

**THE MARRIAGE BILL, 2012**

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## **THE MARRIAGE BILL, 2012**

### **A Bill for**

**An Act of Parliament to amend and consolidate the various laws relating to marriage and divorce and for connected purpose.**

ENACTED by the Parliament of Kenya as follows—

### **PART I—PRELIMINARY**

Short title.

1. This Act may be cited as the Marriage Act, 2012.

Interpretation.

2. In this Act, unless the context otherwise requires—

“child” means an individual who has not attained the age of eighteen years;

“cohabit” means to live in an arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage.

“conciliatory body” means—

(a) a body established under this Act for the purpose of reconciling parties to a marriage;

(b) a mechanism of conciliation recognised under customary or Islamic law;

(c) any other body designated as such by the Cabinet Secretary by notice in the *Gazette*; or

(d) any other body established by any written law;

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“court” means a resident magistrate’s court established under section 3 of the Magistrates’ Courts Act;

“Director” has the meaning assigned to it under the Kenya Citizens and Foreign Nationals Management Service Act;

“dowry” means any token of stock, goods, moneys or other property given or



promised in consideration of an intended marriage;

“faith” means an association of a religious nature and, in the case of any system of religious beliefs which is divided into denominations, sects or schools, any such denomination, sect or school;

‘Hindu’ means a person who is—

- (a) a Hindu by religion in any form (including a *Virashaiva*, a *Lingayat* and a follower of the *Brahmo*, *Prarthana* or *Arya Samaj*);
- (b) a Buddhist of Indian origin; or
- (c) a Jain or a Sikh by religion;

“matrimonial home” means the building and property or part of a building or a compound in which the spouses ordinarily reside or formerly resided together, as the case may be;

“matrimonial proceedings” means proceedings instituted under Part IX and include proceedings for the payment of maintenance or for custody of children instituted independently of a petition for a declaratory decree or for annulment, separation or divorce;

“minister of religion” means a minister, priest, Kadhi or other person who is authorised to celebrate marriages under this Act;

“monogamous marriage” means a marriage whose character has been converted to a monogamous marriage by a declaration made under section 9, including an originally polygamous or potentially polygamous marriage;

“nominal payment” means a payment that is coincidental to but not part of the maintenance fee;

“party”, in relation to a marriage, an intended marriage or a purported marriage, means a spouse in a marriage, or the intended spouse to a marriage or purported spouse in a marriage;

“polygamy” means the state or practice of a man having more than one wife simultaneously;

“prohibited marriage relationship” has the meaning assigned to it in section 11;

“spouse” means a husband or wife;

“witness” means to be present at, to observe, and to attest to the celebration of a

marriage by signing ones name to or putting ones mark on a marriage certificate.

**PART II— GENERAL PROVISIONS**

Meaning of marriage.

**3.** (1) Marriage is the voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with this Act.

(2) Parties to a marriage have equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

(3) All marriages registered under this Act have the same legal status.

Minimum age.

**4.** A person shall not marry unless that person has attained the age of eighteen years.

Witnesses to a marriage.

**5.** (1) A marriage conducted under this Act shall be witnessed by two competent witnesses.

(2) A person is not competent to act as a witness if that person is—

(a) below the age of eighteen years;

(b) otherwise not competent to enter into a contract because of—

(i) mental disability rendering that person incapable of understanding what the parties are doing; or

(ii) intoxication; or

(c) unable to understand, whether through an interpreter or otherwise, the language in which the ceremony is held.

(3) The person who celebrates a marriage shall not be a witness to the marriage for the purposes of this section.

Kinds of marriages.

**6.** (1) A marriage may be registered under this Act if it is celebrated—

(a) in accordance with the rites of a Christian denomination;

(b) as a civil marriage;

(c) in accordance with the customary rites relating to any of the communities in Kenya;

(d) in accordance with the Hindu rites and ceremonies;

(e) in accordance with Islamic law; or

(f) in accordance with the practice of any other faith or other group as may be designated by notice in the *Gazette*.

(2) A Christian, Hindu or civil marriage is monogamous.

(3) A marriage celebrated under customary law or Islamic law is presumed to be polygamous or potentially polygamous.

Declaration of marriage registration areas.

**7.** The Cabinet Secretary may, by notice in the *Gazette*, declare any area of Kenya to be a registration area for the purposes of this Act.

Conversion of marriages.

**8.** (1) A marriage may be converted from being a potentially polygamous marriage to a monogamous marriage if each spouse voluntarily declares the intent to make such a conversion.

(2) A polygamous marriage may not be converted to a monogamous marriage unless at the time of the conversion the husband has only one wife.

(3) A declaration under subsection (1) shall be made in the presence of a Director and shall be recorded in writing and signed by each spouse.

(4) A marriage officer before whom a declaration is made under subsection (2) shall forthwith transmit a copy thereof to the Director.

(5) Where a declaration is made under subsection (1), the Director shall take possession of the certificate registering the marriage as potentially polygamous and shall issue a certificate registering the marriage as monogamous.

(6) The Director shall enter the details of converted marriages in the prescribed manner into a register maintained for that purpose.

Subsisting marriages.

**9.** Subject to section 9, a married person shall not, while—

(a) in a monogamous marriage, contract another marriage; or

(b) in a polygamous or potentially polygamous marriage, contract another marriage in any monogamous form.

Prohibited marriage relationship.

**10.** (1) A person shall not marry—

(a) that person's grandparent, parent, child, grandchild, sister, brother, cousin, great aunt, great uncle, aunt, uncle, niece, nephew, great niece or great nephew;

(b) the grandparent, parent, child or grandchild of that person's spouse or former spouse;

(c) the grandparent, parent, child or grandchild of that person's former spouse;

(d) a person whom that person has adopted or by whom that person has been adopted;

(e) any other person where such marriages is prohibited under customary law.

(2) For the purposes of this section, a relationship of the half-blood a bar to marriage.

(3) A person who, by this section, is forbidden to marry shall be said to be within a prohibited marriage relationship.

(4) The marriage of a person with that person's cousin does not apply to persons who profess the Islamic faith.

Void marriages.

**11.** (1) A union is not a marriage if at the time of the making of the union—

(a) either party is below the minimum age for marriage;

(b) the parties are within the prohibited marriage relationship;

(c) either party is incompetent to marry by reason of a subsisting marriage;

(d) by order made under section 25, the court has directed that the intended marriage is not to be contracted;

(e) the consent of either party has not been freely given;

(f) either party is absent from the ceremony;

(g) both parties knowingly and wilfully permit a person who is not authorised to do so to celebrate the union;

(h) either party is mistaken about the identity of the other party; or

(i) either party knowingly or wilfully enters into the marriage for fraudulent purposes.

(2) Consent is not freely given where the party who purports to give it—

(a) is coerced;

(b) is influenced by fraud;

(c) is mistaken as to the nature or purport of the ceremony; or

(d) is suffering from any mental disorder or mental disability whether permanent or temporary, or is intoxicated, or is under the influence of drugs, so as not to appreciate the nature or purport of the ceremony.

Voidable marriages.

**12.** Subject to section 50, a marriage is voidable if—

(a) at the date of the marriage—

(i) either party was and has ever since remained incapable of consummating it;

(ii) either party was and has ever since remained subject to recurrent attacks of insanity;

(b) there was a failure to give notice of intention to marry under section 18;

(c) notice of objection to the intended marriage having been given was not withdrawn or dismissed;

(d) a person officiating thereat was not lawfully entitled to do so.

(e) the fact that a person officiating the marriage was not lawfully entitled to officiate;

(f) a procedural error that does not undermine the essence of the marriage in question; or

(g) failure to register the marriage.

Spouses and the law of tort.

**13.** Despite the provisions of any other written law—

(a) a spouse shall not be liable for the torts of the other spouse by reason of being a spouse;

(b) spouses have the same liability in tort towards each other as if they were not married; and

(c) a spouse shall be entitled to claim, in any action resulting from a negligent act, omission or breach of duty, which causes loss of the companionship of the other, or damages in respect of that loss.

Arrangement to live apart.

**14.** (1) The parties to a civil marriage may agree to live apart for one year and any such agreement shall be valid and enforceable, and shall be filed with the Court.

(2) Despite subsection (1), the court may vary or set aside the agreement or any of its provisions if the court is satisfied that since the agreement was made there has been a material change of circumstances.

(3) A party to a civil marriage may apply to the court to determine their status after the expiry of the one year period from the date of agreement.



(e) the date and venue of the marriage ceremony.

(3) The notice under subsection (1) shall be signed by both parties.

Publication of notice of intention to marry.

**20.** After receiving a notice under section 18—

- (a) the Director shall, publish the notice in such form as may be prescribed.; and
- (b) the person in charge of the place of public worship shall publish such notice in the prescribed manner in the public place of worship where the marriage is to be celebrated.

Objection to a notice of intention to marry.

**21.** (1) A person who knows of an impediment to an intended marriage may give a written notice of objection to a Director and the person in charge of a public place of worship where notice of intended marriage has been posted in accordance with section 19.

(2) A notice of objection under this section shall, where practicable, be given in the same registration area where notice of intended marriage has been given under section 18.

(3) A notice of objection shall include the name of the person giving the notice of the objection and that person's relationship with either of the intended parties and the shall state the reasons for objection to the intended marriage.

(4) A person who has given notice of objection may withdraw the objection in writing at any time.

Obligations of the Director in relation to objections.

**22** (1) Upon receiving a notice of objection the Director shall notify in writing the person who intends to officiate at the marriage ceremony of the objection and shall direct such person not to officiate at the intended marriage until the objection is either withdrawn or otherwise finally determined.

(2) Where the Director receives a written withdrawal of the objection to the intended marriage the Director shall authorise the person who intends to officiate at the marriage ceremony to officiate at the marriage.

(3) Upon receiving a notice of objection, the Director shall summon the parties to the intended marriage and the person that has given notice of objection to the intended marriage and shall hear them and their witnesses, if any, and any other relevant

	person.
Determination of objection.	<p><b>23</b> (1) The Director shall hear an objection under section 24 within seven days of the Director receiving the notice of objection.</p> <p>(2) The Director shall determine an objection under section 23 within a reasonable period but in any case not more than seven days after the hearing under subsection (1).</p> <p>(3) Any party dissatisfied with the decision of the Director may appeal to the court within seven days of the decision by the Director.</p> <p>(4) A person who makes a frivolous, malicious or fraudulent objection commits an offence and upon conviction is liable to imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or to both.</p>
Effect of an appeal to an objection.	<p><b>24.</b> A marriage ceremony may not be performed until any appeal that has been made against a decision of the Director to permit the marriage ceremony to be performed is heard and determined.</p>
Appeal proceedings.	<p><b>25.</b> (1) The court shall hear and determine any appeal expeditiously.</p> <p>(2) The court may hear and determine an appeal despite the failure of any party or other person to appear before it.</p>
Certificate of no impediment.	<p><b>26.</b> (1) Where a person does not object to the celebration of a marriage, the Director shall issue the persons intending to marry with a certificate of no impediment.</p> <p>(2) Where a Kenyan wishes to celebrate a marriage outside Kenya and where that Kenyan is required to obtain a certificate of no impediment from the Director, such Kenyan shall apply for such a certificate and the Director shall issue the certificate if no person objects to the intended marriage.</p>
Signing of the marriage certificate.	<p><b>27.</b> (1) When a marriage has been celebrated in accordance with the provisions of this Part, the person officiating at the marriage ceremony shall—</p> <p>(a) complete and sign a marriage certificate in the prescribed form; and</p> <p>(b) cause it to be signed by the parties and by the witnesses to the marriage.</p> <p>(2) The person officiating at the marriage ceremony shall issue—</p> <p>(a) one copy of the marriage certificate to the parties;</p> <p>(b) retain one copy of the marriage certificate; and</p> <p>(c) deliver one copy of the marriage certificate to the Director.</p>
Recognition of foreign	<p><b>28.</b> A marriage celebrated outside Kenya otherwise than in accordance with this</p>



marriages as Christian marriages in Kenya.

Part, shall be recognized as a marriage under this Part if—

- (a) it is contracted in accordance with the law of the country where it is celebrated and is consistent with the requirements of this Part;
- (b) at the time of the celebration of the marriage, the parties to the marriage had the capacity to marry under the law of the country where the marriage is celebrated; or
- (c) at the time of the marriage any party to the marriage is domiciled in Kenya, both parties had the capacity to marry under this Act.

Christian marriages at the embassy, high commission or consulate.

**29.** A marriage celebrated in the embassy, high commission or consulate of a foreign country in Kenya is a Christian marriage under this Part if—

- (a) it is contracted in accordance with the law relating to Christian marriages of that foreign country; or
- (b) at the time of the marriage, the parties had capacity to marry under the law of that foreign country and under this Act; or
- (c) either of the parties is at the time of the marriage domiciled in Kenya, both parties had capacity to marry under this Act.

#### **PART IV—CIVIL MARRIAGE**

Celebration of civil marriages.

**30.** A marriage under this Part shall be celebrated by the Director in the place determined by the Director.

Notice of intention to marry

**31.** The provisions of sections 18 to 26 of this Act shall apply with the necessary modifications to a marriage celebrated under this Part.

Power of Director to dispense with notice.

**32.** (1) Subject to section 19, the Director may, by licence in the prescribed form, dispense with the notice required by section 30 where there is sufficient reason to do so.

(2) Before dispensing with the notice, the Director shall confirm that—

- (a) neither party is within a prohibited relationship;
- (b) either party is below the minimum age for marriage;
- (c) neither party is married to another person.

Effect of appeal on the findings of an objection.

**33.** (1) The provisions of section 24 apply with the necessary modifications.

(2) Unless a notice of objection has been withdrawn the Director shall not exercise the power conferred by section 32 to dispense with a notice.

Celebration of civil marriage.

**34.** When a marriage has been celebrated in the presence of a Director, the Director shall—

- (a) complete and sign a marriage certificate in the prescribed form and
- (b) cause the marriage to be signed by the parties and by the witnesses to the marriage and give two copies of the marriage certificate to the parties and retain one copy.

Certificate of no impediment.

**35.** (1) If the Director is satisfied that no impediment to the intended marriage exists, the Director shall celebrate the marriage.

(2) If a Kenyan wishes to celebrate a civil marriage in a foreign country in accordance with the law of that country and the law of that country requires a certificate of no impediment, the Director may issue a certificate of no impediment.

Civil marriages celebrated at the Kenyan embassy, high commission or consulate between non-Kenyan citizens.

**36** A person who is not a Kenyan may celebrate a marriage under this Part in a foreign country if the marriage is celebrated in the presence of the Director or a person authorised by the Director for that purpose in any Kenyan embassy, high commission or consulate.

Civil marriages in foreign countries.

**37** A marriage celebrated in a foreign country otherwise than in accordance with section 36 is valid if—

- (a) it was contracted in accordance with the law of that country;
- (b) at the time of the marriage the parties had the capacity to marry under the law of that country;
- (c) either of the parties is at the time of the marriage domiciled in Kenya, both parties had capacity to marry under this Act; and
- (d) if the Director is satisfied that the parties have obtained a certificate of no impediment if the law of that country requires the parties to an intended marriage to obtain such a certificate.

Civil marriages at the Kenyan embassy, high commission or Consulate for Kenyan citizens.

- 38.** (1) A Kenyan may celebrate a civil marriage in a Kenyan embassy, high commission or consulate in a foreign country if—
- (a) it is celebrated in accordance with the law of that foreign country or
  - (b) both parties have the capacity to marry under the law of that foreign country.
- (2) Despite subsection (1), a civil marriage celebrated in a Kenyan embassy, high commission or consulate in a foreign country is valid in Kenya if the parties were capable of celebrating the marriage in Kenya.

Recognition of foreign marriages as civil marriages in Kenya.

- 39.** A civil marriage contracted in a foreign country shall be recognized as a valid marriage if—
- (a) it is contracted in accordance with the law of that country;
  - (b) it is consistent with the provisions of this Part; and
  - (c) the parties have the capacity to marry under this Act.

Appointment of diplomatic staff as celebrants of marriage.

- 40.** (1) The Cabinet Secretary may appoint by notice in the *Gazette* a member of the diplomatic staff of Kenya in a foreign country to which this Part applies to celebrate marriages under this Act in respect of that country.
- (2) The Director shall maintain a register of all marriages conducted in foreign countries.

Duty to register marriages.

- 41.** (1) A person who celebrates or officiates at a marriage shall deliver a copy of the marriage certificate to the Director and the Director shall enter the details of such a certificate in a register of marriages maintained for that purpose by the Director.
- (2) Where the Director officiates at a marriage, the Director shall enter the details of the marriage in the register of marriages maintained under subsection (1).
- (3) A person who fails to register a marriage commits an offence and shall upon conviction be liable to a fine not exceeding five thousand shillings or to a community service order or to both.
- (4) The Cabinet Secretary may make regulations prescribing the registration of marriages.
- (5) Despite subsection (4), the Cabinet Secretary may make prescribe different regulations for different kinds of marriage.

## **PART V —MARRIAGE UNDER CUSTOMARY LAW**

Governing law for  
Customary marriage.

**42.** (1) A marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.

(2) Where the payment of dowry is required to prove a marriage under customary law, the payment of a token amount of dowry shall be sufficient to prove a customary marriage.

(3) The Director may make regulations regarding the criteria for recognizing valid marriages celebrated under customary law and the Director may consult any relevant person before making such regulations.

Notification of  
customary marriage.

**43.** The parties to a customary marriage shall notify the Director of such marriage within three months of completion of the relevant ceremonies or steps required to confer the status of marriage to the parties in the community concerned.

Contents of notification  
of Customary marriage.

**44.** (1) The notification under section 20 shall—

- (a) specify the customary law applied in the marriage of such parties; and
- (b) contain a written declaration by the parties, that the necessary customary requirements to prove the marriage have been undertaken.

(2) A declaration under subsection (1) shall contain the signatures or personal marks of two adult witnesses and each witness shall have played a key cultural role in the celebrating the marriage.

(3) The notification under subsection (1) shall confirm—

- (a) that the parties to the marriage were 18 years of age at the time of the marriage;
- (b) that the marriage is between persons who are not within a prohibited marriage relationship;
- (c) that the parties freely consent to the marriage; and
- (d) in the case of a second or subsequent marriage, that the current wife or wives has or have, as the case may be, been informed of the marriage.

(4) Despite subsections (1) and (2), if the marriage is a subsequent marriage, the notification shall also declare whether the current wife or wives has or have been informed of the intended marriage and whether she or they approve or disapprove of the intended marriage and her or their reasons for approving or disapproving of the

intended marriage

## **PART VI—HINDU MARRIAGE**

Application of this Part.

**45.** This Part shall apply only to persons who profess the Hindu faith.

Minister allowed to solemnize Hindu marriages.

**46.** (1) A marriage under this Part is may be officiated by a person authorised by the Director and in accordance with the Hindu religious rituals of a party to the marriage.

(2) A person authorised to officiate at a marriage under this Part shall record the details of a marriage under this part in the prescribed form and shall deliver the record to the Director for the registration of such a marriage.

## **PART VII — MARRIAGE UNDER ISLAMIC LAW**

Application of Islamic law.

**47.** This Part shall only apply to persons who profess the Islamic faith.

Officiation of Islamic marriages.

**48.** (1) A marriage under this Part shall be officiated by a kadhi, sheikh or imam as may be authorised by the Director.

(2) A person authorised to officiate at a marriage under this Part shall record the details of a marriage under this part in the prescribed form and shall deliver the record to the Director for the registration of such a marriage.

## **PART VIII—APPOINTMENT OF DIRECTOR OF MARRIAGES AND MARRIAGE OFFICERS**

Appointment of Director and Marriage officers.

**49.** (1) There shall be a Director of Marriages who shall be appointed by the Cabinet Secretary.

(2) The Director shall—

(a) perform civil marriages;

(b) register all marriages;

(c) issue marriage certificates for all registered marriages;

(d) issue certificates of no impediment to persons who intend to marry and who qualify for such a certificate;

(e) determine the rules governing customary marriages; and

(f) determine objections of notices to marry

(3) The Director may appoint such marriage officers at national and county levels, as may be necessary upon such terms and conditions as may be determined by the Public

Service Commission for the purposes of this Act.

Appointment of marriage officers in foreign countries.

**50.** (1) The Director may by notice in the *Gazette*, appoint a member of the diplomatic staff of Kenya in a foreign country to celebrate civil marriages for the purposes of this Act.

(2) A person appointed under subsection (1) shall keep a record of all marriages celebrated that that person in that country and shall deliver the record to the Director for the registration of such marriages.

Licensing ministers of faith.

**51.** (1) A minister of faith may apply to the Director to be appointed as a marriage officer for the purposes of this Act.

(2) The Director may appoint a minister of faith who makes an application under subsection (1) as a marriage officer.

(3) The Director shall issue a person appointed as a marriage officer under this section with a license.

(4) A person appointed as a marriage officer under this section may only officiate at marriages celebrated according to the traditions of the faith in which the minister of faith serves.

(5) The Director may cancel a license issued to a person under this section and shall give written reasons for such withdrawal.

(6) A licence granted in respect of marriages under any law in operation before the commencement of this Act shall, if the licence has not been cancelled at the commencement of this Act, be deemed to be a licence granted under this section.

## **PART IX—REGISTRATION OF MARRIAGES**

Registration of Christian marriages.

**52.** (1) Where a marriage is celebrated under Part III of this Act, the person officiating at the marriage shall forward a copy of the certificate of marriage to the Director within 14 days of the celebration of the marriage for the registration of that marriage.

(2) Before the Director registers a marriage under subsection (1) the Director shall confirm that the marriage complies with the provisions of this Act.

Registration of civil marriages.

**53.** (1) Where the Director celebrates a marriage under Part IV of this Act, the Director shall register the marriage.

(2) Where a marriage officer celebrates a marriage under Part IV, the marriage officer shall record the details of the marriage in the prescribed form and forward the record to the Director and the Director shall register the marriage.

(3) The Director shall issue a certificate of marriage to the parties to a marriage celebrated under Part IV of this Act.

Registration of  
Customary marriage.

**54.** (1) Where the parties to a marriage under Part V have completed the necessary rituals for their union to be recognised as a marriage under the customary law of any of the parties both shall apply to the Director within six months of their marriage for a certificate and both shall appear in person before the Director to be issued with the certificate of marriage.

(2) Where the Director is satisfied that the parties to a marriage under Part V have complied with the provisions of this Act, and the parties have appeared before him in person, the Director shall register the marriage and issue the parties with a certificate of marriage.

Registration of Hindu  
marriages.

**55.** (1) Where a person authorised by the Director celebrates a marriage under Part VI, that person shall record the details of the marriage in the prescribed form and deliver the record to the Director and the Director shall register the marriage.

(2) Before the Director registers a marriage celebrated under Part VI, the Director shall confirm that the marriage complies with the provisions of this Act.

(3) The Cabinet Secretary may make rules regarding the registration of marriages under Part VI of this Act.

Registration of Islamic  
marriages.

**56.** (1) Where a Kadhi, sheikh or imam authorised by the Director celebrates a marriage under Part VII of this Act, the Kadhi, sheikh or imam shall—

- (a) Record the details of the marriage;
- (b) Issue the parties to the marriage with a certificate of marriage; and
- (c) Deliver the record and certificate to the Director.

(2) Where the Director receives a record and certificate of a marriage celebrated under Part VII and the Director is satisfied that the provisions of this Act have been complied with, the Director shall register the marriage.

Registration of other  
marriages.

**57.** The Cabinet Secretary may, in consultation with relevant stakeholders, make regulations for registration of any other type of marriage not provided for under

- Registration of marriages contracted abroad.
58. (1) A Kenyan who celebrates a marriage outside Kenya may apply to the Director to have that marriage registered and the Director may register such a marriage only when the Director is satisfied that the marriage complies with the provisions of this Act.
- (2) The Director may consider a marriage certificate issued in that country or such other proof as the Director may consider sufficient before registering a marriage celebrated outside Kenya and where a marriage certificate is not in the official languages it shall be accompanied by a certified translation into the official languages.
- Evidence of marriage.
59. (1) A marriage be proven in Kenya by—
- (a) a certificate of marriage issued under this Act or any other written law;
  - (b) a certified copy of a certificate of marriage issued under this Act or any other written law;
  - (c) an entry in a register of marriages maintained under this Act or any other written law;
  - (d) a certified copy of an entry in a register of marriages maintained under this Act or any other written law; or
  - (e) an entry in a register of marriages maintained by the proper authority of the *Khoja Shia, Ith'nasheri, Shia* imam, *Ismaili* or *Bohra* communities, or a certified copy of such an entry.
- (2) Despite subsection (1), a marriage may be proven in Kenya if it was celebrated in a public place of worship but its registration was not required, by an entry in any register maintained at that public place of worship or a certified copy of such an entry.
- Copies of decrees of annulment and divorce to be sent to Director.
60. Where a court grants a decree of the annulment of a marriage or the dissolution of a marriage, it shall deliver a certified copy of the decree to the Director and the Director shall register the annulment or dissolution in a register maintained for the purpose.
- Registration of foreign annulments and divorces.
61. (1) Where a marriage celebrated in Kenya is annulled or dissolved by a decree of a foreign court, any party to the annulled or dissolved marriage may apply to the



Director to register the decree.

(2) Where the director is satisfied that a decree under this section should be recognised in Kenya as if the decree was made by a Kenyan court, the Director shall register the decree in a register maintained for the purpose.

(3) An application under this section shall include—

(a) a copy of the decree and where the decree is not in an official language, a certified translation of the decree in an official language and in the prescribed form; and

(b) a declaration under the law of the country in which the decree was obtained made to a legal practitioner authorised to witness such a declaration that states the decree is effective in that country as if the marriage had been celebrated in that country.

Endorsement of  
marriage registers.

**62.** (1) The Director shall enter the details of the declaration made under section 9 against the relevant entry in the register of marriages.

(2) The Director shall enter the details of the decree registered under section 61 against the relevant entry in the register of marriages and such an entry shall be sufficient proof that the marriage has been determined by a foreign decree of annulment or dissolution of marriage.

Correction of errors.

**63.** (1) A party to a marriage may apply to the Director or to a marriage officer or to a person authorised by the Director to correct a clerical error or omission in a register of marriage or a certificate of marriage regarding that person's marriage.

(2) Where the Director, a marriage officer or a person authorised by the Director makes a correction under subsection (1), the Director, marriage officer or person authorised by the director shall sign and date the correction and shall enter the details of the correction against the relevant entry in the register of marriage.

(3) The Director shall notify the parties to a marriage of any changes made in the register of marriage or marriage certificate within a reasonable period of the changes being made.

## **PART XI—MATRIMONIAL DISPUTES AND MATRIMONIAL PROCEEDINGS**

*Dissolution of a Christian marriage*

Mediation of disputes in Christian marriages.

**64.** The parties to a marriage celebrated under Part III may seek the services of any reconciliation bodies established for that purpose that may exist in the public place of worship where the marriage was celebrated.

Grounds for dissolution of a Christian marriage.

**65.** A party to a marriage celebrated under Part III may petition the court for a decree for the dissolution of the marriage on the ground of—

- (a) one or more acts of adultery committed by the other party;
- (b) cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage; or
- (c) desertion by either party for at least three years immediately preceding the date of presentation of the petition.

*Dissolution of a civil marriage*

Right to petition for separation or divorce.

**66.** (1) A party to a marriage celebrated under Part IV may not petition the court for the separation of the parties or for the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.

(2) A party to a marriage celebrated under Part IV may only petition the court for the separation of the parties or the dissolution of the marriage on the following grounds—

- (a) adultery by the other spouse;
- (b) cruelty by the other spouse;
- (c) exceptional depravity by the other spouse;
- (d) desertion by the other spouse for at least three years; or
- (e) the irretrievable breakdown of the marriage.

(3) The petitioner may file the petition with the court for the separation of the parties or the dissolution of the marriage despite any effort to reconcile the parties.

(4) The court may refer a matrimonial dispute that arises in a marriage celebrated under Part IV to a conciliatory process agreed between the parties.

(5) The proceedings for the dissolution of a marriage celebrated under Part IV may be adjourned for a period not exceeding six months as the court may

think fit—

(a) for the court to make further enquiries; or

(b) for further attempts at reconciliation to be made by the parties to the marriage.

(6) A marriage has irretrievably broken down if—

(a) A spouse commits adultery;

(b) A spouse is cruel to the other spouse or to any child of the marriage;

(c) a spouse wilfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;

(d) the spouses have been separated for at least two years, whether voluntary or by decree of the court, where it has

(e) a spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition;

(f) a spouse has been sentenced to a term of imprisonment of the for life or for a term of seven years or more;

(g) a spouse suffers from incurable insanity, where two doctors, at least one of whom is qualified or experienced in psychiatry, have certified that the insanity is incurable or that recovery is improbable during the life time of the respondent in the light of existing medical knowledge or

(h) any other ground as the court may deem appropriate.

Dismissal of petition for deception or non – disclosure.

**67.** Where a foreign court has granted a decree in matrimonial proceedings whether arising out of a marriage celebrated in Kenya or elsewhere, that decree shall be recognized in Kenya if—

(a) either party is domiciled in the country where that court has jurisdiction or had been ordinarily resident in Kenya for at least two years immediately preceding the date of institution of proceedings;

(b) being a decree of annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them.

*Dissolution of a customary marriage*

Mediation of disputes in Customary marriages.

- 68.** (1) The parties to marriage celebrated under Part V may undergo a process of conciliation or customary dispute resolution before the court may determine a petition for the dissolution of the marriage
- (2) The process of mediation or traditional dispute resolution in subsection (1) shall conform to the principles of the Constitution.
- (3) The person who takes the parties to a marriage celebrated under Part V through the process of conciliation or traditional dispute resolution shall prepare a report of the process for the court.

Grounds for divorce of Customary marriages.

- 69.** (1) A party to a marriage celebrated under Part V may petition the court for the dissolution of the marriage on the ground of—
- (a) adultery;
- (b) cruelty;
- (c) desertion; or
- (d) any valid ground under the customary law of the petitioner.
- (2) The Cabinet Secretary may, in consultation with the communities make regulations for the implementation of this section.

*Dissolution of a Hindu Marriage*

Grounds for divorce of Hindu marriages.

- 70.** A party to a marriage celebrated under Part VI may petition the court for the dissolution of the marriage on the ground that—
- (1) the marriage has irretrievably broken down;
- (2) the other party has deserted the petitioner for at least three years before the making of the petition;
- (3) the other party has converted to another religion;
- (4) since the celebration of the marriage, the other party has committed rape, sodomy, bestiality or adultery.

*Dissolution of an Islamic marriage*

Governing law for Islamic divorce matters.

- 71.** The dissolution of marriage celebrated under Part VII shall be governed by Islamic law.

Registration of divorce under Islamic law.

- 72.** Where a Kadhi, sheikh, imam or person authorised by the Director grants a decree for the dissolution of a marriage celebrated under Part VII, the Kadhi, sheikh, imam or authorised person shall deliver a copy of the decree to the Director.

*Annulment of Marriage*

Grounds for annulment of marriages.

- 73.** (1) A party to a marriage may petition the court to annul the marriage on the ground that—
- (a) the marriage has not been consummated since its celebration;
  - (b) at the time of the marriage and without the knowledge of either party, the parties were in a prohibited relationship;
  - (c) in the case of a monogamous marriage, at the time of the marriage one of the parties was married to another person;
  - (d) the petitioner's consent was not freely given;
  - (e) a party to the marriage was absent at the time of the celebration of the marriage;
  - (f) at the time of the marriage and without the knowledge of the husband, the wife is pregnant and that the husband is not responsible for the pregnancy;
  - or
  - (g) at the time of the marriage and without the knowledge of the petitioner, the other party suffers recurrent bouts of insanity.
- (2) The court shall only grant a decree of annulment if—
- (a) the petition is made within one year of the celebration of the marriage;
  - (b) at the date of the marriage and regarding subsections (1)(b) and (c), the petitioner was ignorant of the facts alleged in the petition; and
  - (c) the marriage has not been consummated since the petition was made to the court.

Party to petition for annulment of marriage.

- 74.** (1) A petition for annulment may be presented only by one of the parties.
- (2) , Where a petitioner alleges facts of which only one party was ignorant at the date of that marriage, it may be presented only by that party, .
- (3) Where a petitioner alleges the wilful refusal of one party to consummate the marriage it may not be presented by the party against whom the allegation is made.

Effect of a decree of annulment.

- 75.** The parties to a marriage which has been annulled by decree absolute of the court shall be deemed never to have been married but a decree of annulment shall not—
- (1) render lawful anything which was done unlawfully during the marriage or

render unlawful anything which was done lawfully during the marriage;  
(2) affect the competence of either of the parties as a witness in respect of anything done or omitted to be done, or any privilege in respect of communications between them, during the—

- a) marriage; or
- b) relieve either party of any debt properly incurred on behalf of the other during the marriage.

### **PART X—OTHER RIGHTS OF ACTION**

Effect of a promise to marry.

**76.** (1). Except as provided in this section a promise by a person to marry another person is not binding.

(2) Damages may be recoverable by a party that suffers a loss when the other party refuses to honour a promise to marry.

### **PART XI: MAINTENANCE OF SPOUSE AND OTHER RELIEFS**

Grounds for order of maintenance.

**77.** (1) The court may order a person to pay maintenance to a spouse or a former spouse—

(a) if the person has refused or neglected to provide for the spouse or former spouse as required by this Act;

(b) if the person has deserted the other spouse or former spouse, for as long as the desertion continues;

(c) during the course of any matrimonial proceedings;

(d) when granting or after granting a decree of separation or divorce; or

(e) if, after making a decree of presumption of death, the spouse or former is found to be alive.

(2) The court may order the payment of maintenance to a spouse or former spouse where a decree of separation, divorce or presumption of death is issued by a foreign court and the court may declare that the decree of separation, divorce or presumption of death is effective for the purposes of this section.

lapsing of maintenance.

**78.** Except where an order for maintenance of a spouse is expressed to be for any shorter period or where any such order has revoked and subject to section 79, the order shall lapse—

- (a) if the maintenance was unsecured, on the death of the spouse;
- (b) if the maintenance was secured, on the death of the spouse in whose favour it was made; or
- (c) where the person being maintained is subsequently able to support himself or herself.

Termination of an order of maintenance.

**79.** An order of maintenance shall lapse upon the re-marriage of the beneficiary of the order.

Revocation and variation of an order for maintenance.

**80.** (1) The court may revoke or vary a subsisting order for maintenance of any kind, whether secured or unsecured, if it is satisfied that the order was based or obtained as the result of any misrepresentation or mistake of fact or that there has been a material change of circumstances since the order was made.

(2) The court may vary the terms of an agreement as to maintenance between spouses wherever made if satisfied that there has been a material change of circumstances since the agreement was made despite any provision to the contrary contained therein.

Assessment of maintenance.

**81.** Maintenance payable to a person under an order of the court shall not be assigned or transferred or liable to be attached, sequestered or levied upon for, or in respect of, any debt or claim.

Recovery of maintenance arrears.

**82.** (1) Despite any other period of limitation prescribed by the Limitation of Actions Act, no instalment of maintenance shall be recoverable in proceedings instituted after a period of three years from the date upon which the instalment accrued due.

(2) Subject to subsection (1), arrears of unsecured maintenance, whether payable by agreement under an order of the court, shall be a civil debt recoverable summarily or, where they accrued due before the making of a receiving order against the party in default, shall be provable in subsequent bankruptcy proceedings and where they accrued due before death, shall be a debt from the estate of the deceased.

(3) Subject to subsection (1) arrears of unsecured maintenance which accrued due before the death of the person entitled shall be a civil debt recoverable summarily by the legal personal representative of that person.

Compounding of

**83.** (1) The court may, if it is satisfied that a disposition of property has been made by

maintenance.

the spouse or former spouse of the person by or on whose behalf the application is made, within the preceding three years, with the object on the part of the person making the disposition of reducing the means to pay maintenance or of depriving a spouse of any rights in relation to that property, or is intended to be made with any such object, on application, set aside the disposition or grant an injunction prohibiting that disposition, as the case may be.

(2) Where the disposition of property under subsection (1) is by sale to a bona fide purchaser for value, the court may grant orders as though the sale had taken place.

(3) In this section, “disposition” includes a sale, gift, lease, mortgage or other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made from money or monies worth to or in favour of a person acting in good faith and in ignorance of the object for which the disposition is made

Other relief.

**84.** (1) The court may order a party to refrain from molesting a spouse or former spouse.

(2) No proceedings may be brought to compel one spouse to cohabit with the other, but a spouse who alleges that he or she has been deserted may refer the matter to a conciliatory body.

(3) Where either the husband or wife has, without reasonable [good] grounds, withdrawn from the society of the other, the aggrieved party may make an application to the court for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such application and there being no legal ground why the application should not be granted, may order restitution of conjugal rights accordingly.

Order concerning children.

**85.** Custody and maintenance of children shall be dealt with in accordance with the Children Act and any other written law relating to children.

## **PART XII—OFFENCES AND PENALTIES**

False statement in the notice of intention to marry or notice of objection.

**86.** (1) Any person who, in a notice of intention to marry under section 22 or notice of objection to an intended marriage under section 23, makes a false statement commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or fine not exceeding one million shillings or to both.



(2) A person does not commit an offence under this section if that person had reasonable grounds for believing the statement to be true when that person made the statement.

Marriage to a person under minimum age.

**87.** Any person who marries a person who is below the minimum age commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or a fine not exceeding one million shillings or to both.

Marriage of persons within prohibited marriage relationship.

**88.** (1) A party to a purported celebration of a marriage where the parties are within a prohibited marriage relationship commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or a fine not exceeding three hundred thousand shillings or to both.

(2) A person may not be convicted of an offence under this section if that the person did not know and could not reasonably have been expected to discover the relationship.

(3) A person charged under subsection (1) may include a witness to the purported celebration of the marriage.

Coercion, fraud, etc

**89.** A party to a ceremony purporting to be a marriage who at the time, knows or has reason to believe that the consent of the other party was induced by coercion or fraud or by a mistake as to the nature of the ceremony or that the other party was suffering from any mental disorders or mental disability whether permanent or temporary or was intoxicated or under the influence of drugs, so as not fully to appreciate the nature or purport of the ceremony, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding three (3) years or a fine of three hundred thousand shillings or to both.

Ceremony performed by unauthorized person.

**90.** A person who celebrates a union purporting to be a marriage and who at the time of the ceremony is not authorised to do so commits an offence and shall on conviction be is liable to imprisonment for a term not exceeding three years or a fine of three hundred thousand shillings or to both.

Absence of witnesses.

**91.** A person who celebrates a union purporting to be a marriage at which the required witnesses are not present commits an offence and shall on conviction be liable to imprisonment for a term not exceeding three months or a fine not exceeding ten thousand shillings or to both.

**92. (1)** A person commits an offence if that person celebrates or witnesses a union purporting to be a marriage where that person knows or should know that—

- (a) at least one party is below the age of eighteen years;
- (b) a notice of intention to marry where required has not been given; or
- (c) a notice of objection to the intended marriage has been given and the objection has not been withdrawn, dismissed or determined.

(2) A person convicted under subsection (1) is liable to imprisonment for a term not exceeding six months or a fine not exceeding fifty thousand shillings or to both.

### **PART XIII—MISCELLANEOUS PROVISIONS**

Celebration of other marriages.

**93. (1)** A marriage recognised under section 6 may be celebrated in accordance to the rules made by the Cabinet Secretary.

(2) The Cabinet Secretary may make rules for the celebration of any marriage.

Regulations.

**94. (1)** The Cabinet Secretary may make regulations for the better carrying into effect of this Act

(2) Despite subsection (1), regulations may provide for—

- (a) forms to be used and fees to be paid in respect of any application or licence made or issued;
- (b) the manner in which notices of intention to marry are to be made known;
- (c) the form for the giving of any notice required under this Act;
- (d) the form of explanation to be given by a person authorised by the Director to the parties to an intended marriage in civil form or according to rites recognized by customary law as the case may be before asking them whether the marriage is to be monogamous or polygamous or potentially polygamous;
- (e) the forms of licences and marriage certificate to be issued by the Director;
- (f) the form of statement of particulars relating to marriage to be used by registration officers;
- (g) the procedure for registration and the form of returns to be made and the register to be kept under this Act;

(h) the payment of fees under this Act; and

(i) anything required to be prescribed under this Act

Rules.  
Cap 21

**95.** The Rules Committee established under the provisions of the Civil Procedure Act may make rules regulating court practice or procedure under this Act.

Transitional  
Provisions on  
Cap. 150  
Cap. 151  
Cap. 156  
Cap 157

**96.** (1) A person who, immediately before the date of commencement of this Act, was a Registrar of Marriages under the Marriage Act (now repealed) or the African Christian Marriage and Divorce Act (now repealed), or an assistant Registrar under the Islamic Marriage and Divorce Registration Act (now repealed), shall, as soon as practicable thereafter, send all registers of marriages and divorces to the Director.

(2) Parties to a marriage contracted under customary law, the Hindu Marriage and Divorce Act (now repealed) or the Islamic Marriage and Divorce Registration Act (now repealed) before commencement of this Act, which is not registered shall apply to the Director or County Director to assistant Director for the registration of that marriage under this Act within three (3) years of the coming to force of this Act.

(3) The parties to a customary marriage shall register such a marriage the marriage within three years of the coming to force of this Act.

(4) The Cabinet Secretary may extend the registration period under this section by notice in the Gazette.

Repeals **97.** The Acts of Parliament listed in the Schedule are repealed.

Savings **98.** (1) A subsisting marriage which under any written or customary law hitherto in force constituted a valid marriage immediately before the coming to force of this Act is valid for the purposes of this Act.

(2) Proceedings commenced under any written law shall, so far as practicable, be continued in accordance with the provisions of this Act.

(3) Despite subsection (2), an order for judicial separation or decree of divorce granted under any written law shall in relation to the powers of the court regarding maintenance be deemed to be a decree of separation or divorce as the case may granted under this Act.

## **SCHEDULE**

	Repealed Acts	S. 97
Cap 150	The Marriage Act.	
Cap 151	The African Christian Marriage And Divorce Act.	
Cap 152	The Matrimonial Causes Act.	
Cap 153	The Subordinate Court (Separation and Maintenance) Act.	
Cap 155	The Mohammedan Marriage And Divorce Registration Act.	
Cap 156	The Mohammedan Marriage Divorce and Succession Act.	
Cap 157	The Hindu Marriage and Divorce Act.	

**MEMORANDUM OF OBJECTS AND REASONS**

The principal purpose of this Bill is to provide for and consolidate the various types of marriages and their registration in Kenya and apply common standards for assessing gender justice within the family within the context of international law and the Constitution of Kenya.