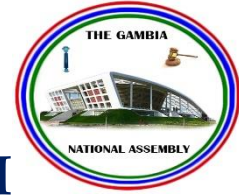




REPUBLIC OF THE GAMBIA

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 MATRIMONIAL
CAUSES (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

Hon. Ousman Sillah	-	Chairperson
Hon. Fatoumata Jawara	-	ViceChairperson
Hon. Saikou Marong	-	Rapporteur
Hon. Sulayman Saho	-	Rapporteur
Hon. Amadou Camara	-	Member
Hon. Musa Amul Nyassi	-	Member
Hon. Bakary Camara	-	Member
Hon. Omar Darboe	-	Member
Hon. Kaddy Camara	-	Member
Hon. Ndey Yassin Secka	-	Member
Hon. Momodou L. K. Sanneh,	-	Member
Hon. Dawda Kawsu Jawara	-	Member

1.2. Support Staff

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

1.3. Subject Matter Specialists

Sekou Omar Dibba	-	SMS
Aminata L.R. Ngum	-	SMS
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 '**Matrimonial Causes (Amendment) Bill, 2020**' at the plenary on 22nd 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 07th 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 Women's (Amendment) Bill, 2020.

Immediately following the committal of the Matrimonial Causes (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 PROPOSED MATRIMONIAL CAUSES (AMENDMENT) BILL, 2020

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

NATIONAL ASSEMBLY

MATRIMONIAL CAUSES (AMENDMENT) BILL, 2020

A BILL ENTITLED

[]

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

2. **Amendment of the Matrimonial Causes Act 2007**

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

3. **Amendment of Section 4**

Section 4 is amended by inserting immediately after subsection (1) (f), a new paragraph (g) as follows-

"(g) the Respondent has committed violent act, including rape, against the Petitioner!

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 in the consultation on the Women’s (Amendment) Bill, 2020.

1. Mrs. Rohey Bittaye-Darboe, Permanent Secretary Ministry of Women, Children and Social Welfare
2. Mr. Kissima Bittaye, State Counsel, Attorney General’s Chamber and Ministry of Justice
3. Mr. Omar Secka - Supreme Islamic Council
4. Mr. Ousman Ceesay - NGBV
5. Mrs. Matilda Johnson - Christian Council
6. Mr. Jacob O. Cole - Christian Council
7. Mariama John - NGBV
8. Mr. Fallu Sowe - NGBV
9. Mrs. Fanta Jatta Sowe - AAITG

8.2. 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

Subject Matter Specialist

1. Mr. Sekou O.M Dibba - SMS

Secretaries

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

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 Civil 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 and written evidences of witnesses

Ministry of Justice

The representative of the Ministry of Justice recommends for the word 'rape' to be replaced with the phrase 'sexual offences' in the proposed Matrimonial Causes Bill.

Ministry of Women, Children and Social Welfare (MoWC&SW)

The Ministry expressed its support for such an amendment.

Gambia Christian Council

The Gambia Christian Council, in both its oral and written position, recommends for the rephrasing of Section 4 (1) (g) to read:

"The respondent has committed violent act against the petitioner."

It also proposes for an addition ground under section 4 to deal with rape and/or some other act that cannot be conveniently covered under the present section 4 (1) (b) of the said Act.

Gambia Supreme Islamic Council

The representative of the Supreme Islamic Council supports the amendment but expressed his disagreement with the idea that rape can occur in marriage and therefore recommends for the its exclusion in the proposed amendment.

Network Against Gender Based Violence (NGBV)

The Network, in its written position, recommended for the paragraph to read as follows:

“4. (1) (g) the respondent has confirmed violent act, including rape, against the petitioner, child of the petitioner or any other person under the responsibility of the petitioner.”

Its justification is that the petitioner, in most instances, is not the only one affected by violence, hence the inclusion of the people around him/her to also be protected by the law.

Matrimonial Clause (Amendment) Bill 2020

Amendment of Section 4

“Section 4 is amended by inserting immediately after subsection (1) (f), a new paragraph (g) as follows”-

(g) the Respondent has committed violent act, including rape, against the Petitioner.”

The majority of witnesses expressed their agreement in having such a provision but further indicated that rape cannot occur in a marriage as far the culture in the Gambia is concern and, as such, are recommending for the deletion of the word ‘rape’ from Section 4 (g).

Comments/ Recommendations

- The representatives of both the Supreme Islamic Council and the Gambia Christian Council do not agree with the inclusion of rape in the proposed paragraph, adding that there can be an additional ground under Section 4 to deal with marital rape and or some other act.

- Network Against Gender Base Violence (NGBV) recommends for the paragraph (g) to be inserted to read:

“The Respondent has committed violent act against the petitioners, sexual offences to the child of the petitioner or any other child under the care of petitioner.”

- The State Counsel from the Ministry of Justice recommended for the word ‘rape’ to be replaced with the phrase ‘sexual offences’.

- Mrs. Matilda Johnson from GCC expresses support for having the word ‘rape’ in the proposed amendment, arguing that some married women face a lot of difficulties in their matrimonial lives such as sexual violence, including rape, which some do not report.

- There was consensus for the word ‘rape’ to be replaced by the phrase ‘sexual offences’ and for the recommendation of the NGBV to be adopted with the removal of the word rape.

2. Conclusions and Recommendations of Committee

MATRIMONIAL CAUSES (AMENDMENT) BILL 2020

A BILL ENTITLED

[]

AN ACT to review and amend the provisions of the Matrimonial Causes 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 Matrimonial Causes (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 Matrimonial Causes (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 Labour Act 2007

The Matrimonial Causes 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 stand part of the Bill.

3. Amendment of Section 4

Section 4 is amended by inserting immediately after subsection (1) (f), a new paragraph (g) as follows-

“(g) the Respondent has committed violent act, including rape, against the Petitioner!

Observation/Conclusion

The Committee observed that the majority of the witness are in support of the removal of the word ‘rape’ from the proposed amendment of Section 4 (1) (g) and for it to now read:

““The Respondent has committed violent act against the petitioners, sexual offences to the child of the petitioner or any other child under the care of petitioner.”

Committee’s Recommendation

Having considered the arguments advanced by all the witnesses including the support for the word ‘rape’ to remain, the Committee is in agreement for the adoption of the revised version presented by NGBV as the phrase ‘sexual offences’ encompasses all types of violations.

The Committee recommends for Section 4 (1) (g) that should stand part of the Bill to read:

“4. Proof of break-down of marriage

(1) For the purpose of showing that the marriage has broken-down beyond reconciliation, the petitioner shall satisfy the court on one or more of the following facts that –

(g) The Respondent has committed violent act against the petitioners, sexual offences to the child of the petitioner or any other child under the care of petitioner.”

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;”

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

“OBJECTS AND REASONS

Domestic violence has increasingly been a concern in The Gambia for the past years. Women are sometimes subjected to violent acts by their husband without having any option to break-down their marriage. Some husbands have sexual affairs with the children (including adopted child) of their wives. This has created lot of hardship for such women in their marriage. And the Principal Act does not provide grounds for such women to break-down their marriages which are discriminatory against them at the highest level.

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 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).

Therefore, this Bill seeks to review and amend the provisions of the Principal Act (that are discriminatory against women and girls) to be in line with the

Convention on the Elimination of all Forms of Discrimination Against Women, (CEDAW).

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

9. ANNEXES

1. Minutes of Meetings

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

Date: 07th October, 2020

Time: 11:00am

Venue: Committee Room 1

Members of the Committee **in attendance:**

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

- | | | |
|-------------------------------|---|---------------------------|
| 1. Mrs. Rohey Bittaye Darboe- | - | PS (MOWCSW) |
| 1. Council Kissima Bittage | - | Ministry of Justice (MOJ) |
| 2. Mr. Omar Secka | - | Supreme Islamic Council |
| 3. Mr. Ousman Ceesay | - | NGBV |
| 4. Mrs. Matilda Johnson | - | Christian Council |
| 5. Mr. Jacob O. Cole | - | Christian Council |
| 6. Mariama John | - | NGBV |
| 7. Mr. Fallu Sowe | - | NGBV |
| 8. Mrs. Fanta Jatta Sowe | - | AAITA |

AGENDA

1. Prayer

2. **Introduction/Opening Remarks**
3. **Review and Adoption of last Meeting**
4. **Review of the Matrimonial Clauses (Amendment) Bill, 2020**
5. **A. O. B**

Prayers:

The meeting was called to order by the Hon. Ousman Sillah, Chairperson of the Select Committee, and individual silent prayers were observed.

Introduction/Opening Remarks:

The Chairperson of the Committee welcome everyone to the meeting and highlighted on the purpose of the consultative meeting.

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.

He also the Chairperson reminded the meeting of the relevant clauses 65,66,67,68,69, and 101 of the Standing Orders of the National Assembly which clearly states the powers and remits of Committees.

Matrimonial Clause (Amendment) Bill 2020

1. Amendment of Section 4

“Section 4 is amended by inserting immediately after subsection (1) (f), a new paragraph (g) as follows”-

(g) the Respondent has committed violent act, including rape, against the Petitioner/

The majority of witnesses expressed their agreement to have such a provision but further indicated that rape cannot occur in a marriage as far the culture in the Gambia is concern and, as such, are recommending for the deletion of the word ‘rape’ from Section 4 (g).

2. Comments/Recommendations

- The representatives of both the Supreme Islamic Council and the Gambia Christian Council do not agree with the inclusion of rape in the amendment Bill, arguing that there cannot be rape in ,marriage as far as they are concern.

- Network Against Gender Base Violence recommends for a paragraph (g) to inserted to read:

“The Respondent has committed violent act against the petitioners, sexual offences to the child of the petitioner or any other child under the care of petitioner.”

- State Council Bittaye recommended for the word ‘rape’ to be replaced with the phrase ‘sexual offences’.
- Mrs. Matilda Johnson expresses support for having the word ‘rape’ in the proposed amendment, arguing that some married women face a lot of difficulties in their matrimonial lives such as sexual violence, including rape, which some do not report.
- There was consensus for the word ‘rape’ to be replaced by the phrase ‘sexual offences’.

Signature.....

Hon. Ousman Sillah
Chairperson of Health

Signature.....

Sarata Bojang
Committee Clerk

2. Position Papers