



Marriage and the problem of Divorce in Uganda

L. Adams, A. T. Ijjo, C. Kabahizi, C. Mbabazi, E. Kabahizi, and M. Juuko

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Authors: The Rev. Lawrence Earl Adams, Ph.D, A. T. Ijjo, PHD C. Kabahizi, MPP, C. Mbabazi, MPP/MBA, E. Kabahizi, LLB and M. Juuko, LLB
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Any inquiries can be addressed in writing to the Executive Director at the following address:

Center of Faith Family and Justice

P.O Box 150045

Mukono, Uganda

Tel: +256760130120

Email: info@cffj.or.ug

Web: cffj.or.ug

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Marital separation and divorce have dire consequences to the parties in the marital union, family members especially children, and other relations.

Marital separation and divorce are caused by many factors including misunderstandings between the couple, financial challenges, interference by relatives, infertility, and others.

In Uganda, the poor, uneducated and rural women and their children are the most vulnerable when a marriage falls apart.

Divorce generally brings about psychological distress, possible substance abuse, as well as poorer health, the suffering of children and weak performance in schools. The increasing number of divorce cases filed with courts in recent years highlights the magnitude of the problem.

This study identifies the leading causes of divorce in Uganda; examines the consequences of parental separation and divorce on the parties involved; and makes recommendations for curbing divorce in the country.



1.1 Background

Christian marriage is for companionship, procreation, and the nurturing of children in fear of the Lord. In addition, Christian marriage can facilitate growth in Christian faith for the couple and it provides the context for the sanctification of the couple. Some Christian denominations such as the Catholic Church could annul a marriage on the grounds of the willful exclusion of children (Canon 1101 sec 2). God gave the married couple the gifts of duty, love, and sex to strengthen the marriage bond. In Uganda, children have always been and are very important in marriage and family life.

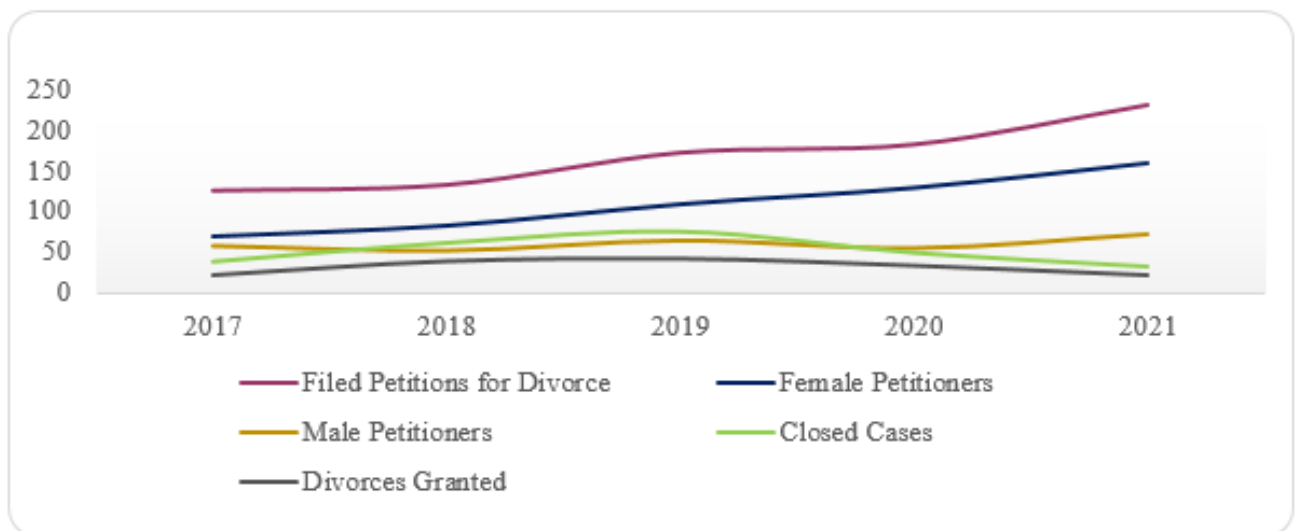
The legal definition of marriage is derived from the famous case of Hyde versus Hyde and Wood house, as the voluntary union for life of one man and one woman to the exclusion of others (Hyde v Hyde & Woodhouse, 1866). There are some that argue that this definition is limited to civil and church marriages while others contend that the said definition is broad in application and as such envisages polygamous marriages too. What is undisputed in the foregoing is that marriage is a consensual agreement between individuals willing to be considered as married to each other.

The minimum requirements for marriage are embedded under Article 31 of the Constitution of Uganda which mandates that a marriage of whatever nature be between a man and a woman, that each of the parties be at least 18 years old and willfully intend to get married (Constitution of Uganda 1995). What is most contravened amongst the said requirements is the prerequisite that both parties agreeing to an intended marriage be at least 18 years old. There have been many reports of child marriages in Uganda with an estimate 5 million child brides (UNICEF & UNPFA, 2019).

Human imperfection creates situations that can lead to irreconcilable differences and conflict and marital separation. As a results of this imperfection, it is impossible for any two human beings to live together strife-free forever. Such is the fate of human existence. It is therefore the willingness and commitment of the couple to learn and forgive that will determine their compatibility and longevity of their relationship.

To illustrate the issue of marital separation and divorce with real case situation, the Makindye family court statistics, reports that the average number of filed divorce petitions per year is 170 with 19% of the petitions granted annually. In a span of 5 years, i.e., 2017 to 2021, the number of filed petitions grew by 82% with the highest increase between 2020 and 2021 probably due to the effects of COVID-19. Moreover, as much as the number of filed petitions has grown significantly, the rate of divorce itself has remained fairly even as shown by the number of closed cases from 2017 to 2021. The data also shows that females are the major divorce petitioners (65% of the total petitions). Uganda's divorce process gives six months after the divorce petition is filed—a 'process' called Decree Nisi—to give the couple time to reconsider their decision of divorce.

Figure 1: Divorce Cases Registered at Makindye Family Court (2017 to 2021)



Source: Makindye Family Court Records on Divorce Cases

A recent study on divorce in Uganda found that divorce and separation are the most common family problems in Uganda (HIIL, 2020). The reasons for divorce most commonly cited by petitioners included adultery, abandonment and poverty, alcoholism and domestic violence i.e., physical or emotional harm of one spouse by another. Divorcees and children of divorce often suffer several hardships such as learning to live independently after trauma, economic instability, depression, psychological distress, poor performance, and growing apart (or outgrowing each other) among others. It is, therefore, imperative to understand the underlying causes of divorce in Uganda and make recommendations on how to reduce the number of divorces and minimize its diverse effects on families.

1.2 Problem statement

The increase in registration of divorces in the past few decades could be due to several factors and cultural changes that have made divorce more acceptable than it used to be. Uganda is increasingly aware and slowly embracing the secularist worldview which sets out to abolish God's good plan for the sexes, marriage and the family. This is leading to sexual confusion, sickness, loneliness, social dissolution and increasing divorce rates.

The increasing acceptance of divorce, and especially the possibility of a better life after divorce, are making it easier for the younger generation to seek divorce. The rise in the education of both girls and boys has provided more demanding opportunities of work outside the home (especially for the women) and financial independence which allows people to sever marriage ties more easily.

The effects of divorce are gender biased. Leopold (2018) found that men's disproportionate strain of divorce is transient, whereas that of women is chronic. Similar to existing literature (Umberson, 1992; Leopold & Kalmijn, 2016), it was found that men were more vulnerable to short-term consequences of divorce such as post-divorce adaptation, higher risk of adopting bad health habits and declines in satisfaction with family life. In the medium-term, similar consequences were borne by both genders in terms of psychological well-being; residential moves, satisfaction with work, chances of re-partnering, social integration with friends and relatives, and feelings of loneliness. Large and persistent consequences were cited in women's disproportionate losses in household income and associated increases in their risk of poverty and single parenting.

Yet, extant studies of divorce are still few in Uganda and data is limited. There is need to grasp two things: Firstly, what leads to divorce and secondly, the consequences of divorce on both the divorcees and the children of divorce. This gap of research precludes a broader view of gender differences in the underlying causes of divorce and multiple consequences of divorce. To address this limitation, with the present study, we aim to offer a comprehensive view of gender differences in the underlying reasons that lead to divorce and consequences of divorce and make policy recommendations.

We expect to find that, although divorcees and their children generally suffer much, women suffer more from divorce with a disproportionate care burden of their children.

1.3 Objectives

This paper:

1. Examines the underlying causes of divorce in Uganda.
2. Analyzes the effect of divorce on both genders and children in Uganda.
3. Makes recommendations on how to curb divorce and minimize its negative consequences.

1.4 Significance

The study may offer institutional significance in the following ways:

- 1.To the Church, the study helps to identify and recommend possible interventions for mitigating divorce and its consequences so as to enable the building of strong families.
- 2.To the courts of law and development institutions, the study identifies the gender disaggregated causes of divorce and consequences which if explored could enhance family-centered policies and projects.
- 3.To the academia, the study helps bridge knowledge and practice gaps for gendered causes of divorce and its effects. By so doing, it will contribute to the body of knowledge on divorce and likely causes and remedies.

1.5 Methods

The study utilized both secondary and primary data to provide an enriched analysis of the objectives. For secondary data, the research reviewed published reports and journals on divorce, and the family court records to analyze the divorce trends in Uganda.

A cross-sectional survey design was used for the study to collect primary data. Questionnaires were used to collect information. Key Informant Interviews with divorcees, the Judiciary, church leadership, policy makers and family-oriented organizations were done to collect information on the causes of divorce, effects of divorce, lessons learnt and recommendations. Excel was used for cleaning and validation and STATA for data analysis.

2.1 Historical perspective on Marriage and Divorce

Traditionally, after marriage, women moved into the man's home. The girl was married into the family of the man. This meant his family became her new family. She was always free to visit her own kin but going forward, most of her life revolved around the man and his family (Otiso, 2006). This is still the case in modern day Uganda. In the past, divorce was mostly thought of as an abomination, and brought much shame and stigma especially on the divorced wife. Traditionally, women were expected to stick to their guns and remain married through thick and thin, and the credit of a successful marriage was mostly given to the woman. The very low rates of divorce, however, did not mean that the marrieds were necessarily happy. Many women stayed married even in very abusive or oppressive conditions.

In the more recent past, divorce rates remained low, and this could be for several reasons: Firstly, divorce was still frowned upon and divorcees were stigmatized. Secondly, many may have been ignorant about the process of divorce or probably felt the whole process was too cumbersome. It may have even been too costly for others. Thus, low divorce rates did not necessarily mean that the majority of the marriages were harmonious. As a result, distraught marrieds looked for other ways to resolve their conflicts.

How women in the past coped with marital problems

Because families were large, providing a large social support system, women had several ways of dealing with their marital problems:

1. Talking to fellow wives/friends/mothers/Ssengas and sisters about their problems for advice.
2. If problems persisted, a woman could report her marital woes to her parents in law or other elders in her husband's family. These elders would then mediate to solve the problems between the couple (The target here was always to reconcile the couple as opposed to encouraging separation).
3. Spiritual measures: Women occasionally took matters into their own hands, seeking the gods for blessings and favors before their men and many used (and still use) charms to keep their husbands in pleasant moods.
4. When things got really tough, women occasionally visited their parents for weeks or months to 'rest' from the turmoil back home. This is still common practice. These brief separations gave women breathers and allowed them to recollect their strength to meet their marital obligations.

At the end of the day, women were married for the long haul in whatever form—loved, neglected or estranged. Marriage had a sacred sense of permanence, and the onus was usually on the bride to settle down in marriage and build her home, through thick and thin.

2.2 Christian perspective on Divorce

God's design for marriage in His world is laid out in the first chapters of the Bible. The Lord Jesus affirms the narrative of Genesis when He says:

From the beginning of creation, 'God made them male and female.' 'Therefore a man shall leave his father and mother and hold fast to his wife, and the two shall become one flesh.' So they are no longer two but one flesh. (Mark 10:6)

Jesus further clarifies two elements from Genesis. Marriage, he says, is monogamous and it is lifelong, not just in principle but in practice. Thus in the early Church, divorce and polygamy died out altogether. Jesus provides for one other possibility, that of living a holy life outside marriage for those who become "eunuchs for God's Kingdom" (Matthew 19:12). This is a liberating message for those who, by choice or chance, serve Him in the single life.

God sees marriage and family as his unchangeable plan for mankind, which is designed for personal happiness, social cohesion and gives hope for the future.

2.3 Legal perspective on Divorce

In the Divorce Act, men and women had different grounds to prove in order to sustain a divorce cause. This had been the position of the law for a long time, since 1904. That is to say, that a man was allowed to Petition Court for divorce where his wife had committed adultery as a ground sufficient for Divorce. On the other hand, a woman was only to petition for divorce if her husband had changed his profession of Christianity for the profession of some other religion and gone through a form of marriage with another woman; or where the husband had been guilty of incestuous adultery, or bigamy, rape, or sodomy or bestiality. Additionally, would be adultery coupled with cruelty; or adultery coupled with desertion without reasonable excuse for two years or upwards.

In 2004, the above position on divorce was later altered in the case of Uganda Association of Women Lawyers and 5 Others v. Attorney General Constitutional Petition No. 2 of 2003 where Justice Twinomujuni (as he then was) stated that the above provision of the Divorce Act contravened and was inconsistent with Articles 21(1) & (2), Article 31 and 33 (1) & (6) of the Constitution of the Republic of Uganda, 1995 as amended. In the above case, the Constitutional court established that all the grounds mentioned in Section 4(1) and (2) are equally available to both parties seeking divorce. Court further ruled that even the provisions of the Act relating to naming of the co-respondent, compensation, damages and alimony apply to both women and men who are parties to the marriage, contrary to Section 5, 21, 22, 23, 24, 26 of the Divorce Act. Cap. 249.

Therefore, in such much as the above impugned provisions have not yet been amended, the above case illustrated a shift in the divorce law in Uganda. It is prudent to note that decided cases are equally a source of law in Uganda, hence being enforceable and implemented.

In further development of the law concerning divorce, in 2003 court observed that though the grounds stated under Section 4 of the Divorce Act are equally available to both men and women in marriage, one needs not to prove all the grounds. Court stated that proving one ground under Section 4 to the satisfaction of Court is sufficient for the grant of divorce. This was in the case of *Dr. Specioza Wandera Naigaga Kazibwe v. Eng. Nsubuga Kazibwe Divorce Cause No. 03/2003*.

In proving any of grounds for divorce, courts have been addressing the facts in totality to determine whether a marriage has irretrievably broken down and that indeed divorce should be granted in such circumstances, as the last resolution to solve the problems in the marriage. This was discussed in the case of *Julius Chama V. Specioza Rwalinda Mbabazi Divorce Cause No. 25/2011*. The above yardstick/standard is used in order for people not to abuse the marriage institution. It is the more reason the Divorce Act has absolute and discretionary bars to divorce. That even if one has a ground of divorce, court may choose not to grant divorce where it is established that during the marriage the petitioner has been an accessory to or conniving at the going through of the form of marriage or the adultery or has condoned it, or finds that the petition is presented or prosecuted in collusion with either the respondent or correspondent. Court may also decline to grant divorce where it is established that the petitioner has during the marriage been guilty of adultery, or has been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty to the respondent, or of having deserted or wilfully separated himself or herself from the respondent before the adultery complained of, and without reasonable excuse, or of such wilful neglect of or misconduct towards the respondent as has conducted the adultery.

The Divorce Act further guards the sanctity of marriage by providing for the decree nisi and degree absolute stages of divorce so that parties are given room to reconcile if possible before court makes a final pronouncement to end the said marriage. This is possible by the law providing a-six months between a decree nisi and a degree absolute. Many of the above considerations that case law has made as far as Divorce matters are concerned in Uganda, including annulling several provisions of the Divorce Act, Cap. 249, have not yet been amended. However, there is a Marriage and Divorce Bill where it is hoped that some or all of the above-proposed amendments will be considered.

Be that as it may, it is not only the Divorce Act that regulates divorce in Uganda; there are other laws like the Marriage and Divorce of Mohammedans Act, Cap. 252, that was enacted and came into force in 1906, and the Statutory Instrument thereto, the Hindu Marriage and Divorce Act. Cap. 250 and the Statutory Instrument thereto that came into force in 1961, the Customary Marriages (Registration) Act, Cap. 248, and the Regulations thereto, among other laws, as already stated above.

Customary law, just like the Islamic law, permits a man to marry more than one woman. Section 1 of the Customary Marriages Registration Act. Cap. 248 (hereinafter referred to as the Customary Marriages Act) defines customary marriage as “a marriage celebrated according to the rites of an African community and one of parties to which is a member of that community, or, any marriage under Part III of this Act.” It is now settled law that payment of the full bride price requested by the bride’s family is proof that a customary marriage has been celebrated between two parties as was discussed in the case of *Mifumi (U) Limited and 12 Ors vs. Attorney General and Anor* (Constitutional Petition No. 12 of 2007) where Hon. Justice S.B.K Kavuma recognized that payment of bride price is a widely practiced culture in Uganda. It is also prudent to note that unlike religious considerations in the other marriage laws, there is no restrictions against Muslims or those professing any other religion to contract a customary marriage. What is required is that the couple celebrates the marriage according to the culture and marriage norms of any indigenous tribe of Uganda as was stated by Hon. Lady Justice Eva K. Luswata in the case of *Namukasa Joweria vs. Kakondere Livingstone* High Court Divorce Cause No. 30 of 2010. In addition to the above, nothing would bar the same couple married under customary marriage to proceed and celebrate a church marriage. Equally, any person who contracted a monogamous marriage that is still subsisting cannot proceed to conduct a customary marriage with another person.

However, regarding Divorce in Customary marriages, previously, and for the longest time, there was a common practice among many cultures in Uganda whereby if the paid bride price was returned to the husband’s home, then the marriage was deemed to have ended. This practice had been acknowledged by the courts for a very long time. In fact, there was even a position of law that the Divorce Act Cap. 249 does not apply to customary marriages. In the case of *Mifumi (U) Ltd and 12 others Vs. The Attorney General* (Supra), this is practice was found demeaning to the dignity of women and in violation of a married woman’s constitutional right to be equal co-partners to men. This practice was found to be wanting, archaic, repugnant to natural justice, and incompatible to the Ugandan 1995 Constitution. This is position of dissolving customary marriages was eliminated, yet the principle law (the Customary Marriages Registration Act. Cap. 248) which establishes customary marriages in Uganda does not provide for how they are dissolved.

Nevertheless, Courts have given an interpretation and application of the Divorce Act Cap. 249 as applicable to even customary marriages. Since the Act deals with the grounds for dissolution of marriages. Therefore, the same grounds under the Divorce Act, can be raised by the aggrieved party for the dissolution of a customary marriage, in Court. These grounds must be considered in light of the case law position in regard to grounds for divorce as already discussed above in the different cases that streamlined Section 4 of the Divorce Act to be applicable equally to both men and women. The same cases stated that any one ground under Section 4 of the Divorce Act would be sufficient to dissolve a marriage, where the circumstances require.

However, since customary marriage is celebrated based on the customs of each custom, it can be dissolved based on the negotiations of customs and rites observed among the ethnic groups of one or both parties to the marriage. But this does not bar courts from dissolving customary marriages when the cases are filed in court as was stated by Hon. Lady Justice Percy Ntuhaise in the case *Nakakande v Balikuddembe* (Divorce Cause No. 60 of 2017).

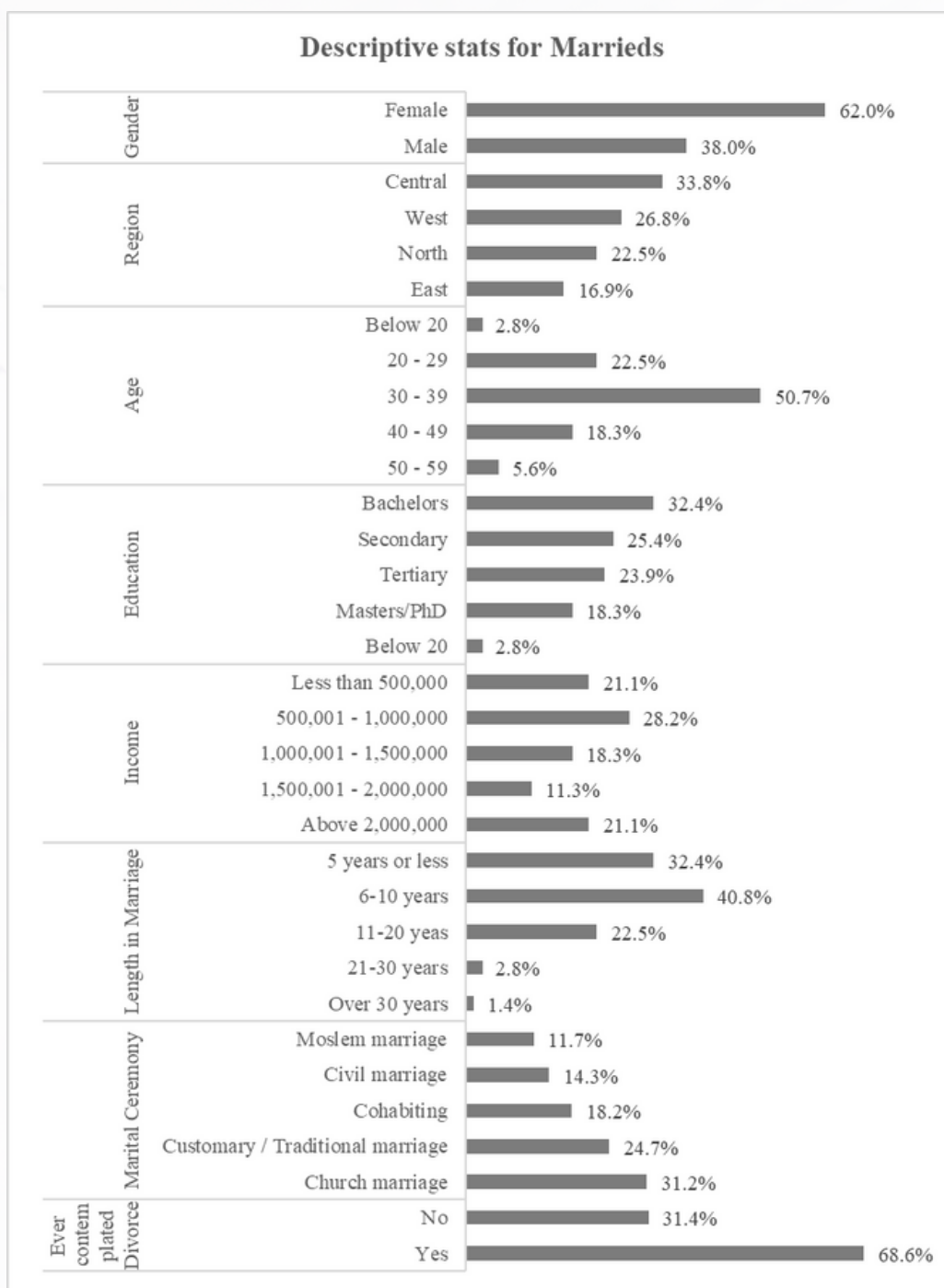
In conclusion, though the laws governing and regulating the family institute keep evolving mostly for the worst, all over the world, there is still a high level of protection for the marriage institute in Uganda, with the help of the existing rigid compendium of laws in Uganda enacted and designed with the architectural rationale of preserving families. This is equally engrained within people cultural, and customary beliefs and practices among families and tribes in Uganda that view marriage and family as a mode of preservation of the community and certain heritages among different tribes. The existing cultural strong hold of regions in Uganda has also contributed towards the preservation of family institute from rampant divorce, and family breakdowns, as analyzed above.

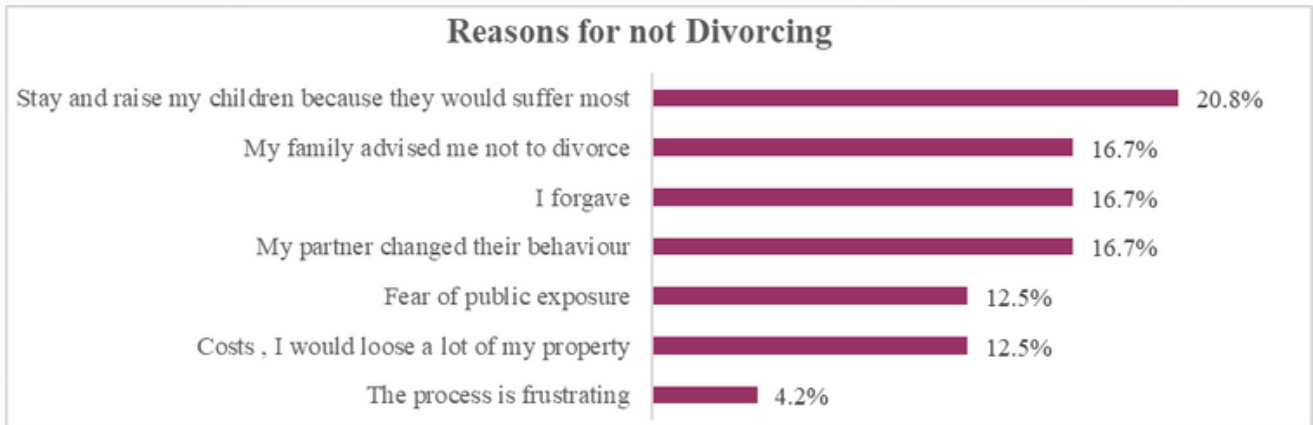
CHAPTER THREE: CAUSES AND EFFECTS OF DIVORCE IN UGANDA

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3.1 Current status of marrieds

Most of the Marrieds that participated in the survey were female (62%), from the Central region (33.8%), aged 30 – 39 (50.7%), with a bachelor's as highest form of Education (32.4%) and earning a salary of above Ugx. 1million (50.7%). More so, most participants had a Church marital ceremony (31.2%) with 6-10 years of marriage (40.8%). Interestingly, majority of the marrieds have considered divorce (68.6%) however, many chose to stay and raise their children because they would suffer the most. Staying to raise children is the most mentioned reason for not considering divorce in marriage.

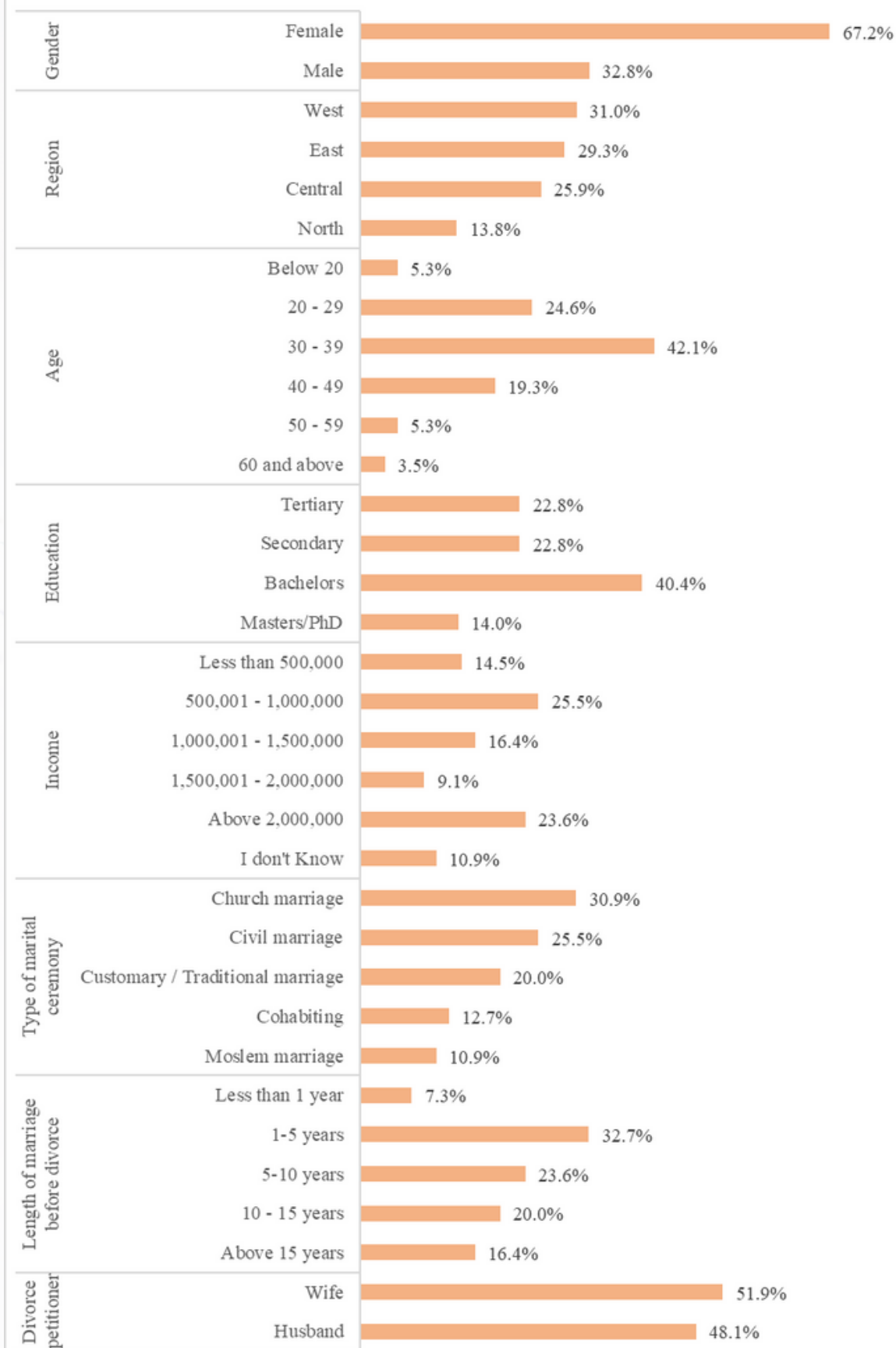




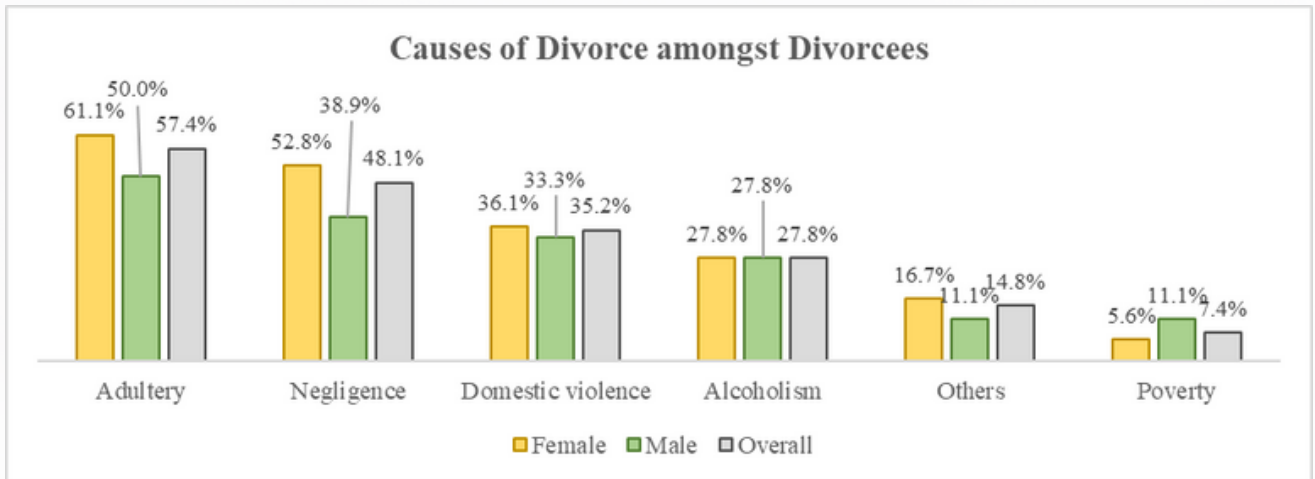
3.2 Current status of divorcees

Majority of the Divorcees that participated in the survey were female (67.2%), from the Western region (31%), aged 30 – 39 (42.1%), with a bachelor's as highest form of Education (40.4%) and earning a salary of above Ugx. 1million (49.1%). Additionally, most divorcees had a Church marital ceremony (30.9%) with about 1-5 years of marriage before the divorce (32.7%). The wife was the main petitioner for the divorce (51.9%).

Descriptive statistics for Divorcees



3.3 Reasons for divorce



Majority of the divorced participants mentioned that adultery was the primary cause of divorce for both genders (57.4%). Other major causes stated included negligence, domestic violence and alcoholism. These views were shared by other study participants such as the Church leaders and lawyers. Poverty was regarded as a minor cause of divorce.

Reasons why women are the major petitioners for divorce

When asked why women are the major petitioners for divorce, majority of the participants stated the following reasons.

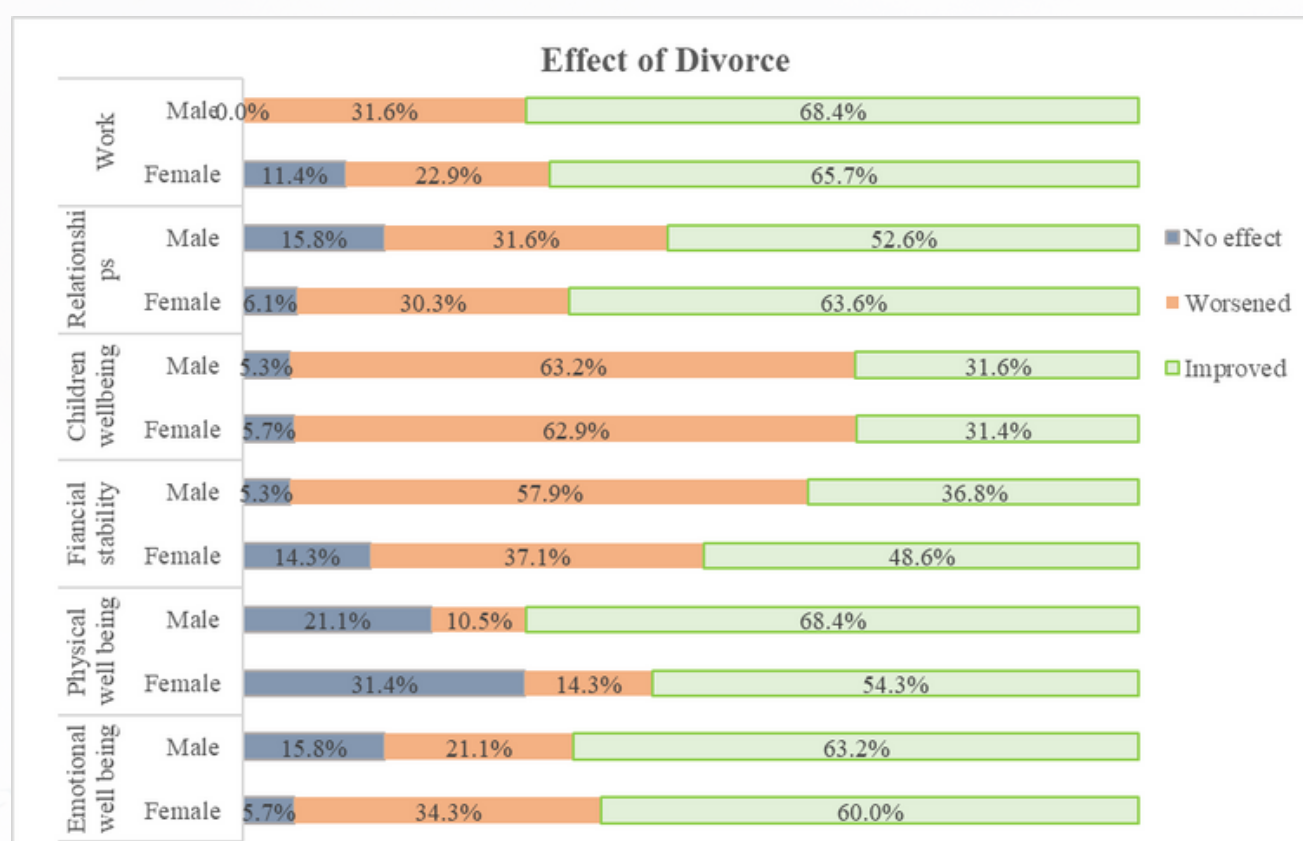
1. Family issues affect women most since they are the main care takers.
2. Many times, men don't run to courts of law and therefore women are left as the biggest number applying for divorce.
3. Women experience massive emotional and physical abuse.
4. Peer pressure
5. Negligence of husbands to care for their families after adultery
6. Women aren't patient

Experience with the divorce process



Majority of the divorced participants found the divorce process long and frustrating. This view was shared by the lawyers interviewed.

3.4 Effects of Divorce on the Family



The effects of divorce were found to be similar across genders. Children's wellbeing worsened the most after Divorce amongst all other aspects. This implies that children are the most negatively affected by divorce and should be given priority in the process of divorce. This is followed by financial stability particularly for the males as most of their assets are split after divorce and are required to pay alimony (57.9% vs 37.1%). Emotional wellbeing worsens more for females compared to males (34.3% vs 21.1%).

The biggest improvement for both genders after divorce is seen at work (> 65%). This implies that marital issues bear a high effect at work and should be monitored by employers.

The severance of marriage ties is a life-changing experience for all involved, and it affects family members in different ways. Some effects are long term and others short term, with the personalities of the affected further influencing how strongly they are affected. All family members face significant stress and distress at some point during and after divorce.

Effects of Divorce on Women

Because many women choose divorce to end abusive relationships, divorce is at first a relief from a turbulent relationship for many. But they nonetheless face several negative consequences like:

1. Distress over loss of the relationship
2. Stress over how to provide and care for themselves and their children. Since many wives heavily rely on their husbands for financial support, divorce usually leaves women in a worse position economically. More so, men do not always oblige to meeting the needs of their children after divorce or separation.
3. Stigma from friends and relatives about ending the marriage
4. Loss of property or sources of livelihoods

Effects of Divorce on Men

Effects of divorce on men are not well documented but men too suffer effects from divorce. Some effects include:

1. Deteriorating health and distress over the breakdown of the family
2. Loss of property
3. Disorientation about living alone
4. Many end up remarrying because of need for a caregiver

Effects of Divorce on Children

Children suffer most after divorce. Their experiences vary however, depending on their age and family environment during the marriage. Where the marital union was characterized by severe domestic abuse, divorce is in many ways a relief from the tumultuous environment they grew up in. After divorce, children have to choose or are taken by either parent.

Some effects of divorce on children include:

1. Missing the other parent.
2. Being more vulnerable to being exposed to abuse and ending up on the streets.
3. Suffering lower standards of living because of economic hardships
4. Suffering stress, anxiety and depression about the breakdown of the family
5. Higher chances of codependency as they are forced into taking care of their parents emotionally and sometimes economically

3.5 Moving on from divorce

After divorce, more females move on to other serious relationships compared to males. This could be as a result of higher effects of divorce on the financial and emotional well-being of females compared to males. Thus, more females quickly move on to serious for their emotional and financial stability.



CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

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In view of the pain and heartbreak associated with marital separation and divorce, and on the basis of findings of the study, we make the following recommendations with emphasis on prevention of the break up of the marital union:

- There is need to strengthen love and care in the family and to raise children in fear of the Lord. The problem of ensuring adults have good morals and character starts in the home. It is therefore very important that children are raised in the environment of reverence for God and with the opportunity to develop morally so as to be able to discern right from wrong (Heb 5:14). This should ensure that individuals turn out to be persons of good character and ultimately faithful marriage partners and responsible members of society.
- The development of good character along biblical principles is key in couples staying together. Much of the marital separation and divorce emanates from misunderstandings between the couple and the associated incompatibility based on character, attitudes, communication, and many others. The mindset and attitudes of the couple in the marital union are key in the success of marriages and families. This is an area where the church could play a key role by emphasizing faith, forgiveness, tolerance and good character. There is need for the Church to ensure teaching that encourages the cultivation of the fruits of the Spirit – Love, joy, patience, peace, long suffering (tolerance), faith, and others that constitute very important qualities for the success of the marriages.
- Freedom of choice of marital partner by all parties involved – some marriages are “arranged/forced/coerced or undertaken for wrong motives. It is important that the choice of a spouse is free and not forced. Individuals may be advised but allowed to make their choices freely. This assumes that everyone knows what is good for them. In addition, such persons will take responsibility for the choices rather than blame other people for any choices they consider to be poor.
- Early sensitization and counselling of young people even before the choice of partners. This will ensure that individuals intending to marry will know the Godly qualities to look for in a spouse. Without proper and Godly teaching on this, individuals are likely to make poor choices for spouses which will inevitably lead to break up. Good counselling, given early in life should be able to guide individuals in making informed choices of their spouses for life partner.

- When separation or divorce actually occurs, then it is important to mitigate the negative effects of such break up especially on the children. The children may then be allowed to stay with one of the parents but it is very important that access to the children be granted for the other parent as well. Accessibility and nurture of the children should be arranged in such a way as to give the best opportunities in life for the children. Some parents act selfishly, especially when they have been hurt in the breakup, they then think of getting back of the other spouse regardless of the effect on the children.

In as much as we discourage divorce, we recognize that a marriage ridden with strife creates an unhealthy environment for immediate family members. We understand that feeling stuck in a marriage or remaining in an oppressive marriage are instances that are far from ideal for all parties involved. But we also know that with the right beliefs, the right tools and wise living, it is possible to build a loving and healthy marriage. We thus not only promote marriage but healthy marriage. The kind of marriage that provides a strong bedrock for the thriving of a family, in which all its members enjoy the blessedness that comes with having love and godliness at the core of the marital union.



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Center of Faith Family and Justice
P.O.Box: 150045, Mukono, Uganda
Phone: +256-760 130120
Email: info@cffj.or.ug

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