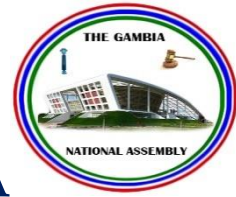




REPUBLIC OF THE GAMBIA

National Assembly, New Assembly Building, Reverend Pye Lane
Banjul, The Gambia



**REPORT OF THE
SELECT COMMITTEE ON
HEALTH, WOMEN,
CHILDREN, DISASTER,
HUMANITARIAN RELIEF
AND REFUGEES OF THE
NATIONAL ASSEMBLY OF
THE GAMBIA
ON THE CIVIL MARRIAGES
(AMENDMENT) BILL, 2020**

October, 2020

Contents

1. MEMBERS OF THE COMMITTEE.....	i
2. ACKNOWLEDGEMENT	ii
INTRODUCTION.....	1
4. MANDATE.....	2
5. METHODOLOGY	2
6. THE CIVIL MARRIAGES (AMENDMENT) BILL, 2020	2
7. Planning Meeting	4
8. PROCEEDINGS	4
8. Proceedings	4
8.1. Witnesses	4
8.2. Select Committee Members in attendance	4
8.3.2. Consideration, Findings and Recommendations of the Committee.....	6
9. ANNEXES	9
9.1 Minutes of Meetings.....	9
9.2. Position Papers.....	13
Position papers on the Civil Marriages (Amendment) Bill, 2020 are submitted by the following witnesses:	13

1. MEMBERS OF THE COMMITTEE

1.1. Members of the National Assembly Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees

1. Hon. Ousman Sillah - Chairperson
2. Hon. Fatoumata Jawara - ViceChairperson
3. Hon. Saikou Marong - Rapporteur
4. Hon. Sulayman Saho - Rapporteur
5. Hon. Amadou Camara - Member
6. Hon. Musa Amul Nyassi - Member
7. Hon. Bakary Camara - Member
8. Hon. Omar Darboe - Member
9. Hon. Kaddy Camara - Member
10. Hon. Ndey Yassin Secka - Member
11. Hon. Momodou L. K. Sanneh -Member
12. Hon. Dawda Kawsu Jawara - Member

1.2. Support Staff

1. Sarata Bojang - Secretary
2. Isatou Sonko - Secretary

1.3. Subject Matter Specialists

1. Sekou Omar Dibba - SMS
2. Aminata L.R. Ngum - SMS
3. Dr. Ayo Palmer - SMS

2. ACKNOWLEDGEMENT

The Members of the Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees wish to acknowledge the positive response of all the stakeholder institutions from government, non-governmental organisations and civil society who were invited to participate in the consultations. Their position papers and presentations reflecting their views and recommendations had really enriched the exercise and its outcome. The participation of the Permanent Secretaries, Deputy Permanent Secretaries of the relevant ministries, the Directors and Assistant Directors of concerned departments, Executive Directors and Programme or Unit heads of NGOs and CSOs, senior officials, among others have been very instrumental in the consultations with their ideas and passion to achieve results.

It would therefore not be an exaggeration to conclude that without their invaluable participation and contributions in the process, as stakeholders in the promotion and protection of the rights of women and children, it would not have been easy for the Committee to complete and present this report for the consideration of the Assembly. They provided the evidence or information needed for inclusion in the amendment bill.

The Committee is obliged to express appreciation to the Office of the Clerk for providing the efficient support staff and logistics which enabled the Committee to carry out exhaustive consultation with all relevant stakeholders.

INTRODUCTION

After being handed over a copy of the Bill entitled the '**Civil Marriages (Amendment) Bill, 2020**' at the plenary on 22 June 2020 by the Attorney General and Minister of Justice, the Clerk of the National Assembly read aloud the short title which was deemed to be the First Reading, in accordance with Standing Order 65 of the National Assembly (Revised Edition, 2019).

On 7 July 2020, the National Assembly plenary, following the conclusion of the second reading of the Bill, which witnessed a debate on its principles and merits by the honourable National Assembly Members, referred the said proposed legislation to the Assembly Business Committee (ABC), in accordance with Standing Order 68 (1). Consequently, the ABC committed the said Bill for consideration to the relevant committee which is the Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees, as provided for by Standing Order 68 (2).

In accordance with Standing Orders 68 (2), 69 (1) and (2), 97 (1) and (3) (b), the Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees was tasked to review, consult and report to the plenary its findings and recommendations on the draft Civil Marriages (Amendment) Bill, 2020.

Immediately following the committal of the Civil Marriages (Amendment) Bill, 2019 to the appropriate Committee "for detailed investigation and report..." as per Standing Order 68 (2), the Select Committee immediately set itself to work by convening a planning meeting to adopt the methodology or approach to undertake in order to accomplish the task in accordance with the requirements of the Standings Orders. The Committee agreed to hold consultations and thus identified the key stakeholders from government and non-state institutions and organisations to be engaged to get their views and recommendations on the proposed Bill for consideration and incorporation in its report to the National Assembly.

4. MANDATE

Standing Order 69 requires the Committee not to discuss the principles of the Bill but its details in terms of the clauses. It is thus mandated as follows:

- a) List out witnesses, hold proceedings and take evidence from witnesses.
- b) Record the opinion of the Committee on each clause and schedule of the Bill and apprehend any amendment recommended.
- c) Present Amendments in the order in which they stand in the Bill.
- d) Present a report incorporating the summary of the evidence of the witnesses, the opinion of the Committee on the clauses and attach relevant records of minutes of its proceedings.

5. METHODOLOGY

Since Clause 66 (1) (b) requires a Committee, at the Committee Stage of the process, to engage in “detailed investigation” when considering a Bill committed to it, the Select Committee called witnesses from the identified institutions and organisations. This was after when each of them was provided with a copy of the Bill and thus asked to review and present a written report or position paper on their views and recommendations, if any, for the consideration of the Committee.

After holding the formal meetings at the National Assembly with the stakeholders from Government Ministries, Departments and Agencies (MDAs), Non-Governmental Organisations (NGOs) and Civil Society Organisations and platforms to present and discuss their written reports, the Committee convened a meeting to review and conclude on the positions and validate the Report.

6. THE CIVIL MARRIAGES (AMENDMENT) BILL, 2020

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Supplement “B” to The Gambia Gazette No. 12 of 16th March 2020

NATIONAL ASSEMBLY

CIVIL MARRIAGES (AMENDMENT) BILL, 2020

A BILL ENTITLED

[]

AN ACT to review and amend the provisions of the Civil Marriages Act found to be discriminatory against women and girls in The Gambia in furtherance of The

Gambia's international obligations and in line with the Constitution and for connected matters.

ENACTED by the President and the National Assembly.

1. Short title

This Act may be cited as the Women's (amendment) Act, 2020.

2. Amendment of the Civil Marriages Act 1938

The Civil Marriages Act (In this Act referred to as "the Principal Act") is amended as set out in this Act.

3. Repeal of Section 15

Section 8 is repealed

4. Amendment of Section 16

Section 16 is amended by inserting a new paragraph (f) in sub-section (1) as follows:

"(f) if celebrated between persons either of whom is below the age of eighteen years."

OBJECTS AND REASONS

This amendment is the first of its kind in Africa for being the trail blazer for the recognition, observance and the domestication of international obligations and commitments relating to women's rights into domestic laws. Since the enactment of the Women's Act 2010, significant strides have been made to enforce the law and to protect women in line with the provisions of the Act. Section 25 of the Women's Act recognised the need for periodic review of legislation every ten years to ensure further compliance with our international obligations as enshrined in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Protocol to the African Charter on Human and People's Rights on The Rights of Women in Africa, (The Protocol). This amendment is intended to amend and repeal the provisions of this Act that are discriminatory against women as mandated by section 25 of the Women's Act.

7. Planning Meeting

The Select Committee held a meeting on 29th September, 2020 to identify the relevant stakeholders to be consulted and to plan and adopt a Road Map for the engagements. During the deliberations, members identified the stakeholders to be consulted from the state and non-state institutions/organisations i.e. NGOs and civil society. The meeting agreed to hold sessions at the Assembly with the institutions to get their views and recommendations of the stakeholders on the proposed Women's Act (Amendment) Bill, 2020 for the consideration of the Committee in its report.

These consultations are in accordance with Clause 69 paragraph 2 of the Standing Orders which states "A Committee to which a Bill is committed shall consider and take evidence on the provisions of the bill and report its opinion thereon to the Assembly."

8. PROCEEDINGS

8.1. Witnesses

The following witnesses or stakeholders from government, non-government organisations and civil society participated as witnesses providing evidence during the consultation on the Women's (Amendment) Bill, 2020.

8. Proceedings

8.1. Witnesses

- | | | |
|------------------------------|---|--------------------------------|
| 1. Mrs. Rohey Bittaye Darboe | - | PS (MOWCSW) |
| 2. Kissima Bittaye | - | Ministry of Justice (MOJ) |
| 3. Reneta R. Jack | - | Ministry of Justice (MOJ) |
| 4. Jean Able Thomas | - | Gambia Christian Council |
| 5. Mrs. Matilda Johnson | - | Gambia Christian Council |
| 6. Father Jacob O. Cole | - | Gambia Christian Council |
| 7. Alhaji Cadi Omar Secka | - | Gambia Supreme Islamic Council |

8.2. Select Committee Members in attendance

- | | | |
|---------------------------|---|-------------|
| 1. Hon. Ousman Sillah | - | Chairperson |
| 2. Hon. Fatoumata Jawara | - | Member |
| 3. Hon. Musa Amul Nyassi | - | Member |
| 4. Hon. Amadou Camara | - | Member |
| 5. Hon. Kaddy Camara | - | Member |
| 6. Hon. Ndey Yassin Secka | - | Member |
| 7. Hon. Sulayman Saho | - | Member |
| 8. Hon. Bakary Camara | - | Member |

8.3. Scrutiny, Consideration, Findings and Recommendations

8.3.1. Evidence of witnesses

(i). Ministry of Justice

- The Ministry of Justice is in support of repealing Section 8 of Civil Marriages Act 1938 which reads:

“Consent to marriage of unmarried minors

The Father, if living, of any party to an intended under eighteen years of age, the party not being a widower or widow, if the father is dead or unable for any reason to give such consent, the mother of the party or both parent are dead or unable for any reason to give the consent, then the guardian or guardians of the party, if any, will have authority to give consent to the marriages, and the consent is hereby required for the marriage of the party unless there is no person authorised to give the consent.”

- It is also in support of the amendment of Section 16 by inserting a new paragraph (f) to read:

“16. Marriage when invalid

(f) if celebrated between persons either of whom is below the age of eighteen years.”

- In addition to supporting the proposed repeal of Section 8 and the amendment of Section 16 by inserting by inserting a new paragraph (f) in subsection 1 as proposed by the amendment Bill, the officials of the Ministry, in their oral evidence, are further recommending for the amendment of Section 7 (b) of the parent Civil Marriages Act 1932.

“Section 7 (b) reads:

7. Issue of Certificate by Registrar on proof of necessary conditions by affidavit

A Registrar, at any time after the expiration of twenty one days and before the expiration of three months from the date of the notice shall, on payment of the prescribed fee, issue his or her certificate according to the Form B set out in the First Schedule to this Act:

(b) each of the parties to the intended marriage (not being a widower or widow) is eighteen years old, or that, if he or she is under that age, the consent of the person or persons whose consent to the marriages is required under the provisions of this Act, has been obtained or that there is no person having authority to give the consent, as the case may be;”

The Ministry is therefore recommending for the amendment of Section 7 (b) to now read:

“(b) each of the parties to the intended marriage (not being a widower or widow) is eighteen years old or above;”

And for the rest of the sentence to be removed to be consistent with the laws that prohibit under age marriage.

(ii). Ministry of Women, Children and Social Welfare

The Ministry in its oral evidence expressed its agreement with the repeal of Section 8 of the parent Act and the amendment of Section 16 by inserting a new paragraph (f) in subsection 1 as proposed by the amendment Bill.

(iii). Gambia Christian Council (GCC)

In both their written oral evidences, the representatives of the Gambia Christian Council expressed agreement for the repeal of Section 8 and the amendment of Section 16 by inserting a new paragraph (f) in subsection 1 as proposed by the amendment Bill.

(iv). Gambia Supreme Islamic Council (GSIC)

The representative of the Gambia Supreme Islamic Council noted in his oral evidence that *cadi* courts, which have jurisdiction over Muslim marriages, is in support of the proposed amendment Bill which seeks to prohibit the marriage of underage girls.

8.3.2. Consideration, Findings and Recommendations of the Committee

CIVIL MARRIAGES (AMENDMENT) BILL, 2020

A BILL ENTITLED

[]

AN ACT to review and amend the provisions of the Civil Marriages Act found to be discriminatory against women and girls in The Gambia in furtherance of The Gambia’s international obligations and in line with the Constitution and for connected matters.

ENACTED by the President and the National Assembly.

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with the preamble of the Civil Marriages (Amendment) Bill, 2020

- Committee’s Recommendation

The Committee recommends that the preamble stands part of the Bill.

1. Short title

This Act may be cited as the Women's (amendment) Act, 2020.

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with Clause 1 on the Short Title of the Bill

- Committee's Recommendation

The Committee recommends that the Clause 1 on the Short Title stands part of the Bill.

2. Amendment of the Civil Marriages Act 1938

The Civil Marriages Act (In this Act referred to as "the Principal Act") is amended as set out in this Act.

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with Clause 2 to stand part of the Bill

- Committee's Recommendation

The Committee recommends that the Clause 2 should stands part of the Bill.

3. Repeal of Section 15

Section 8 is repealed

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with the repeal of Section 8.

- Committee's Recommendation

The Committee recommends for the repeal Section 8 of the Civil Marriages Act 1938.

4. Amendment of Section 16

Section 16 is amended by inserting a new paragraph (f) in sub-section (1) as follows:

"(f) if celebrated between persons either of whom is below the age of eighteen years."

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with the amendment of Section 16 by inserting a new paragraph (f) in subsection (1). It supports the amendment of Section 16 of the Civil Marriages Act by inserting a new paragraph (f) to read:

"(f) if celebrated between persons either of whom is below the age of eighteen years."

- Committee's Recommendation

The Committee recommends the insertion of Section 16 (f) to stand part of the Bill.

Additional Recommendation

- Observation/Conclusion

As observed and recommended by the officials of the Ministry of Justice, Section 7 (b) of the Civil Marriages Act is inconsistent with the laws that prohibit the marriage of girls who are under eighteen years of age.

- Committee's Recommendation

The Committee recommends for the amendment of Section 7 (b) to now read:

"(b) each of the parties to the intended marriage (not being a widower or widow) is eighteen years old or above;"

OBJECTS AND REASONS

This amendment is the first of its kind in Africa for being the trail blazer for the recognition, observance and the domestication of international obligations and commitments relating to women's rights into domestic laws. Since the enactment of the Women's Act 2010, significant strides have been made to enforce the law and to protect women in line with the provisions of the Act. Section 25 of the Women's Act recognised the need for periodic review of legislation every ten years to ensure further compliance with our international obligations as enshrined in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Protocol to the African Charter on Human and People's Rights on The Rights of Women in Africa, (The Protocol). This amendment is intended to amend and repeal the provisions of this Act that are discriminatory against women as mandated by section 25 of the Women's Act.

- Observation/Conclusion

The Select Committee recommends for the Objects and Reasons to be redrafted in order for it to capture the specific nature of the issue the Bill is intended to address as required by Standing Order 64 (1) (a), which states:

"(1) Every Bill shall be accompanied by a memorandum signed by the person in charge of the bill containing a statement of the objects and reasons of the Bill, including

-

(a) the nature of the issue the Bill is intended to address;"

It was agreed by the Joint Committee that this task of redrafting the Objects and Reasons to ensure that it is specific to the proposed amendment was assigned to the team of draftspersons/counsels from the Ministry of Justice.

9. ANNEXES

9.1 Minutes of Meetings

1. MINUTES OF MEETING OF THE SELECT COMMITTEE ON HEALTH, WOMEN, CHILDREN, DISASTER, HUMANITARIAN RELIEF AND REFUGEE

Date: 06th September, 2020

Time: 11:00am

Venue: Committee Room 1

In Attendance:

Hon. Members of the Committee

- | | | |
|----------------------------|---|-------------|
| 9. Hon. Ousman Sillah | - | Chairperson |
| 10. Hon. Fatoumata Jawara | - | Member |
| 11. Hon. Musa Amul Nyassi | - | Member |
| 12. Hon. Amadou Camara | - | Member |
| 13. Hon. Kaddy Camara | - | Member |
| 14. Hon. Ndey Yassin Secka | - | Member |
| 15. Hon. Sulayman Saho | - | Member |
| 16. Hon. Bakary Camara | - | Member |

Subject Matter Specialist

- | | | |
|------------------------|---|-----|
| 1. Mr. Sekou O.M Dibba | - | SMS |
|------------------------|---|-----|

Secretaries

- | | | |
|-----------------------|---|-----------|
| 1. Mrs. Sarata Bojang | - | Secretary |
| 2. Ms. Isatou Sonko | - | Secretary |

Witnesses:

- | | | |
|------------------------------|---|--------------------------------|
| 7. Mrs. Rohey Bittaye Darboe | - | PS (MOWCSW) |
| 8. Kissima Bittage | - | Ministry of Justice (MOJ) |
| 9. Reneta R Jack | - | Ministry of Justice (MOJ) |
| 10. Jean Able Thomas | - | Gambia Christian Council |
| 11. Mrs. Matilda Johnson | - | Gambia Christian Council |
| 12. Mr. Jacob O. Cole | - | Gambia Christian Council |
| 13. Alhaji Cadi Omar Secka | - | Gambia Supreme Islamic Council |

AGENDA

1. Prayer
2. Introductory/opening remarks
3. Review and adoption of minutes of last meeting
4. Review of the Civil Marriage (Amendment)
5. A. O. B

Prayers:

Hon. Ousman Sillah, Chairperson of the Select Committee called Hon. Members to order, and individual silent prayers preceded the meeting.

Introduction/Opening Remarks:

The Chairperson opined that the Hon. Minister for Justice has introduced series of bills before the Assembly that were committed to the Committee for further scrutiny, and report its findings and recommendations to the Assembly for considerations and approval. According to him, the Civil Marriages (Amendment) Bill 2020 and the Christian (Amendment) Bill 2020 are amongst the Bills under the scrutiny of the Committee.

Giving a background reflection on the Bills, the Chairperson informed the meeting that the bills were initially consolidated into one, and committed to the Health Committee but later withdrawn by the Ministry of Justice (person in charge of the bills). Subsequently, he said the Bills were later separated and brought back to Parliament in June, 2020 for consideration.

According to the Chairperson, the Committee is mandated to make relevant amendments to the bill. Detailing the methodological approach of the Joint Committee in scrutinizing the Bills, the Chairperson argued that the Committee would garner evidences both oral and written from Witnesses to accord them the opportunity to act and make inform decisions.

Furthermore, the Chairperson reminded the meeting of the relevant clause 101 of the Standing Orders of the National Assembly which clearly states the powers and remits of Committees.

Review of the Civil Marriages (Amendment) Bill 2020:

Oral evidence of witnesses

1. All the witnesses, namely the Ministry of Women, Children, Social Welfare, Ministry of Justice, Gambia Christian Council and Gambia Supreme Islamic Council, in their oral presentations, are in support of the repeal of Section 8 of the Civil Marriages (Amendment) Bill, 2020.

They argued that the repeal of Section 8 is consistent with the Women's Act and the Children's Act which prohibit the marriage of girls under the age of eighteen years.

All the witnesses agreed that Section 16 be amended by inserting a new paragraph (f) in subsection 1 to read as follows:

'Consent to marriage of unmarried minors to be repeal''

The Father, if living, of any party to an intended under eighteen years of age, the party not being a widower or widow, if the father is dead or unable for any reason to give such consent, the mother of the party or both parent are dead or unable for any reason to give the consent, then the guardian or guardians of the party, if any, will have authority to give consent to the marriages, and the consent is hereby required for the marriage of the party unless there is no person authorised to give the consent.

"16. Marriage when invalid

(f) if celebrated between persons either of whom is below the age of eighteen years."

3. The Ministry of Justice further recommends for the amendment or redrafting of Section 7 (b) of the parent Act as it is inconsistent with the laws that prohibit the marriage of the underage girl. It proposes for the amendment of the provision to read:

"each of the parties to be intended marriage (not being a widower or window) is eighteen years old, or above.

The Chairperson concluded the first session of the meeting and thanked the witnesses who responded to the convocation of the Committee to attend the meeting to provide evidence on the proposed amendment bill.

Review of the Civil Marriages (Amendment) Bill 2020:

Comments from Witnesses

1. The Witnesses namely: The Ministry of Women, Children, Social Welfare, Ministry of Justice and the Christian Council resolved for section 8 of the parent Act which read as;

‘The witnesses resolved that Section 16 be amended by inserting a new paragraph (f) in subsection 1 which will read as

“if celebrated between persons either of whom is below the age of eighteen years.”

Additional Comments made by Members:

1. The Ministry of Justice recommended for Section 7b of the Parent Act which read as (each of the parties to be intended marriage (not being a widower or widow) is eighteen years old, or that, if he or she is under that age, the consent of the person or persons whose consent to the marriages is required under the provisions of this Act, has been obtained or that there is no person having authority to give the consent, as the case may be. To be redrafted.

9.2. Position Papers

Position papers on the Civil Marriages (Amendment) Bill, 2020 are submitted by the following witnesses:

1. Gambia Christian Council (GCC)