



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 CHRISTIAN MARRIAGES (AMENDMENT) BILL, 2020

October, 2020

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1. MEMBERSHIP 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 - Vice Chairperson
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.

3. INTRODUCTION

After being handed over a copy of the Bill entitled the '**Christian 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 21st 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 Christian Marriages (Amendment) Bill, 2020.

Immediately following the committal of the Christian 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 CHRISTIAN MARRIAGES (AMENDMENT) BILL, 2020

Supplement “B” to The Gambia Gazette No. 14 of 18th March 2020

NATIONAL ASSEMBLY

CHRISTIAN MARRIAGES (AMENDMENT) BILL, 2020

A BILL ENTITLED

[]

AN ACT to review and amend the provisions of the Christian 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 Christian Marriages (amendment) Act, 2020.

2. **Amendment of the Christian Marriages Act 1862**

The Christian Marriages Act (In this Act referred to as “the Principal Act”) is amended as set out in this Act.

3. **Repeal and Replacement of Section 10**

Section 10 is repealed and replaced as follows-

“A marriage licence shall not be issued unless one of the parties personally swears before the President that he or she believes that there is no impediment of kindred or alliance or of any other lawful cause or that neither of the parties is under the age of eighteen years,”

4. **Repeal of Sections 11 and 12**

Sections 11 and 12 are repealed.

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

- | | | |
|------------------------------|---|---------------------------|
| 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 |

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. Consideration, Scrutiny, Findings and Recommendations

In his welcoming and introductory remarks, the Chairperson commended the stakeholders for responding to the invitation to come and serve as witnesses.

The Chair informed the witnesses/stakeholders that the Hon. Minister for Justice had tabled a series of bills before the Assembly which were committed to the Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees for further scrutiny and to report its findings and recommendations to the Assembly for consideration and approval. He noted that the Christian Marriages (Amendment) Bill 2020 was one of the Bills committed to the Committee.

Giving a background history on the Bills, the Chairperson informed the meeting that they 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 be adducing evidences both oral and written from witnesses to enable it to come up with appropriate recommendations.

Furthermore, the Chairperson reminded the meeting about Standing Order 101 of the National Assembly which clearly states the powers and remits of Committees.

1. Consideration and scrutiny

Oral evidence of witnesses

Gambia Christian Council (GCC)

The Gambia Christian Council (GCC), in its oral and written submissions, indicates support for the repeal and replacement of Section 10 of the Christian Marriages Act 1862. Section 10 which the proposed bill seeks to repealed reads as follows:

“10. When Licences can be granted

For avoiding all fraud and collusion in the obtaining of licences for marriage, before any licence is granted, one of the parties shall personally swear before the President that he or she believes that there is no impediment of kindred or alliance or of any other lawful cause, and when either of the parties not being a widower or widow is under the age of eighteen years, that the consent of the person or persons whose consent to the marriage is required under the provisions of this Act is obtained:

Provided that if there is no such person or persons having authority to give the consent, then, on oath being made to that effect by the party requiring the license, it shall be lawful to grant the license, notwithstanding the want of such consent.”

What is being proposed to replace Section 10 reads:

“A marriage licence shall not be issued unless one of the parties personally swears before the President that he or she believes that there is no impediment of kindred or alliance or of any other lawful cause or that neither of the parties is under the age of eighteen years,”

The GCC recommends for the repeal of Section 10 and further proposes for a replacement of the section with thus:

“No licence should be granted that would allow for a marriage under the age of eighteen years.”

It also supports the repeal of Section 11 on *“Consent of father or guardians necessary in cases of unmarried minors”* and 12 on *“The Chief Justice in certain cases may authorize the marriage of parties”*.

The GCC noted that Christian marriages are conducted between persons who are above the age of eighteen.

Ministry of Women, Children and Social Welfare

The Ministry of Women, Children and Social Welfare in both its oral and written presentation expressed support for the proposed repeal and replacement of Section 10 but indicated that the word 'President' needs to be qualified.

Ministry of Justice

The representatives of the Ministry of Justice, in addition to supporting the repeal and replacement of Section 10 and the repeal of sections 11 and 12 of the Christian Marriages Act, are also recommending for the heading of Section 7 of the Act to be amended. It is therefore being recommended that the heading "Protection of Ministers" should be replaced with "Punishment of Ministers" to make it punishable for any minister of religion who solemnises the marriage of a girl under the age of eighteen years.

The state counsels brought to the attention of the Committee the amounts of two dalasis fifty bututs and one dalasi stated in Section 3 (2) of the Christian Marriages Act and asked for a review considering the changing times.

Section 3 (2) reads:

*"The form of attestation shall be subscribed by the party making it, and certified under the hand and seal of the Justice administering the oath or affirmation and the Registrar shall, on application made to him or her for that purpose, and on payment of the fee of two dalasis fifty bututs made to him or her for that purpose, enter and record such attestation, duly certified, in a register book kept by him or her for that purpose, and the register, or an attested copy thereof, shall be considered **prima facie** evidence of the marriage, and of the birth of children, and the Registrar shall give such copy duly certified by him or her to any person demanding it on payment of one dalasi:"*

General comments

It is also recommended that the phrase 'Punishment of Minister' be qualified by putting it thus: "Punishment of Minister of Religion".

2. Conclusions and Recommendations of Committee

Christian Marriages (Amendment) Bill 2020

NATIONAL ASSEMBLY

CHRISTIAN MARRIAGES (AMENDMENT) BILL, 2020

A BILL ENTITLED

[]

AN ACT to review and amend the provisions of the Christian 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 Christian 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 Christian Marriages (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 Christian Marriages Act 1862

The Christian 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 and Replacement of Section 10

Section 10 is repealed and replaced as follows-

"A marriage licence shall not be issued unless one of the parties personally swears before the President that he or she believes that there is no impediment of kindred or alliance or of ant other lawful cause or that neither of the parties is under the age of eighteen years,"

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with the proposed repeal and replacement of Section 10. However, the Gambia Christian Council is recommending for the further amendment of what is being proposed for replacement by the bill with a simplified version.

The issue of the President of the Republic being given a role in such a personal matter was discussed. In clarifying the role of the President, the ministry of Justice officials indicated that this is a delegated responsibility which is not necessarily discharge by the office holder. They cited Laws of The Gambia Interpretation Act Cap 4: 01 Section 25 which defines this delegated role of the President which is performed by the Registrar.

- Committee's Recommendation

The Committee recommends that any of the two proposals from the bill or the Gambia Christian Council can be adopted.

4. Repeal of Sections 11 and 12

Sections 11 and 12 are repealed.

- Observation/Conclusion

The Committee observes that the witnesses are in agreement in the repeal of Sections 11 and 12 of the Christian Marriages Act 1862.

- Committee's Recommendation

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

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 Joint 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 for this task of redrafting the Objects and Reasons to ensure that it is specific to the proposed amendment to be assigned to the team of draftpersons/counsels from the Ministry of Justice.

Below is the version of the Objects and Reasons drafted by the legal draftsperson of the Ministry of Justice which the Committee recommends for adoption:

“OBJECTS AND REASONS

For decades, some marriages have been conducted in The Gambia without the actual consent of a women or a girl. Their consent to marry is normally obtained from their parents or guardians. Such practices are discriminatory against women and girls. It is also a violation to their right to marry. Right to marry is a fundamental human right enshrined in our Constitution. A person

shall not be forced to marry to another person. A men and women can only marry with consent from both parties.

Section 27 of the 1997 Constitution of the Republic of The Gambia provide

–
“(1) Men and women of full age and capacity shall have the right to marry and found a family.

(2) Marriage shall be based on the free and full consent of the intended parties”

Furthermore, section 28 of same Constitution provides-

“(1) Women shall be accorded full and equal dignity of the person with men.

(2) Women shall have the right to equal treatment with men, including equal opportunity in political, economic and social activities.”

Also, section 25 of the Women’s Act recognized 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 Peoples Right on The Rights of Women in Africa, (The Protocol).

Thus, this Bill seeks to review and amend the provisions of the Principal Act that are discriminatory against women and girls.

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HON. ABUBACARR MARIE TAMBADOU
ATTORNEY GENERAL AND MINISTER OF JUSTICE”

9. ANNEXES

i. Minutes of Meeting

ii. Pictures

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

Date: 06th October, 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 Bittaye | - | 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. Father Jacob O. Cole | - | Gambia Christian Council |

AGENDA

1. Prayer
2. Introduction/Opening Remarks
3. Review and Adoption of last Meeting
4. Review of Christian Marriage (Amendment Bill, 2020)
5. A. O. B

Prayers:

Following the silent prayers, the Committee Clerk informed the Chair that a quorum existed for the meeting to proceed. When the Chair, Hon. Ousman Sillah, put the question before the members as to whether to proceed or not, the 'ayes' have it.

The Chair asked the attendees to self-introduce themselves.

Introductory/opening remarks:

In his welcoming and introductory remarks, the Chairperson commended the stakeholders for responding to the invitation to come and serve as witnesses informed 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.

2.

1. Gambia Christian Council

2. Ministry of Women, Children and Social Welfare