as a 10th district but due to insecurity at the time of the survey, a community of people from Arua living in Mukono district was interviewed.

4.1.1 Criteria used to select the districts

- a. **Ethnicity:** This is because different tribes have different cultural norms regarding marriage and related issues. The ten districts selected were based on the five major groupings of Uganda’s five major ethnic groups; The Bantu, the Nilo Hamites, the Hamites and the Nilotics and the Sudanese peoples.

⁵⁰ Survey Report of the Uganda Law Reform Commission on the Reform of The Law on Domesic Relations and Domestic Violence at page 10.

b. Rural/Urban considerations

It was considered necessary to obtain views from both the rural and urban population. To this end 14.6% of the respondents were selected from the urban areas while 85.4% were selected from the rural areas.

4.1.2 Data collection

The researchers employed both qualitative and quantitative approaches. Issues under investigation included the practices, perceptions, and behavior regarding the family. The researchers also solicited suggestions and recommendations for the reform of the law on domestic relations.

The exercise involved a questionnaire survey that targeted selected key informants. In-depth interviews were conducted with opinion leaders and policy makers at national and district levels. These were conducted in order to:

“Examine in detail through discussions with stakeholders at this level, the following issues:- Marriage, Marital rights, cohabitation, polygamy, separation/divorce, succession, property rights, inheritance, and domestic violence⁵¹”

Selection of the participants was based on the nature of their work and cultural role in society. Some of those interviewed included elders involved in handling day to day cultural issues such as presiding over marriage ceremonies, divorce and marital dispute resolution. They included government officials, religious and cultural leaders.

⁵¹ The Background Report to the Domestic Relations Bill ULRC , Supra at page 18

4.1.3 Specialized studies

a) Customary studies:

The Commission observed that in as much as there was a law regulating customary marriages, it did not deal with the substantive issues of domestic relations beyond the registration of marriages. Aware that customs and practices related to marriage vary from one ethnic group to another, the commission assigned consultants to carry out research and obtain recommendations on customary, traditional observances that were pertinent to domestic relations in the various ethnic groups of Uganda.

Research in this area was undertaken in four districts selected according to ethnic groupings. The four districts were Mpigi, Nebbi, Ntungamo and Soroti.

b) **Islamic studies:** The commission observed that even though the Constitution⁵² recognized Qadhis courts as competent to preside over matters of domestic relations, issues of marital rights and duties, divorce, guardianship and inheritance were not adequately provided for within the law⁵³. Consultants were therefore assigned to carry out research on the issues of domestic relations in Islam.

A study of Sharia Law was undertaken in three districts to establish Islamic religious beliefs and practices regarding marriage. Kampala was selected on the basis of diversity. It contained a large number of Muslims from different sects. Iganga district was selected because it possesses the highest population of Muslims. Bombo and Luweero districts were selected due to the presence of Nubian Muslims.

⁵² Article 129 2 (d)

⁵³ Marriage and Divorce of Mohammedans Act Cap 213.

4.1.4 Stakeholder consultations

It was observed that several government departments and civil society organizations had been involved in carrying out stakeholder consultations to feed into proposals for the reform of the family laws in Uganda. The Commission set up a consultative workshop to synthesize the proposals and recommendations that had stemmed from these consultations.

4.1.5 Consultative Meetings with special interest groups

These were identified as the Muslims, women, and Christian churches. The Commission held special consultative meetings with these groups to identify issues pertinent to them under the domestic relations proposals.

4.1.6 Secondary Research

Reports of studies carried out by government and various non-governmental organizations were reviewed. Also reviewed was comparative literature from other jurisdictions in Africa and elsewhere. This included reports from other Law Reform Commissions, and International Instruments. National Policies and legislation were also considered.

The draft recommendations were then publicized for public reaction through consultative workshops with members of the public. The views obtained within the consultations were considered in the preparation of the final recommendations made by the Commission.

After the data was collected, a conceptual framework for the proposed law was developed from the synthesization of the data collected from the field study, the review of relevant reports and literature and recommendations of consultative meetings.

The core issues in this model were based on the following principles;

- a) The law should be modern and progressive;
- b) The law should promote the development of the family taking into account the social effect of practices;
- c) The law should be implementable and enforceable and this has to be balanced against fairness;
- d) The law should not be detached from the socio-economic situation;
- e) The law should conform to the Constitution and to the international obligations binding on Uganda;
- f) The law should protect the interests of children, the institution of marriage and the family.

The Commission employed this methodology in order to permit critical and rigorous examination of various factors including legal norms, cultural practices, social and developmental elements, political and economic changes which influence individual community and national perceptions about domestic relations in the changing Ugandan society⁵⁴.

After these consultations were finalized, the recommendations were forwarded to the First Parliamentary counsel within the Ministry of Justice for the preparation of the draft Bill.

This detailed methodology reveals a meticulous field survey, designed, as far as possible, to represent the true position of the Ugandan people on issues of domestic relations. This study will not go into the details of the research findings. What is important, however, is that they were used to formulate the recommendations upon which the draft Bill was prepared. I am of the view that the research was well done and that the draft Bill was prepared on the basis of a

⁵⁴ ULRC Study Report on Domestic Relations *supra* at page 17.

representative study. It should be noted that “inadequate consultation” is a common complaint made against it by adversaries of the Bill.

It was important for me to engage the persons who undertook the research that informed the drafting of the Domestic Relations proposals in order to get first hand information about the research. I did so because I needed to get their version of the story in view of the allegations by some of the members of the public that the consultations were rushed, biased and unrepresentative. For this purpose, I interviewed the legal officers who were in charge of handling the research and preparing the subsequent draft Bill proposal and the external Commissioners of the Commission who were independent academicians employed to oversee the project.

4.2.0 Peoples views on the methodologies employed in the initial process

Most of the respondents interviewed were of the view that the research was thoroughly done as reflected in the following responses;

“...A lot of time was spent on the DRB. The research was very well done. The Commission synthesized reports and views from 18 districts. Thereafter, the recommendations were forwarded to a drafting expert. The research for the DRB was done after a literature review of other researches on the same topic...” **(Jean Kyazze, Legal officer on the project).**

“...The DRB is a thorough piece of legislation. The ULRC did its best. They carried out extensive research and consultations. It was a multi-disciplinary research and was representative. It is not an elitist law. The final proposals were made and submitted after consultative workshops were held...” **(Percy Tuhaise, Lawyer, External Commissioner on the project.)**

“...The background research was thorough and exhaustive. The computation of statistics and the consultations were exhaustively handled. The findings were screened by the external Commissioners and the secretariat. These findings formed a very strong basis for the research proposals...” **(Irene Ovonji, Legal officer on the project).**

Some of the respondents interviewed were of the view that the general public did not appreciate the intricacies of the research and, as such, the allegations that the research was inadequately handled were based on this misunderstanding.

“People misinterpret the idea of consultation. There is no possibility of consulting 100%. It is always a representative sample that is used. Unless it is the sampling method under question then that would be an issue. Society does not understand social research methods and what it takes to legitimately consult”. **(Lillian Tibatemwa, External Commissioner.)**

Other contentions about the background research were that the proposals within the Bill were made by women for women. It has been claimed that the background consultations for the domestic relations proposals were biased because only women were consulted as seen in the following response.

“...I commend the efforts of the ULRC. It is better that it had wide consultations from the bottom up. The stakeholders claimed that the research consulted women only. However, all were consulted. It so happened that the women’s voices were louder...” **(Sitnah Cherotich, Female Lawyer and Consultant on the Islamic study)**

Although the respondent seems to suggest that the women's voices were louder within the findings, actual findings show that an almost equal number of male and female respondents were interviewed for purposes of the study. However, given that the Bill makes proposals that would serve to promote the status of women, it is only natural for such qualms to arise.

According to the survey report⁵⁵

“...The number of respondents interviewed in the 10 sampled districts was 1016. Of these, 513(50.5) were male and 503(49.5%) were female given a male to female ratio of 1:1 as was intended”...

Although these findings should serve as proof to eliminate the claims that the proposals were made by women, very little mileage has been gained in that regard. I believe this is so because it is not a viable venture to circulate study reports among the general public as evidence of research findings.

I further established that several consultations were conducted with key stakeholders who included Christians, Moslems, women as well as key Government Ministries and Civil Society organizations involved in the same cause. The purpose of these consultations was to obtain a considerable level of consensus on the preliminary proposals.

“After the preparation of the first draft, the Commission set out to make further consultations. This involved engagement with the public which included a variety of stakeholders. These included the Ministry of Gender, the Judiciary, civil society, Ministry of Justice, First Parliamentary Counsel, Independent researchers within Civil Society, Religious leaders Customary Leaders, members of the public. This was done to specifically follow up on pertinent issues of controversy. We also consulted with

⁵⁵ Survey Report of the Uganda Law Reform Commission on the Law of Domestic Relations and Domestic Violence.

government institutions that had been awarded roles in the proposed Bill. It was intended to make them aware of what was coming. These included the judiciary; the register general's office, Local Governments (Lc/subcounty chiefs (to be registers of marriage)". **(Peter Edopu, Legal Officer on the project)**

I established that the Ministry of Justice which commissioned the study played a crucial role in drawing up the final proposals in the first draft of the bill.

"...A lot of negotiation was done and many things changed. Negotiations took place between the Commission and the Ministry of Justice over the principles, guidelines and objectives of the study to assess the social impact of the proposals that were being made..." **(Irene Ovonji, Legal officer on the project)**

It was only after the proposals were scrutinized that the first draft Bill was prepared.

"The First Parliamentary counsel came up with the Draft Bill based on recommendations from the Commission. The Commission engaged the Ministry of Justice in a clause by clause discussion of the Bill thereby clarifying on pertinent questions" **(Peter Edopu, Legal officer on the project).**

From these research findings, I observe that the Commission did whatever was in their power to ensure that the study captured as many views as was possible. It was therefore necessary to dig deeper into the objections raised about the methodology to establish why the mode of consultation was unsatisfactory to certain categories of people. I categorized my observations according to three groups: the voices: bread winners and heads of households; the guardians and the false custodians of culture and the religious leaders.

4.2.1 The voices: bread winners, heads of households

I believe that a lot of objection was raised against the mode of consultation leading to the proposals because the many of the proposals within the bill are an echo of the voices of the people, especially women that had hitherto been silent within our societies. Let us, for purposes of understanding the real picture, take an example of the practice of widow inheritance. It would be and still is an uphill task to convince certain members of the general public that widow inheritance is a fairly unpopular and unfair practice. This is probably because those who stand to gain from the practice (the men) are the vocal minority in our communities leaving those opposed to the practice silently defiant. However, the research echoed the voices of the voiceless because it created a forum for those that had until then been silently opposed to certain practices to speak out against them.

It is also important to appreciate that the majority of the members of the public do not appreciate that research studies are representative and cannot take the form of a referendum and as such, not everyone in the country can be interviewed on the matter. This coupled with false belief that the bill *dictates*⁵⁶ the way that individuals *should manage*⁵⁷ their private (domestic) affairs, only served to increase the anxiety about the mode of consultation.

Whereas the mode of consultation regarding public legislation, such as tax and electoral laws, is not usually in issue, the contention against the mode of consultation used for the Domestic Relations Bill seems to lie in the fact that some of the proposals therein⁵⁸ appear to take the *absolute*⁵⁹ power of decision making within the home away from the household heads. Since almost every

⁵⁶ My emphasis

⁵⁷ My emphasis

Clause 61 Makes it an offence for one to have sex with his or her spouse without their consent. Clause 66 provides that matrimonial property shall be owned in common.

⁵⁹ My emphasis

individual holds a distinct opinion on how their home affairs are run, it would appear that they would each prefer not to be spoken for in that regard. As the adage goes..."Every *man's* home is *his* castle⁶⁰", as is captured in the following quote

"Some leaders are not for some clauses embodied in the Bill because it is social legislation. Chances are that some provisions directly relate to the familial situations of some leaders which, in some instances, threatens their interests. Among these are proposals within the Bill pertaining to polygamy, property ownership, cohabitation and divorce to mention but a few. This applies to both male and female leaders..." **(Jean Kyazze, Legal officer on the project)**

As further explained the level of engagement regarding issues within the Bill was found wanting. It was assumed that the Bill would be considered at the level of policy and development at the cabinet level as is usually the case. On the contrary it was not awarded the seriousness it deserved, possibly because the matters under discussion were only domestic:

"I attended the 1st Cabinet meeting. The level of engagement was wanting. The depth to which the participants should have had knowledge was wanting. Each Minister was giving a personal, subjective and emotional account of his or her position instead of dealing with the proposals and their implication on development, human rights compliance, national policies etc. They would select populist clauses and share personal experiences yet the law is not personal. It should be looked at broadly." **(Percy Night Tuhaise, External Commissioner on the project)**

⁶⁰ My emphasis

I will now do an analysis of the foregoing field findings to establish the real reasons as to why the method of study was under criticism.

4.2.2 Was it the method behind the proposals or the proposals themselves?

As earlier mentioned, specialized customary studies were carried out to represent the various ethnic groups of Uganda. Focus group discussions were held with community leaders and community members to establish the position of culture regarding marriage, property ownership, divorce and other such related issues.

In my own observation, I believe that the critique of the cultural studies lies in the fact that some of the proposals in the law are a departure from the cultural norms that have been modified to promote certain interests. The custodians that hope to gain from the transformation in culture critique the mode of consultation mainly because an opportunity was created for the communities themselves to reflect upon and retrace the source of particular customs and what was intended by them. This being done, proposals were made to reflect the true values of the communities, as opposed to the distorted versions of the cultures and values.

A case in point within the proposed Bill is the prohibition of the demand for the return of marriage gifts at the end of a marriage. The Bill proposes that bride price be renamed “marriage gifts “and provides that these are not essential requirements of a marriage⁶¹.

In most Ugandan communities, the origin of bride price was not as it is today. According to the Domestic Relations Coalition Report marriage gifts were offered as a token of appreciation to the parents of the bride, and no demands were ever made as to what was to be given. Presently as a consequence of

⁶¹ Clause 20

departing from the original custom, the commodification of the girl child as a potential object of bride price is presently widespread and being abused to the extent of causing girl children to drop out of school to be married.⁶² It is such deviations from the norm that are promoted by the false custodians in a bid to gain from such transactions. The proposals within the domestic relations bill however seek to maintain the original custom.

Consequently, a lot of opposition has been raised about the Domestic Relations Bill proposals taking away the freedom of cultural expression guaranteed by the Constitution without sufficiently consulting the cultural institutions⁶³. However it should not be forgotten that the same Constitution prohibits the exercise of laws, cultures and customs that abuse the rights of women. This is the position that the Domestic Relations Bill proposals seeks to promote.

The Commission employed specialized studies to investigate the law of Shariah and document the position of this law on marriage, divorce, separation, and marital property among others. This was done in a bid to put to paper the Shariah law regarding issues of marriage within the Domestic Relations Bill.

To this end, consultations were made by a group of Muslim consultants selected on the basis of their knowledge and experience in Islam. They included; a lecturer and scholar of Islamic studies, an Imam and a female lawyer. These consultants carried out their investigations within predominantly Muslim communities in Uganda as earlier elaborated.

The contention raised about this mode of consultation was that Muslims do not accept men to interpret and make laws for them. It was advanced that the

⁶² DRB Coalition report.Supra at page 22.

⁶³ Article 37 Of the Constitution of the Republic of Uganda.

“Shariah is the product of what Allah dictated and since the only acceptable exponents of the principles of the Shariah are prophets who have since died, those who are living are not qualified to interpret and codify the law”. (Professor JMN.Kakooza, Chairman Uganda Law Reform Commission)

Several consultations have since been held with the Muslim leadership. A compromise position was reached when the Muslims were given the opportunity to make proposals for a law separate from the Domestic Relations Bill. It was asserted by the leadership that Shariah is to be followed to the letter and not to be tainted by introducing into it other principles that fall outside the ambit of Islam.

It is my observation that religion is being used to preserve the status quo and thereby promote the interests of those who presently stand to gain from it. An example among the proposals from the proposed Domestic Relations Bill was the regulation of polygamy to ensure that each of the wives and children from a polygamous union would be properly provided for. This proposal was directly derived from the provision of the Shariah requiring those who wanted to acquire additional wives, to ensure that they would treat all the wives equally. The contention of the Muslims was that polygamy is an absolute right that cannot be subjected to restrictions. It was also advanced that freedom of religion is a right guaranteed by the Constitution. This line of argument is unconvincing and a cover up of the real issues which remain unsolved.

What comes into play is the dynamics of who stands to gain from the law as it stands today, and who stands to lose if any changes are introduced within the status quo? The answer remains the same. The men stand to lose the privileges

awarded to them by their interpretation of the Koran and therefore cannot entertain any challenges stemming from a liberal interpretation of the same.

It is upon such a fragile premise that the consultative process used in the background research to the Domestic Relations Bill was thoroughly critiqued and the subsequent proposals rejected.

4.3 Assumption 2

The DRB has not been passed to date because of possible inadequacies within the lobbying and advocacy strategies employed prior to its reading in parliament.

Since my study sought to establish any possible weaknesses within the passage of the draft Bill, another pertinent area of investigation was to consider whether the delay in the passing of the DRB could be attributed to weaknesses in the lobbying and advocacy strategies employed to enhance the progress of the Bill.

I established that several initiatives were undertaken in advocating the enactment of the Domestic Relations Bill. Those involved included: women's organizations, women members of parliament and the Uganda Law Reform Commission. Their activities included: grassroots' campaigns; advocacy workshops and retreats; issuing of statements and position papers; lobbying members of Parliament; media talk shows; publication of advocacy materials; holding public events, demonstrations, as well as, dramas. Some of the initiatives undertaken will be illustrated in the table below.

4.3.1 TABLE TO SHOW ADVOCACY INITIATIVES ON THE DOMESTIC RELATIONS BILL BY GOVERNMENT AND CIVIL SOCIETY ORGANISATIONS

<i>Organisation</i>	<i>Initiative</i>	<i>Date</i>
Uganda Women's Network (UWONET)	Organization of stakeholders workshops	July 2000
Uganda Parliamentary Association (UWOPA) and UWONET	Women's Action Plan to steer an intensified advocacy and lobby campaign on the DRB	May 2002
UWOPA	Dialogue on the Domestic Relations Draft Bill Campaign	10 th November 2003
<i>Organisation</i>	<i>Initiative</i>	<i>Date</i>
UWONET and Uganda Legislative Support Activity Development Associates	Civil Society Reflection meeting to review a position paper on the DRB	August 20, 2004
Uganda Law Reform Commission	Grassroot Sensitisation workshops in Mukono District	October 2004

Domestic Coalition	Relations	Bill	Memorandum on the DRB submitted to the members of the Legal and Parliamentary committee.	November 25 th 2004
Uganda Commission	Law	Reform	Media Campaign, clause by clause explanation of the DRB provisions Translated radio messages	April – May 2005
Uganda Commission	Law	Reform	Newspaper supplements of an abridged version of the DRB Publication of DRB report Explanatory notes on the DRB	April – May 2005
Uganda Commission	Law	Reform	Advocacy workshops with members of Parliament Advocacy workshops with Muslims	April-June 2005
Uganda Commission	Law	Reform	Consensus Meeting with the Uganda Joint Christian	March 2006

Council

Uganda Law Reform Commission
Consensus meetings with January 2008
Muslims

In order to investigate this assumption, I carried out extensive consultations with the Commission officers who were involved in the project and Civil society organizations that were involved in carrying out advocacy programs regarding the bill to establish the loopholes within the advocacy strategies.

I established that the DRB was the first proposal on law Reform that involved a large number of stakeholder consultations. It is possible that the involvement of many people caused the spread of misconceptions about the draft bill.

I established that after the preparation of the first draft of the bill, the commission engaged with the public which included proposed implementers such as the judiciary, the register general's office Local Governments, cultural leaders and religious groups. However, this was found later to be the nail in the coffin of the Domestic Relations Bill's advocacy programs:

“It so happened that consultations were made on draft proposals. Those consulted used these consultation drafts to confuse the public on the position of the Bill.” **(Jean Kyazze, Legal officer on the project)**

During the ensuing advocacy workshops it was established that there were several untruths circulating within the public about the provisions of the bill. Such untruths included: the erroneous belief that the bill proposed to outlaw polygamy; the erroneous belief that the Bill provided for equal ownership of all property belonging to the spouses; the erroneous belief that the children of the marriage belong to the wife; and many such other misconceptions.

Some of the respondents were of the view that the initial drafts should not have been circulated among a large cross section of people.

“...The 1st package of the DRB was distorted and blown out of proportion by those who had access to it. It would have been better to test the message with a small sample...” **(Hilda Tanga, Acting Director FIDA Uganda)**

After the initial consultations, it was observed that the doubts and reservations about the bill developed among some sections of the public, especially the Muslim community. These unchecked suspicions evolved over time, eventually culminating in a general dislike for the proposed legislation.

“There were instances where erroneous information was given to the public about the provisions in the Bill raising public outcry against it. This was brought about by some Muslim leaders who felt that the proposals sought to dismantle the very foundation of the Islamic way of life.” **(Jean Kyazze, Legal Officer on the project)**

From my investigations I established that the media was used to create awareness about the bill. The Commission in its media advocacy strategy targeted the grassroots by preparing a clause by clause explanation of the provisions of the Bill in the local dialects using the local radio stations.

It had been established in a prior study by the Commission that the radio is the most effective media for targeting the grass root communities⁶⁴. Commission officers visited the local radio stations and hosted talkshows regarding the provisions of the Bill. In this way, the officers obtained information on the attitudes, misconceptions, and views on the Bill. The also used this as an opportunity to correct misconceptions that had been created by adversaries of the bill.

⁶⁴ Community Law Reform Baseline Report 2005.

I also established that civil society organizations also employed a media strategy in their advocacy campaigns. The Radio and Television were utilized for talkshows in order to discuss the provisions of the Bill. The newspapers were also used by the Commission to publish clause by clause explanatory notes and an abridged version of the Bill.

However, the snag lay in the fact that the timing of all these media campaigns was poor. Efforts to put this effective tool of advocacy into operation were only made after the opponents of the Bill themselves had already used the media as a platform for airing negative views about the Bill. The damage had already been done. In many cases the talkshows that were held were of an adversarial nature. They involved the advocates and opponents of the Bill facing off against each other while the radio show host played referee.

Even where newspapers articles were run about the Bill, it was often a case of damage control. The opponents of the Bill often had the advantage probably because they worked quickly, often with the advantage of time. They ran hard hitting articles against the Bill. The advocates of the Bill, on the other hand, were often faced with the challenge of undoing the negative damage caused by these articles and in most instances, they were ill prepared.

In time, there were adversaries of the Bill making deliberate efforts to cause anxiety among the masses using the media to spread propaganda about the provisions of the bill. According to a DRB coalition report⁶⁵

“..In some instances the media published articles and emphasized comments that were negative and tended to confuse the public about the intent of the Domestic Relations Bill. On one occasion, where the issue of

⁶⁵ Report on a background study for restructing for enactment of an equitable family law for Uganda at page 29.

polygamy and HIV/AIDS was discussed, the author drew a parallel between polygamy and polyandry and stated that if the DRB was proposing to retain polygamy at all, then polyandry should also be legalized. Part of the statement was taken out of its context and blown out of proportion by both the print and broad cast media under the heading " WOMEN LAWYERS PRESS TO MARRY MORE MEN⁶⁶"

The media played a big role in undermining the Domestic Relations Bill. I say this because when advocates were making an effort to correct the negative image already portrayed of the Bill, they seemed to be swimming against the tide. This I attribute to the fact that the key decision makers in some of the leading newspapers already held biases against the Bill as could be evidenced in the tone of the stories that they ran about it.

"After the Muslim community issued its statement to the speaker of Parliament in March 2005, the media again carried negative publicity of the issues that the DRB was trying to address. The Muslim statement published by the Directorate of Sharia was given prominence while the activities of the women activists were down played. The New Vision carried detailed statements of the Muslim leadership and pictures of Muslim women and men demonstrating against the Bill. Particularly damaging was the prominence given to the demonstration of the Muslim men chanting "*Twagala Kuwasa banna*⁶⁷" and the women chanting *mutuleke batuwase*.⁶⁸ This type of media coverage reduced the issues in the DRB to only polygamy⁶⁹."

⁶⁶ The Monitor, 29th November 2004.

⁶⁷ We want to marry four

⁶⁸ Let them marry us

⁶⁹ Domestic Relations Bill Coalition, Report On Background Study For Restrategizing For Enactment Of An Equitable Family Law For Uganda at page 30.

In another case, the Monitor Newspaper exaggerated a threat of a jihad by a Muslim cleric under the headline “**Muslims threaten war over Domestic Bill.**”⁷⁰

It was reported that the vice chairman of the Uganda Muslim Youth Assembly had issued a statement in which he stated:

“We are issuing a warning that if some members keep pushing Muslims to the wall, they will rebound and we don’t want that to happen. But we are fighting for the Muslim principles.”

Prior to the 2005 presidential and parliamentary elections the East African⁷¹ reported that:

“War might erupt any time in Uganda. But this time, it will not be about politics. The impending war will be about women. Precisely the ability to acquire a second woman without the first woman interfering in the process. War is a serious thing and had the war cry not been issued by a serious group, we would have taken it for a joke. It is none other than the radical sect of Muslims, the tabliqs, which has stated clearly that should the Domestic Relations Bill pass in its present form, where a man must seek the consent of the first wife if he wants to take on a second, they will wage a jihad.”⁷². It is also important to note that the heading of this story was “Museveni should consider ‘domestic relations’ in quest for third term”.

The story as published is a mockery of the Domestic Relations Bill because in the first place, a group of Muslim fundamentalists disgruntled by a clause in a bill poses no threat to the security of a nation. Also the reference to the third term is

⁷⁰ The Monitor 6th May 2005.

⁷¹ Museveni should consider ‘domestic relations’ in quest for third term; The East African , Monday May 16,2005

⁷² Museveni should consider ‘domestic relations’ in quest for third term; The East African , Monday May 16,2005

a political innuendo, intended to highlight the fact that if the Bill was passed it would affect the president's chances of winning the election. This kind of reporting reflects a bias about the Bill on the part of its male writer⁷³.

A close look at the media strategy for the Domestic Relations Bill points to the fact that it could have been put to better use. That is to say, a lot more could have been done within the media to work to the advantage of the Bill. According to some of those interviewed:

“The media strategy was poorly managed. It should have been managed better. The discussion centered on media reports and not on the Bill itself. The land co-ownership clause in proposal for the Land Act had very good advocacy strategy. It was tightly managed. A spotlight was put on the parliamentary debates naming members of parliament and the positions taken by them on the issue. This forced accountability.” **(Irene Ovonji, Officer on the project)**

Another respondent raised the following pertinent issues:

“How much writing did we do in the papers? Efforts should have been made to target some of those that read the papers so as to bring them on board...” **(Lillian Tibatemwa, External Commissioner on the project).**

The handling of the media strategy was problematical and this played a big role in the progress or rather, lack of progress, of the Domestic Relations Bill.

Another issue I established from the respondents was that in spite of all the negative publicity that the Bill was facing, there were no immediate measures to counteract the untruths. This lapse occurred as a result of several reasons.

⁷³ Joachim Buwembo

In the first instance, the Commission had no advocacy strategy beyond making the relevant Institutions and stakeholders aware of the provisions in the Bill through consultative workshops. In an interview it was revealed that:

“There was no knowledge of strategic partnerships and advocacy strategy within the Commission” **(Jean Kyazze, Legal officer on the project).**

It was further established that much as there were Non Governmental Organizations involved in the process of preparing the bill, they were not present at the critical time to champion it. As such the bill did not have much by way of support by civil society and other agencies that are usually instrumental in promoting support for laws and policies among the public.

“...As a result the masses remained unclear about the provisions of this bill and unaware of the mischief that the bill intended to address...” **(Peter Edopu, Legal officer on the project)**

This state of affairs was attributed to the limited forward planning ability on the part of the civil society organizations. Since most of the civil society organizations are donor funded, they operate according to fixed budget lines and cannot accommodate unanticipated programs, no matter how important they are. This was the case for the Domestic Relations Bill.

“..Many of these NGO’S do not have sufficient preparation or output. They operate on a survival basis and do not sustain programs. They change with the tide. However urgent the issue is, they bypass it if they have not been funded for it. At the time when we needed them, they claimed that they had no money...” **(Jean Kyazze, Officer on the project).**

Much as the above argument could be advanced as a weakness in the advocacy program regarding the Bill, it is also true that even when plans were finally made to champion the Bill, there was failure to coordinate activities among those who

were involved in advocacy programs for the Bill as is captured in the following quotation:

“One of the problems that I can identify is the fact that the civil society did not coordinate the popularization of the Bill with government. Similarly, Government did not coordinate with civil society. These efforts were uncoordinated and therefore repetitive and ineffective”. **(Hilda Tanga, Acting Director, FIDA).**

It is possible that part of the reason for this uncoordinated activity was because some organizations within civil society had been forced to wait patiently for their funders to *chew on* the advocacy proposals while the adversaries to the DRB carried on undermining the Bill. It is therefore not surprising that eventually there was a “mad dash” to rescue the Bill. It is therefore not surprising that their efforts were not as effective as they had anticipated.

“...Efforts to sort out the damage were rushed and uncoordinated. Advocates should have targeted the period when the controversy was not up yet...”

(Peter Edopu, Legal officer on the project)

Another point that should be put into perspective is the fact that the deliberations were stretched out over a long period of time which ended up exhausting available resources at varying stages of the life of the Bill:

“...Because the bill has gone through a long dragged out process, the advocacy has been done in phases which die out because of financial implications. Sustaining this kind of advocacy for a bill that is in and out of deliberations proves to be very difficult. Owing to the fact that the bill has dragged on since 1996, it is not easy to judge whether indeed inadequacy of the advocacy strategies is a major point of concern...” **(Irene Ovonji, Legal officer on the project).**

Another challenge faced was that when efforts were finally made to champion the Bill, women stood out as its front runners. In a further attack, the proposed legislation was incorrectly labeled “A women's bill”. And so the Bill's adversaries multiplied.

One of the respondents had this to say;

“The women’s movement is not bringing men on board. There are three types of men. Those opposed, the believers and those on the fence. To what extent have we brought these men on board for example by having the Uganda Law society discuss the Bill? We could also use men to talk about the bill. We could also borrow men who are visibly outside the legal fraternity and bring them on board. Run programs on radio and television where men are actually involved in defending the rights of women. Those men on the fence would be affected.” **(Lillian Ekirikubinza, External Commissioner on the project).**

In a bid to create further antagonism against the Bill, its other detractors alleged that the Bill did not address the problems of rural women. Subsequently, the label of “An elitist woman’s bill” only succeeded in creating a rift between the rural and urban women.

“The DRB coalition tried to publicize the Bill. This was a misdoing because thereafter, it was branded a women’s law, gaining disfavor among the general population especially among Moslems. NGO’s have tried. However, it has resulted in the Bill being related to women activists”. **(Percy Tuhaise, External Commissioner, ULRC)**

“Some members looked at it as a women’s Bill. Women looked at it similarly (excluding men). Therefore the men were fighting the Bill”
(Rose Semakula, Clerk to Parliament)

The respondents interviewed revealed that the key decision makers (executive and legislature), were not aware of the provisions of the Bill. In view of the fact that there was no initiative on the part of the Commission to create awareness about the provisions within the Bill, misconceptions and erroneous interpretations about the Bill prevailed. This had a bearing on the attitudes of the decision makers within cabinet and Parliament and subsequently on the progress of the Bill within these fora.

“There was a lot of confusion and band wagon effect on the contents of the Bill. Very few legislators would give a listening ear. There was a lack of awareness even among the legislators. The men felt it was a women bill.” **(Jill Kyoheire, Uganda Women’s Parliamentary Forum)**

It is important to note that at some point during the Bill’s discussion in cabinet, a proposal to amend it allowing for co-ownership of land among spouses was suggested. This clause had already caused controversy among members of Parliament and women activists during the debate of the proposed land bill.

“The death blow of the DRB was when it was suggested that the controversial co-ownership clause be placed in the DRB. The mere suggestion of this brought more stigma on a bill that already had issues”.**(Irene Ovonji, Legal officer on the project).**

Also suggestions to include a presumption of marriage into the Bill caused further resistance to the Bill, especially from among the church leaders. This

proposal suggested that persons who had lived as man and wife for over 10 years would be legally recognized as man and wife.

It is also important to appreciate that the Bill's progress was greatly delayed by the Ministry of Justice which took a long time to respond to the draft Bill. Although the Commission submitted the proposals in 1998, the Bill was only tabled to Parliament in 2005!! This lack of continuity and never-ending debate grossly affected the development of the Bill. In most cases when the discussions on the drafts were reopened there was a change of the desk officers handling the project within the Ministries and civil society organizations. This affected the progress of the Bill as the new officers had to be brought on board, some of whom were not keen on the issues.

“The time lag also served to dampen the spirit of its proponents after drawn out debates on the Bill came to nothing. It also caused a lot of speculation and fatigue on the project especially among those involved from the very start. Owing to these delays, circumstances changed within the concerned institutions. New people came on board within the Commission, Ministries and NGO'S and continuity was lost. Also new ideas not originally topical are brought on board (Gender and Development, HIV/AIDS etc.) The draft was then looked at from different perspectives that were not originally in issue” **(Jean Kyazze, Officer on the project)**

After a long wait, the Bill finally progressed to the first reading of Parliament in 2005. Unfortunately, no mention was made to the Law Reform Commission about this development and as such even though the Commission had since grown wiser about the importance of lobbying and advocacy, and had been waiting for an opportunity to make up for lost time, they were not given adequate time to employ their strategies.

The Commission hurriedly developed an advocacy program which was submitted to the Royal Netherlands Embassy for funding. Uppermost on the agenda was the sensitization of the members of Parliament through advocacy workshops to create consensus on issues within the Bill. By the time the bureaucracy was finalized, the Legal and Parliamentary Committee had already presented its report to the House and what remained was the third reading.

This was poor timing on the part of the Commission because at the time, as the legislators' minds had already been influenced against the Bill by its critics. Reflecting upon the course of the Bill, one of the external Commissioners had this to say:

“Maybe the timing for the sensitization of parliament was wrong. Parliamentarians should have been targeted much earlier to own the bill with us before they were negatively influenced. ..”(Lillian Ekirikubinza, External Commissioner).

The failure by the Commission to sensitize the members of Parliament had other consequences. For example, it was manifest in the report by the Legal and Parliamentary committee that there was no proper appreciation of the subject matter of the Bill and the mischief it intended to address, especially in the aspect of promotion of key human rights principles. I will quote a few excerpts from this report to illustrate this point.

On the proposal for marital rape the report by the Legal and Parliamentary Committee states⁷⁴;

⁷⁴ Report of the Committee on Legal and Parliamentary Affairs on the Domestic Relations Bill, 2003 at page 3.

“...Our current law does not recognize any such thing as marital rape. The new concept just highlights a situation where the marriage has broken down irretrievably and the solution should be a petition for Divorce...”

In reference to the proposal to outlaw the demand for the return of marriage gifts, the committee states:

“...The Bill recognizes customary marriage as a recognized form of marriage. To outlaw marriage gifts, which might be an essential requirement for marriage, is a contradiction in terms. What would then amount to a customary marriage? If the gifts as proposed by the bill cannot be **demanded** (my emphasis) back, what would then amount to a divorce under the custom which originally required the gift?”

On the issue of widow inheritance, the report states thus:

“The use of the phrase widow inheritance is a deliberate coining to make this cultural **form of marriage** (my emphasis) derogatory. For as long as there is **free consent** (my emphasis) of the widow this should be a form of recognized marriage. The reason for supporting this is that it gives protection and dignity to the widow and the orphans to remain in the home of the deceased and bring up the children according to the customs of the clan. As long as we have patrimonial system, remarriage within the clan provides a way of maintaining the lineage.”

It is apparent that the members of the Legal and Parliamentary Committee did not consider the fact that the Domestic Relations Bill is one of the efforts to domesticate Uganda’s obligations under the UDHR, CEDAW and the Protocol to the African Charter.

It is very important to observe at this point that the Commission had greatly relied upon the fact that the state was under a duty to uphold the basic Human Rights standards through the enactment of enabling legislation. This was regarded as the launch pad of the proposals that were contained in the Bill.

“We thought that the document would **sell by itself** (my emphasis) and did not have the contingency plan to popularize the document at the time.” (Peter Edopu, Legal officer on the project)

“We wrongly assumed that people would understand the law from a **human rights perspective.**(My emphasis) ” (Lillian Ekirikubinza, External Commissioner on the project)

“...Many of the people in society who should have seen the proposal as a human rights issue failed to do so and as such did not participate in advancing its cause. A noteworthy example is of some members of the Bahai faith. These people saw the bill as a social issue and have consistently supported the cause of the Bill...” (Irene Ovonji, Legal officer on the project)

It is apparent that the framers of the law and those that were responsible for the passing of the legislation were working at cross purposes. It is normally the case that the legislature and the department of the executive responsible for the framing of the law are working along the same policy and rights framework. The Domestic Relations Bill seems to stand out as an exception to the common practice.

As correctly stated by one respondent, the method of consultation may take into account the wishes of the common man, but it is equally pertinent to target the mind of the decision makers who in this case are the members of Parliament.

“The law reformers may make the assumption that the general populace needs to be consulted. To what extent do we consider that the decision makers are aware of the issues before the bills become public?” **(Lillian Ekirikubinza, External Commissioner on the project).**

In a later development, the Commission was not made aware that the Bill was presented for the first reading in Parliament. Further still no opportunity was created for interaction between the legislators and the Commission for explanation of the clauses as is usually the case. As a result of this the legislators (most importantly the Legal and Parliamentary Committee) did not get into the reasoning behind the clauses in the Bill.

In an effort to save the already bad situation, three sensitization workshops were held to bring members of Parliament on board about the purpose of the proposals within the bill. The workshops proved to be successful because a number of misconceptions were dispelled. The Commission was also able to bring to light the human rights implications of the proposals within the Bill.

These sensitization workshops created a certain amount of awareness among the parliamentarians. At the end of the workshop, the Commission was commended for the effort. It was pointed out that several misconceptions had been brought to light and promises were made of more informed deliberations⁷⁵. Some of the Parliamentarians even promised to bring their colleagues on board.

⁷⁵ Uganda Law Reform Commission , Report of the Advocacy Retreat with Members of Parliament, At the Imperial Resort Beach Hotel Entebbe, December 2005.

“... When the Commission organized workshops with Parliamentarians to elucidate on the provisions within the Bill prior to the 3rd reading in Parliament, a more positive response was obtained. ..” (**Jean Kyazze, Legal officer on the project**)

This was the best opportunity that the Commission had used to its advantage. If poor advocacy had been the only stumbling block, the Domestic Relations Bill would have run a smoother course from this point onwards. However, there were other issues that were involved. This brings me to the third assumption.

4.4.0 Assumption 3

The DRB has not been passed to date possibly because of inadequately considered factors external to the assumed law reform process such as lack of political will, culture, custom and religion. The study established the following regarding this assumption.

a) Religion

As earlier mentioned, a special background study was commissioned for purposes of informing the proposals that would result in changes within the Marriage and Divorce of Mohammedans Act. However, although these consultations were made on the basis of the specialized study, they were subsequently rejected by some members of the Muslim society.

It was established that;

“...The members of the Islamic faith can be identified as some of the formidable foes of the DRB because there are a substantial number of members of parliament who belong to the faith and who expressed aversion to the Bill without a proper appreciation of its contents...Also the fact that some very vocal and influential persons within the Islamic faith

voiced negativity about the Bill caused the bill several hurdles..." (**Jean Kyazze, Legal officer on the project**)

Another officer on the project pointed to the fact that even though they noted some level of the resistance during their original consultations with the public, they did not consider the extent to which these opponents would go .

"...We underestimated the level of resistance against the DRB. The march of Muslim women was one such unanticipated incident. We did not know the extent our opponents would go (well organized and informed of the process). We also learned the importance of religion in society. It was a pertinent issue for both Muslims and Christians alike. .."(**Peter Edopu, Legal officer on the project**)

Judging from this response, it is my understanding that the officers of the Commission were of the view that the conflict would be handled by regular discussion. However, there was much more to it as was elaborated upon by one respondent.

"It is also important to note that the Muslim society is big. As a result, there are two different types of Muslims. They are those that wish to have Islam practiced to the letter as it is done in the Islamic Countries then there are the "elitist" Moslems who prefer to have it modified. .."

"...Another pertinent concern was the fact that Muslims did not wish for non Muslims to deal with their issues that they felt were within their bounds such as Polygamy, Age of Marriage and Divorce. They claimed that the Shariah provided a "full suit" (self contained) for all aspects of their lives and that they did not wish to change that position in any way... The DRB went beyond what was necessary. The Shariah is a "full suit"

practiced in all aspects of life why are we looking at the marriage aspect only?" (**Mohammed Mbabazi, Muslim Consultant on the Shariah study**)

It was suggested that the research did not ask the pertinent questions pertaining to Islam in the present day.

"..Those doing the research needed to have posed questions that were relevant to the situation. They should have asked questions that were pertinent to the challenges faced by decision makers in Islam in light of the standards and intricate changes introduced by the rapid evolvement of society..." (**Mohammed Mbabazi, Muslim Consultant on the Shariah study**)

It would appear from the findings that some of the people who practice Islam do so without fully appreciating the teachings of true Islam. As a result, they drift away from the practice standards set out in the Koran, yet continue to attribute these deviations to Islamic teachings. This probably contributed to the rejection of the DRB proposals which attempted to codify Islamic Law on the basis of the standard set by true a standard of which many so-called true believers⁷⁶ fall short:

"Faith is mixed up with culture. That is where problems come from. Some people use cultural practices to manage their Islamic homes and in the process they drift away from the faith because they want to serve their personal interests..." (**Sitnah Cherotich, Muslim Consultant on the project**).

One of the major challenges responsible for the standoff between the Law Reform Commission and the Muslim community was the issue of polygamy.

⁷⁶ My emphasis.

The Bill proposal sought to regulate polygamy in keeping with the Koranic teachings that direct equal treatment of all the wives within a polygamous union.

This turned out to be a major point of contention that resulted in a mass demonstration by Muslim women on the streets of Kampala. Although it turns out that this demonstration was in fact orchestrated by men⁷⁷, the impression it created among the public was that Muslim women are indeed in full support of the institution of polygamy. It was alleged by those involved in the demonstration, that polygamy was a fundamental aspect of their religion, an expression of faith and a right, that could not be denied or even treated as an issue separate from true Islam. It is important to note at this point that the Bill did not actually outlaw polygamy, but only sought to regulate the way it is practiced to ensure that women within polygamous marriages would get a fair deal⁷⁸. One of the respondents interviewed stated:

“...Polygamy is a very difficult issue to tamper with. This was a mistake on the part of the law reformers. The Muslims looked at it as a challenge to their faith. This is one of the reasons why the Bill failed. It rubbed Muslims the wrong way. That is why women participated in the demonstrations. They demonstrated for their faith. They know what the faith teaches, not what is practical. The mistakes made within polygamy are not mistakes of the faith but the mistakes of humans. Many of them are not unhappy about what goes on in the faith but are unhappy about

⁷⁷ Women who had gone to attend Juma prayers were at the end of the prayers commanded to get out of the mosque and hold a demonstration. Some Muslim women later approached women Parliamentarians and expressed outrage at what had happened. They expressed their support for the provisions of the Bill to limit polygamy. DRB Coalition Report supra at page 30

⁷⁸ Clause 31(1) of the proposal provides that a party to an Islamic or customary marriage who wishes to contract a subsequent marriage should make an application to a District Registrar of Marriages showing that he is economically capable of maintaining his wives and children at least at the same level of maintenance as at the time of the application; that he has made a separate matrimonial home for the subsequent wife, except in exceptional circumstances where the parties including the current wife have agreed to live together in the same home; and is capable of giving the same treatment to all the wives.

the failings of humanity...” (**Sitnah Cherotich, Muslim consultant on the project**)

I established from my interviews that the uproar about polygamy was brought about purely by a misguided understanding of the proposal on the same. I believe that this misinformation was maliciously circulated to the benefit of some of those who strongly opposed the Bill based on the belief that it sought to undermine the practice of Islam. I strongly believe that an unbiased discussion with Muslim women on the issue of polygamy would reveal a different position⁷⁹.

Another issue that was raised by the Muslims was the fact that the Constitution as amended made provision for the operation of Qadhi Courts⁸⁰. They contended that since the Constitution granted them freedom to exercise the Shariah, it would suffice to govern issues of marriage and divorce.

Many of the respondents gave weight to the impact of the Muslim protest on the progress of the Domestic Relations Bill, as was captured in the following responses:

“The beginning of the end of the DRB was when the protests begun. It was asserted that it was difficult to continue discussion of the bill with protests going on...”(**Harriet Lwabi, First Parliamentary Counsel, Ministry of Justice and Constitutional Affairs**)

According to the deputy Minister of Justice and Constitutional affairs:

⁷⁹According to the DRB Coalition report, some Muslim women later approached women parliamentarians and expressed outrage at what had happened. They expressed their support for the provisions in the Bill to limit polygamy which confirmed that the group that participated in the demonstrations was not representative of Muslim Women. (At page 30).

⁸⁰Article...

“..The DRB requires a different approach. Even if you have numbers in Parliament, you cannot pass a law when people are demonstrating on the streets.” **(Freddie Ruhindi, Deputy Minister for Justice and Constitutional affairs)**

Although it may be advanced as an argument, the reality is that the will of the people does not usually take centre stage in legislation.

Findings reveal that what was decided in principle was that the Ministry of Justice and Constitutional affairs could not ignore protestors (Muslims). This was probably influenced by the political situation at the time as was revealed in the following response:

“This was probably because of the mounting political tensions at the time of the pending elections. As potential voters, the Muslim protestors wielded power. In some countries, the Attorney General is not a political representative. The Parliament could have voted on the areas of controversy raised by the Muslims, issues of age of marriage and number of wives”. **(Harriet Lwabi, First Parliamentary Counsel).**

It is important to point out that the Bill was introduced into the 7th Parliament at a time when political tensions were high. The incumbent President had completed his second term of office and thereby reached his term limit. He however sought to remain in office for a third term. This issue proved to be very controversial among the electorate and as such the political situation was delicate.

Consequently, this was not a good time for controversial issues to be tabled for debate. In view of the fact that it was very important for the incumbent Government to win the favor of the electorate, it was more strategic to stall the

discussion of the Domestic Relations Bill which was viewed as potentially controversial.

There were two important votes that the incumbent Government was not ready to risk losing as a decision had to be made between the women's vote and the Muslim vote. As such, no conclusive verdict was reached on the Bill. It was shelved on the basis that further consultations were required before the debate on the Bill could be concluded. This was the safest position for the government to adopt because each of the parties was left unsatisfied but hopeful that progress would be made.

b) Culture

Research established that very few of the strong arguments advanced against the Bill were founded on the premise of culture. This could be attributed to the fact that the cultural studies made prior to the enactment of the Bill adequately represented the position of culture.

It is also possible that those opposed to the Bill on this front were not interviewed during this study owing to the fact that the study was carried out within the city centre and only among the elite. It is possible that those who had views on culture, emanating from the Bill's proposals, were not adequately represented.

It was however expressed by the deputy Minister of Justice and Constitutional affairs that:

“The law should also follow generally accepted custom to ensure mass acceptance otherwise it will remain a law on the books”. **(Freddie Ruhindi, Deputy Minister for Justice and Constitutional affairs).**

Another respondent was of the view that the guardians of the original culture had not appropriately handed down the cultural knowledge, or made efforts to remodel the culture to suit the ever-changing trends within modern society. As a result some unscrupulous individuals were taking advantage of this knowledge gap to challenge and undermine the Bill.

“...The cultural institutions in place do not place much emphasis on sensitizing their people about their cultures. There is also a gap between the original culture and its place in recent trends and developments. Some people are taking advantage of this gap to undermine the Bill...” **(Hilda Tanga, Acting Director FIDA, Uganda).**

c) Political Will

Several respondents I interviewed were of the view that the biggest challenge faced by the Domestic Relations Bill was the fact that the top in the executive in Government did not want to see the Bill passed into law. The following responses were obtained by the study in this regard:

“One of the biggest challenges facing the Bill is that the President does not support the Bill.” **(Irene Ovonji, Officer on the project)**

It was also captured in the UWONET report that ⁸¹

“The biggest challenge to the enactment of the DRB was lack of political will from the top executive. In 2000, the president expressed the view that women should inherit property from their natal families. ..”

As earlier stated, the Domestic Relations Bill would have sailed a smoother course if it embodied less controversial provisions. Many of the decision

⁸¹ Supra at page 32

makers⁸² within Government do not appreciate the contents of the Bill especially in view of the fact that it seeks to promote a woman's right to property in a marital union. One of the respondents had this to say in that regard:

"This is not the president's favorite Bill. He is not as passionate about it as he is about investment and commercial bills. Similarly, politicians consider this to be a women's bill that is designed to take over their property..." **(Sitnah Cherotich, Muslim Consultant on the project).**

It has also been observed that some members of the executive wield a lot of influence over other key decision makers in the legislature. In the long run, the unpleasant truth appears to be that the fate of the Bill will be determined by the will of the executive and not of the legislative arm of government. This poses a question as to whether the separation of powers is a reality in our government:

"It is unfortunate for the governance institutions to follow the whims of one person. The minister for justice should be able to stand up and defend the Bill. Even Parliament keeps deferring the bill because they fear to fall out of step with people in high places". **(Irene Ovonji, Legal officer on the project).**

On occasion the Bill has been fronted as an initiative by Government to promote the rights of women. Promises to enact this legislation have been on the lips of many politicians in a bid to woo women voters. However, these merely seasonal champions of the Bill have been allowed to get away with their false promises.

⁸² The Legal and Parliamentary affairs committee that discussed the Draft Bill was constituted by 13 out of the 22 members of the committee. It would be interesting to observe that this sessional committee had slots for only 3 women and that one of these was missing at the time the Domestic Relations Bill was debated. This gender imbalance definitely placed the Bill at a disadvantage considering the fact that it was issues of gender under discussion.

“The DRB has its foes and *fors*. Some government officials and parliamentarians have used the Bill for their own gain. Government may front the Bill to get votes but when things get hot they pull out. Prior to the most recent presidential elections, the Bill was tabled for discussion and then abandoned because it proved to be controversial and potentially threatening to the incumbent government’s popularity among the electorate. This brings to the fore the real question. Who is for the DRB? At present the only real champions for the cause are the donor community, the Commission and some individuals. It should also be noted that even among these individuals, some are interested in particular clauses and not others”. **(Jean Kyazze, Legal Officer on the project)**

It was explained by one of the respondents that:

“Some leaders are not for some clauses embodied in the Bill because it is social legislation. Chances are that some provisions directly relate to the familial situations which, in some instances, threatens their interests. This applies to both male and female leaders. **(Jean Kyazze, Legal Officer on the project).**

This position was confirmed by the deputy Minister for Justice and Constitutional affairs who stated that:

“.. Most of us are already compromised. Polygamous, bigamous... It is a position of no redemption. We have to fight the Bill to save our interests. Banks and financial institutions are also involved in fighting against the property clauses within the DRB.

This point was further illustrated by another respondent who stated that:

“The groups of people who are charged with the duty of passing the laws are part and parcel of the society and system that we are trying to change. They have personal interests to protect. We should compare the process that this bill has taken with a bill in which cabinet has an interest: do they act the same way?**(Lillianne Ekirikubinza, External Commissioner on the project)**

Another issue that was raised was the fact that even some of the members of Parliament had been pressured to vote against the Domestic Relations Bill.

“...Within this category is the fear by the MP’s that they would lose votes if they were seen to be in support of this Bill...”

(Rose Ssemakula, Clerk of Parliament)

One of the respondents summed it all up to be electoral politics:

“It is just electoral politics. The president thought that he would lose votes from the Muslim community and villages. Government was just not interested in the Bill. We as Parliament had done everything to prevent the Bill by proposing the removal of the objectionable clauses. This process began in 1960, if by then women appreciated the need for this Bill. This is the 21st Century, are we moving backwards? For how long are we going to let electoral politics rule us? **(Ben Wacha, Member of Parliament)**

One of the respondents raised a pertinent issue that could be used to advance the progress of the Bill. He was of the view that much as this is the case, political will can be created:

“If the executive was for the Bill, it would have passed. With some political leaders viewing the Bill personally as a vote loser / or as a

ground for losing personal property. When there was no political will for the Leadership Code, the World Bank and donors made it a condition for giving aid. Political will can be created using the carrot and stick method.” **(Peter Edopu, Legal Officer on the project).**

It was consistently pointed out that although it was anticipated that women politicians would champion the Bill, things were different in reality:

“...It has been observed that women who own property also act like men around the property clauses of the DRB...” **(Carol Idembe, coordinator UWONET)**

Another respondent had this to say on the matter:

“Problems began with the assumption that women leaders would champion the cause of the Bill. Some women opposed the Bill because the Bill offered a give and take position on property and personal issues. They did not look at the Bill strategically...” **(Peter Edopu, Officer on the project)**

It was pointed out by one of the respondents that, in spite of the fact that initiatives were designed by the Uganda Women’s Parliamentary Forum, very few could be counted upon to advance the cause of the Domestic Relations Bill.

“There is a certain degree of reluctance on the part of some women parliamentarians. Not all women were involved and active in UWOPA activities regarding the DRB. We cannot count on all of them. ..”**(Jill Kyoheire, coordinator, UWOPA)**

The above findings point to the fact that much as it is usually contended that the Bill has failed because it is a male majority within the corridors of power, it is also a fact that some women leaders have also been corrupted by power and wealth and, as a result, have abandoned the cause of their sisters in the struggle

for emancipation. These deserters silently condone the injustices faced by their less privileged women in exchange for a guarantee that their property interests will be protected.

Other issues that were consistently raised included the role played by patriarchy:

“Society is male dominated. Attitudes are hard to change...” **(Sitnah Cherotich, Muslim Consultant on the project)**

Another respondent raised pertinent questions regarding the influence of the voices within a patriarchal society:

“Who are the voices in patriarchal society and whose interest do these voices represent? Society is patriarchal. People in power are likely to reject a law that is trying to give rights to people who have been oppressed. In order to do so, they make use of what would seem to be legitimate and sophisticated problems. It is possible that they fear the consequences of the law if it were passed. Whatever contention there is rotates around the issues of equality.” **(Lillian Ekirikubinza, external commissioner on the project).**

Another issue that was pointed out as pertinent is the structure of the Bill. It was also pointed out that the Bill failed because it attempted to consolidate the Marriage Laws of people with different beliefs and lifestyles into one. This was said to be unacceptable:

“...The main worry about the Bill is that it is an omnibus law. People are unclear about its provisions. I believe that we should go according to the status quo and develop and amend existing legislation as it is. The new aspects should be introduced in their respective legislation...” **(Freddie Ruhindi, Deputy Minister for Justice and Constitutional Affairs).**

It was also pointed out that certain contents of the bill were not appreciated by society:

“You cannot legislate upon marriage for example the law on adultery, this law is hardly enforceable. Adultery is curbed by other things...Some proposals were struck down. For instance, some churches do not recognize divorce. It is an anomaly within canon law.” **(Deputy Minister for Justice and Constitutional Affairs).**

It is also important to observe that Male chauvinism came out as a strong issue among those interviewed. This was observed as instrumental by one respondent who stated that:

“During the cabinet debates, you could see its head popping ...as a man how do you allow that? You are aware that most of the decision makers positions are occupied by men....There was also a problem of women making comments similar of those of men. ..” **(Percy Night Tuhaise, External Commissioner on the project)**

Another respondent stated that:

“The men felt that their rights would be trampled upon by the Bill.” **(Jill Kyoheire, UWOPA).**

Another said:

“The larger number of male parliamentarians was opposed to the clauses on matrimonial property. After the explanation they realized and came to understand and appreciate the need for such a law.” **(Ben Wacha, Member of Parliament)**

This position was confirmed by another respondent who stated that:

“Some parliamentarians were of the view that the Bill would deprive them of the freedom to choose how to allocate or distribute their property. Others claimed that the DRB envisaged that women would die before their husbands so that they would divide the property.” **(Rose Semakula, Clerk to Parliament)**

It is apparent that arguments and accusations were centered on the property clauses that sought to ensure fair distribution of property on the termination of marriage. The legislators were so focused on the *tasteless possibility* (my emphasis) of having to co-own matrimonial property with their spouses, that they overlooked the fact that this provision would only apply to parties who would fail to divide their property amicably at the termination of marriage.

It is also important to highlight the fact that in some cases those concerned misunderstood the provisions of the Bill. One of the respondents pointed out that a general problem regarding the Bill centered on misinterpretation of the clauses.

“Many times, Parliamentarians do not read or consult their constituencies. Continuity is also a problem. An MP may come into Parliament today and come back after 3 days. Very few of these leaders consult their constituency for their views.” **(Rose Ssemakula, clerk to Parliament)**

d) Insufficient networks

It was also observed that another major cause of the delay in the passing of the Bill was brought on by insufficient networks among those involved. Some of the organizations that could have played a supportive role, were absent in the struggle. This was attributed to the fact that the Bill was considered a women’s issue instead of a human rights issue.

“Would-be partners such as human rights organizations considered this Bill to be a women’s bill and therefore did not participate. Many parts of society who should have seen it as a human rights issue failed to do so and as such did not participate...” **(Irene Ovonji, officer on the project)**

e) Donor agenda

It was further advanced that the donor agenda determined the priority areas of law reform and as such, the Domestic Relations Bill was shelved. Another pertinent issue that was raised was the fact that the donors had since turned their focus on Commercial laws. This is pertinent in view of the fact that in most cases, it is the donors who determine the agenda:

“We observed at a JLOS sector review meeting that there was no provision for the DRB within the budget line. It would seem that commercial laws are the only priority”. **(Carol Idembe, UWONET coordinator)**

Another respondent pointed out that:

“The World Bank currently supports the ministry of Justice and the support it offers is for Commercial laws. The justice department has been made the mediator of economic issues. The commercial courts are the priority not the family division. The World Bank seems to drive the development process.” **(Irene Ovonji, Legal officer on the project)**

In view of the fact that Uganda is dependent on the donor community, it is not surprising that the priority legislation for the Ugandan Government is Commercial Law while social legislation is put on the shelf. The World Bank is currently promoting the development of Commercial Laws within Uganda.

The findings above point towards the fact that the Domestic Relations Bill faced innumerable hurdles from different angles stemming from the methodologies

employed, the advocacy strategy and other inadequately considered areas. It turns out that the majority of challenges faced by the Bill were unforeseen and not planned for. It was therefore difficult for both the Commission and civil society to efficiently strategize at the time.

The Bill was a first attempt at large scale stakeholder consultation and this had a big impact on the progress of the Bill. Some of the strategies used such as pretesting the bill among stakeholders ended up causing problems in the long run when the message of the DRB was distorted.

Finally, the fact that this proposal was the initial attempt at far reaching social legislation is key to understanding the challenges faced by the Bill. Ugandan society was challenged to its very core at the prospect of change in the status quo. Although several changes have taken root since independence such as Constitutional and political reform, the DRB is the first attempt at social reform. This posed a great challenge to the general public, especially, because the change was brought to their very doorstep! The DRB challenged the state of affairs because the private domain in which several injustices had long been practiced was now becoming a public affair. The DRB would in the long run break several women free from the culture of silence that has been handed down to generations of women through cultural institutions. The adage in Luganda is "*ebyomunju tebitotolwa*" literally meaning that the affairs of the home are not to be loosely discussed. Such is the position in most of the Ugandan society. The level of exposure of domestic injustices that this law could bring about was something that some of the patriarchal institutions of the Ugandan public could not handle.

CHAPTER FIVE

EMERGING ISSUES AND RECOMMENDATIONS

5.0 Introduction

The study findings have demonstrated the purpose of the Domestic Relations Bill and its potential for improving domestic relations in Uganda. Also identified were the challenges that were faced in the process of proposing the enactment. In view of the fact that the Bill lapsed with the 7th Parliament in 2005, the process is now to be recommenced from the cabinet stage. This is an opportunity for those involved to ensure that the passage of the Bill makes a fresh start. Efforts should be directed at designing a clear and concise strategy using hindsight and the experience gained from the initial process.

I have made recommendations from my assessment of the study findings. My discussion in this chapter will start with the general recommendations and progress to the specific recommendations.

5.1 General Recommendations

a. Advocacy strategies

It emerged from the study findings that advocacy for the Bill was problematic. In the first instance, the plans and budgets for advocacy were made only after it was established that the Bill was being challenged. It was only at that point that hurried efforts were made to sensitize the masses that had already been biased about the Bill. It emerged from the study that it would have been more effective to create awareness about the provisions of the Bill at the beginning of its life among the members of the public before those opposed to it could undermine it.

It is therefore necessary for the champions of the Bill, including the Uganda Law Reform Commission and civil society organizations, to design a comprehensive

advocacy strategy targeting members of the public, religious leaders and political leaders especially members of Parliament.

Since it was established that part of the friction was brought about because the Bill was considered to favor women, it shall be necessary to shift the spotlight to the family as beneficiaries of the Bill in order to steer clear of the stigma. In order to do this effectively, the advocacy message should be repackaged to demonstrate how men and children stand to gain from the Bill. Furthermore men and children should also be involved in advocating for the Bill.

It also transpired that there was no networking between the advocates of the Bill. This resulted in a duplication of efforts and wastage of resources that could have been avoided. The Commission and other stakeholders such as key government ministries, members of civil society organizations and members of the academia should ensure maximum output from the available resources by designing a uniform strategy that draws from the strengths of each individual organization.

The study established that advocacy for the Bill only gathered pace when it was about to be debated in Parliament. The result was that the efforts at advocacy were rushed and uncoordinated. These last minute efforts have proved futile. It shall be necessary for Government and Civil society to establish a free channeling of information about the process of the Bill so that the institutions and organizations involved in advocacy are informed in sufficient time to make proper plans.

It shall also be necessary for the organisations involved in advocacy to design a continuous advocacy strategy using the media press, literature and publications. Media campaigns on the Domestic Relations Bill should be aimed at demonstrating the linkages between the Bill and topical issues such as

Globalization, Religion, HIV/AIDS, Poverty, Domestic Violence and Gender mainstreaming among others. These linkages will bring to the fore the relevance of the Bill.

b. Political Will

It has been established by the study that one of the major reasons why the Bill has not been passed to date is because there was a lack of political will on the part of the executive and the legislative body. Part of the reason for this is the fact that these political leaders are not aware of the full range of benefits that may be obtained from this piece of legislation. As earlier mentioned, the Domestic Relations Bill fits into some of the key policy frameworks of Uganda, i.e., The Poverty Eradication Action Plan and the HIV/AIDS policy and the Gender Policy. This should be underscored in the advocacy campaigns specifically designed for the members of the executive.

It has also been pointed out that political will can be created by making the passage of the Bill a pre-condition for donor funding. As was noted by one respondent:

“When there was no political will for the leadership code, the World Bank and donors made it a condition for giving aid. Political will can be created using the carrot and stick method”. **(Peter Edopu, Officer on the project).**

Although this is possible, it may not yield the desired results because the Bill will always be looked at as a donor driven reform.

It is necessary to employ allies including the donor community, political leaders from other countries and heads of regional and international organizations such as the United Nations, The African Union, the East African Community and such other bodies in order to move the political leaders in the necessary direction.

It would also be necessary to identify significant advocates within government such as Ministers and Members of Parliament who may be sympathetic to the cause of the Domestic Relations Bill, and involve them in lobbying for the Bill at the level of political leadership.

c. Establishment of Qadhi Courts

Some of the resistance against the Bill can be addressed by allowing Muslims to secede from the proposed Domestic Relations Bill. The Constitution provides for qadhis courts for marriage, divorce, inheritance of property and guardianship as subordinate courts⁸³. This study established that it would be advantageous for Government to set up Qadhi courts and provide a framework law that sets out the mandate, practice and procedure required therein. This law should only provide framework legislation. Details should be left to the heads of these courts to develop their own jurisprudence.

The Uganda Women's Network has commissioned a study using Muslim Consultants to read the Koran and Hadith and interpret the true position of Islam on issues of marriage and Divorce. This report should be used to feed into the amendment of the Mohammedan Law on Marriage and Divorce and to govern the operation of Qadhi Courts.

d. Broaden scope of debate and dialogue

Part of the problem can also be attributed to the fact that the dialogue and debate on the Bill is restricted to the law itself and subsequently the legal profession. This excludes other disciplines that would otherwise help to enlighten the general public on the benefits of the Bill.

⁸³ Article 129 1 (d)

So far the Bill has only been discussed on the basis of rights protection, Constitutional guarantees and Human Rights implications. This has restricted the debate to members of the legal fraternity. However, the Bill covers a much larger scope than that. Issues of Domestic Relations could be correlated to Crime, Medical practice, Religious principles, Culture and modern trends. As such the dialogue on the Bill shall bring on board a much broader range of advocates outside the legal fraternity.

e. Mobilization of women as a constituency

It has been pointed out by some respondents that women have not been mobilized into a powerful constituency that can demand the enactment of this law. The study established that:

“Though constituting a significant majority of voters, the women had not been mobilized to say no to the ruling party on account of their concerns in the Bill having been neglected for the last 20 years of the NRM administration⁸⁴.”

Part of this can be attributed to the fact that divisions exist between the urban elite and the rural women. Some of the rural women have been successfully brain washed into believing that the Bill is an attempt by urban women to take over their husband’s property⁸⁵. As such, some of them do not want to be associated with the cause of the Bill. It shall therefore be necessary to design advocacy programs specifically targeting rural women to bring them on board. Off course, it cannot be said that all the women in the urban areas are sufficiently educated about the Bill and the opportunities that they stand to gain from its enactment. It shall also be necessary to target this category. A considerable number of women demanding that their Members of Parliament enact the Bill

⁸⁴ DRB Coalition report at page 25.

⁸⁵ DRB Coalition report supra

may speed up its enactment. Civil society should mobilize women into a strong constituency that can exercise their political and economic power to be heard.

It may also be necessary to place a media spotlight on the parliamentary debates regarding the Domestic Relations Bill naming members of parliament and the positions taken by them on certain issues within the Bill especially those concerning the protection of women such as co-ownership of property and marital rape. This will force accountability of the members of Parliament towards their female constituents.

f. Support Networks from other Human Rights organizations

It was established during the study that would be partners such as human rights organizations considered this Bill to be a women's bill and therefore did not participate in its advocacy. These included the Human Rights Network and the Foundation for Human Rights Initiative. (HURINET/FHRI)⁸⁶. I believe that these organizations have a lot to offer by way of advocacy, coordination and strategy. It is therefore unfortunate that they did not participate in the belief that the DRB campaign was outside their scope of operation. Efforts should be made to ensure that all the rights organizations are made to appreciate that women's rights are human rights. Specific lobbying and advocacy strategies should be designed to get them on board.

g. International organisations

It was also established by the study that the agenda of Parliament is determined by The World Bank and other international organisations. It was further established that these organizations are giving commercial laws first priority over family and social legislation. Efforts should be made to lobby these organizations in order to make them appreciate the linkages between the

⁸⁶ Interview with Irene Ovonji, Legal officer on the project.

Domestic Relations Bill and the development process. Specific attention should be paid to the fact that women within the domestic arena are the backbone of the agricultural sector and, as such, it would be necessary, as far as possible, to accommodate their interests within the overall development frameworks.

h. Public interest litigation

It has been observed that the courts of Judicature wield a lot of power in the area of legal interpretation and law reform. The judicial pronouncement in the FIDA case promoted the position of irretrievable breakdown of marriage over the fault based system of Divorce⁸⁷. This initiative resulted in reform in the area of Divorce as was proposed within the Domestic Relations Bill. Similarly, test cases of this nature should be made in order to obtain judicial pronouncements particularly on issues regarding the subordination of women that are contained within the Bill. These may subsequently be removed from the Bill where judicial pronouncements are successfully obtained. In the long run this will serve to 'decongest' the Bill.

i. Strategies regarding the Bill

It is apparent that a harmonized law on marriage has failed. It is also a fact that the title of Domestic Relations Bill has become unpopular among the members of the public because of the negative publicity that the Bill has received. It shall therefore be necessary to rename the Bill. The Uganda Law Reform Commission should also consider taking the avenue of breaking up the Bill and proposing amendments within already existing legislation.

Another possible avenue would be to identify areas within the Bill that have caused contention, isolate them and consult with those opposed to them to create a consensus.

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There are three categories of issues those which are not contentious, such as the process of solemnization of marriage and the prohibited degrees of kindred and affinity, those which are contentious to individual groups such as the regulation of the practice of polygamy and those which are contentious to a majority such as cohabitation resulting in marriage. The Bill should be strategically moved to have the contentious issues introduced through other legislation.

5.2 Long term reform proposals for the Uganda Law Reform Commission

The process of the Domestic Relations Bill has demonstrated the challenges of enacting social legislation. In view of the fact that social legislation challenges the core of societal belief, it requires tactful handling and planning.

It shall be necessary in future for the Commission, at the initial stage, to identify potential allies and foes for any piece of legislation that requires a high level consensus from the public. These should be brought on board at the planning stage to ensure that they are involved in designing the strategies to be used in obtaining a consensus position.

The Commission should carry out continuous consultations after the initial research processes and should respond instantly to points of controversy that may be raised against the proposals being made. Such information may also be obtained through the media.

The Commission should design an advocacy strategy alongside the study in order to: keep the public informed about what reforms are being undertaken and the methodology being employed; and to obtain information on any pertinent issues that may have been left out by the Commission.

The media has been identified as an influential tool in the process of law reform. Efforts should also be made to ensure that linkages are established and maintained with the media. This will not only guarantee successful media campaigns but also balanced and informed reports on proposed legislation thereby limiting incidences of public bias.

The Commission should limit sex based biases towards its reforms. This can be achieved by ensuring that a balanced picture is given about the beneficiaries of any reform, even in instances where it may be that one particular sex stands to gain more. The Commission should also take steps to ensure that the message being sent out by civil society is similarly balanced. Even though it is a fact that the Domestic Relations Law shall to a large extent promote the status of women, it has since been proved that focusing the spotlight on improving the status of women has worked to the detriment of the Bill. It may be better to emphasize how the law will improve marital relations.

In order to target political will and donor support, the Commission should undertake specialized studies to link the intended legal reforms to policy agendas and development initiatives. These study reports should be circulated within the media as part of the advocacy initiatives.

The Commission should target bringing the executives directly concerned with the proposed legislation on board at the initial stages. This should be done to ensure that they appreciate the reform initiatives and can thereby participate in their advancement.

It shall also be necessary to target members of Parliament when creating consensus for proposed legislation in order to enable the proposed legislation to sail a smooth course as possible.

5.3 Conclusion

The Domestic relations Bill has posed a great challenge to the Law Reformers and the civil society organization. However, it is a blessing in disguise that the Bill lapsed with the 7th Parliament because it has created an opportunity for those concerned to reflect on its process and see how things can be done differently.

Now that the 8th Parliament has been constituted, it shall be necessary for the framers and advocates to re-strategise and come up with a water-tight strategy to ensure the success of the bill. It is my sincere hope that this study paper has brought to light the challenges that lie in the way of the Bill and proposed workable strategies to deal with the issues of concern.

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