



STUDY ON COHABITATION IN UGANDA

STUDY REPORT

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Vision

“Laws that facilitate transformation and development of Uganda”

Mission Statement

“To reform and update the laws in line with the social, cultural and economic needs and values of the people of Uganda.”

Core values of the Commission

Professionalism
Accountability
Integrity
Result oriented

Slogan

“Law reform for transformation and sustainable development”

PREFACE

Cohabitation is prevalent and gaining popularity in Uganda. The practice of cohabitation poses legal challenges in terms of child maintenance and custody; property rights; and inheritance and succession rights. Efforts to address issues related to cohabitation have continued to be futile as a result of the absence of a comprehensive mechanism to address the legal issues that arise. Cohabitation is not recognised as a form of marriage and is therefore not provided for under marriage laws in Uganda.

In 2016, consultative meetings with key actors and stakeholders recommended that an in-depth study is carried out on the subject of cohabitation in Uganda to establish the dimensions of cohabitation that may merit regulation.

This is a report of the study undertaken in response to the above recommendation. Herein, the need to regulate the practice of cohabitation; to recognise the property rights of cohabiting persons; the need to provide protection to vulnerable persons in cohabitation; the need to address child custody and maintenance during and at the breakdown of a cohabitation relationship and at the death of a partner are highlighted.

The Uganda Law Reform Commission is grateful for the support offered by the Government of Uganda. Special thanks to various institutions such as; Makerere University, Centre for Domestic Violence prevention and the twenty districts that were consulted during the study.

The findings and recommendations of this study are expected to inform proposals for a law to regulate cohabitation in Uganda.



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EXECUTIVE SUMMARY

This is a report of the study on Cohabitation in Uganda undertaken by the Uganda Law Reform Commission. The study was undertaken to explore possibilities for a legal and institutional framework to govern cohabitation relationships. In particular, it sought to establish the nature of cohabitation and identify the implications of cohabitation and examine the need to regulate cohabitation in Uganda.

The study was a follow up of consultative meetings in 2016 with key actors and stakeholders which recommended that the subject of cohabitation in Uganda be studied in depth to establish other dimensions of cohabitation other than property issues that affect cohabiting relationships and that may merit regulation.

The study was undertaken using both qualitative and quantitative methods of data collection and it targeted stakeholder representatives and rural communities in twenty selected districts in all the sub regions of the country. The study population comprised community members, representatives of civil society organisations and religious institutions, Members of Parliament and representatives of academia.

The report indicates that there is an increase in the number of cases of cohabitation in Uganda. This increase points to a high degree of acceptability of the practice. The report further presents the increasing number of the problems that arise out of cohabitation relationships, the challenges faced by cohabiting parties and their implications. The increasing popularity of cohabitation has raised the question as to whether and how informal relationships can be given legal form.

Abbreviations and Acronyms

CAO	Chief Administrative officer
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEDOVIP	Centre for Domestic Violence Prevention
ICRW	International Centre for Research on Women
SPSS	Statistical Package for the Social Sciences
UWOPA	Uganda Women Parliamentary Association
UN	United Nations

Key findings

1. There is no uniform definition of the concept of cohabitation. As a result, it is interpreted circumstantially and in the best interest of the person interpreting it. This does not facilitate the making of legal decisions on the subject.
2. Cohabitation is prevalent and on the increase in many communities in Uganda.
3. The practice of cohabitation poses legal challenges in terms of property ownership during and at the breakdown of a cohabitation relationship and inheritance on the death of either party, as there is no legal protection for cohabitants in relation to property acquired jointly during, and at breakdown of cohabitation relationship and right to inheritance. This leads to family disputes, property disputes and disenfranchising of women and children's rights to inheritance.
4. Up to 85% of respondents are in favour of regulation of the practice of cohabitation. This is because of the prevalence of cohabitation and its acceptability by society.

Key recommendations

1. There is need for a contextual definition of the concept of cohabitation for purposes of clarity and regulation.
2. Considering the steady increase in the practice of cohabitation in Uganda, there is need to critically consider the need for regulation of the practice.
3. The need to recognise the property rights of cohabiting persons can no longer be ignored. In particular, the element of child custody and maintenance, during and at breakdown of a cohabitation relationship and at the death of a partner should be addressed.

4. The prevalence of cohabitation, its acceptability by society and the need to provide protection to vulnerable persons in cohabitation call for regulation of the practice of cohabitation.

The findings and recommendations of this study are expected to inform the proposals for a law to regulate and protect the rights of people in these kind of relationships.

CHAPTER ONE

BACKGROUND AND CONTEXT

1.0 Introduction

This chapter contains the background and context of the study. It presents the problems that arise out of cohabitation relationships, the challenges faced by cohabiting parties and their implications. The chapter further presents objectives of the study, provides justification for undertaking the study on cohabitation and defines the scope of the study.

1.1 Background and context

Cohabitation is a common practice all over the world and is becoming increasingly prevalent. Cohabitation started to spread in the 1970s and 1980s. During this diffusion process it gradually went from being a deviant phenomenon to a widespread and accepted behaviour for young people who wanted to start living together in most Northern and Western European and North American countries. The 21st Century has seen profound changes in the configuration of family life in Sub-Saharan Africa.¹ A prominent feature of this family has been the increasing prominence of cohabitation which entails residence of unmarried partners living like husband and wife.² These consensual, free and casual unions are gaining popularity and are no longer considered a moral issue in many countries.³

1 Di Giulio P. & Rosina A. Intergenerational family ties and the diffusion of cohabitation in Italy. (2007) *Demographic Research*, 16(14), 441–468.

2 Haskey 2001 in Cohabitation in sub-saharan Africa. A regional Analysis. Pg 1

3 Claves A E, Kobiane J.F and Martel E. Changing Transition to Adulthood in Urban Burkina Faso. *Journal of Comparative Family Studies* 38 (2): (2004) 265-283.

This increase can be attributed to socio-cultural and economic reasons. In some countries, the phenomenon is further being dictated by the disproportional population structures where the number of women outweigh the number of men and social economic challenges that come with marriage. The increasing popularity of cohabitation has raised the question as to whether and how informal relationships can be given legal form.⁴

Cohabitation involves a man and woman residing together in an intimate relationship in which they may have children and acquire property together. Persons may choose to cohabit for a variety of reasons including the desire to test compatibility before committing to a legal union while others may want to maintain their single status for financial reasons. In some cases, it is individuals already married to another person under a law that does not allow them to marry another (monogamous unions). In other cases, the partners may feel that marriage is unnecessary.

Cohabitation relationships raise issues of child maintenance and custody, property rights, inheritance and succession rights and domestic violence. These issues often raise socio-economic and legal questions that merit redress. Whereas there are institutional and legal frameworks that address aspects of these issues, there are no comprehensive mechanisms that can be used to address these issues specifically.

African scholars argue that cohabitation poses a challenge to African cultural outlook towards marriage and the growing popularity of cohabitation among Africans has become a

4 Charlotte Mol Reasons for Regulating Informal Relationships: A comparison of nine European jurisdictions. Volume 12, Issue 2 (June) (2016:1) www.utrechtlawreview.org | <http://doi.org/10.18352/ulr.347> accessed on 16th August 2020.

source of concern to parents, opinion/religious leaders, social scientists and policy makers.⁵

In Uganda, the practice and its rising popularity can be derived from a study undertaken in Sub-Saharan Africa on cohabitation which states that cohabitation relationships rose from 13.6% to 26.9% in 2011, making Uganda the country with the highest number of cohabiters in East Africa⁶ and further that in Uganda cohabitation is highest among the richest, standing at 25%, while among the poorest it is rated at 18.8%.⁷ Statistics further show that in terms of education 14.8% of cohabitation is between persons with no formal education, 58.8 % is among persons with primary education, 22.3% with secondary education while 4.1 % are among persons with tertiary education.⁸

Considering the rate at which cohabitation rose between 2006 and 2011, it is projected that currently cohabitation in Uganda may be estimated to be at 53.8%. This trend poses a threat to the institution of marriage, making it no longer useful for the rise in cohabitation to be ignored.

In 2016, on the advice of the Minister of Justice and Constitutional Affairs and the Attorney General, the Commission held discussions with stakeholders to address some of the

- 5 Uka, J.M. Moving the Goalpost: 'Come-We-Stay' Practice in Menchum Division (MD), Cameroon. *Sociology Study* 5(8): (2015)616-627 accessed on <doi:10.17265/2159-5526/2015.08.002.>; Okyere-Manu, B., Cohabitation in Akan Culture of Ghana: An Ethical Challenge to Gatekeepers of Indigenous Knowledge System in the Akan Culture. *Alternation Special Edition* 14: (2015) 45-60
- 6 Ndgurwa. P et al. Cohabitation in Sub-Saharan Africa: A regional Analysis. Pg 13 <<https://uaps2015.princeton.edu/papers/150817>> accessed on 5th June 2020
- 7 Ndgurwa. P et al. Cohabitation in Sub-Saharan Africa: A regional Analysis. Pg 18 <<https://uaps2015.princeton.edu/papers/150817>> accessed on 5th June 2020
- 8 Ndgurwa. P et al. Cohabitation in Sub-Saharan Africa: A regional Analysis. Pg 19 <<https://uaps2015.princeton.edu/papers/150817>> accessed on 5th June 2020

contentious and unclear clauses in the Marriage and Divorce Bill 2009 that raised concerns and contributed to the delayed, full consideration and passage of the Bill. Top on the list was the subject of cohabitation and its different dimensions that merited attention. The Commission was directed to undertake a fully fledged study on cohabitation in Uganda to establish other factors other than property rights that affect cohabiting persons. It is against this background that the Commission undertook this study to explore mechanisms that can address the issues surrounding cohabitation that merit legal redress.

1.2 Statement of the problem

There is an increase of cohabitation in Uganda. This increase points to a high degree of acceptability of the practice. Such relationships have led to domestic violence, death of partners, child neglect, and inheritance disputes especially at the demise of either party or breakdown of the relationship. While the practice of cohabitation is on the increase, it is not formally recognized by the law in Uganda. Although certain aspects of cohabitation are addressed, they are piece meal and inadequate.

Uganda lacks a specific law to address issues resulting from cohabitation. This causes uncertainty to the cohabitating parties at the time of death and separation. This uncertainty in law poses a challenge to cohabiting partners, the status and rights of children or property issues at separation or death.

Cohabitation relationships are faced with conflict and disputes which may arise during the subsistence of the relationship or at breakdown. This sometimes creates unfair advantage to either cohabiting partner especially where the period of cohabitation is relatively long. Conflicts such as domestic violence, child neglect and disagreements over property ownership merit mechanisms to address them.

This study sought to explore possibilities of legal redress for the above concerns. Key issues explored in this context included the concept of cohabitation, why people cohabit, the process, cost and duration of such relationships, the nature of protection available to cohabittees, the implications of such relationships and their effect on the institution of marriage.

1.3 Objectives of the study

The overall objective was to study cohabitation in Uganda in order to explore possibilities for a legal and institutional framework to govern cohabitation relationships.

The specific objectives of the study were to:

- (i) establish the nature and forms of cohabitation in Uganda;
- (ii) identify the implications of cohabitation; and
- (iii) examine the need to regulate cohabitation.

1.4 Justification for the study

The Constitution in Objective XIX of the National Objectives and Directive Principles of State Policy⁹ implores the State and society to protect the family as the natural and basic unit of society. Article 31 provides for the right to found a family. Article 31(1) provides that a man and a woman are entitled to marry only if they are each of 18 years and above and are entitled at that age (a) to found a family and (b) to equal rights at and in marriage, during marriage and at its dissolution. In essence, cohabitation is not recognised. Studies indicate a high prevalence of cohabitation in Uganda. This calls for an examination of the legal protection that is accorded to the parties in cohabitation.

⁹ Objective XIX of the 1995 Constitution provides that the family is the natural and basic unit of society and is entitled to protection by society and the State.

The United Nations (UN) committee on the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in its recommendations 21 and 29 provide that States(s) parties should take measures to protect women and children in *de facto* unions specifically with regard to the protection of their economic rights.

In 2016, on the advice of the Minister of Justice and Constitutional Affairs, the Attorney General and the Commission held discussions with stakeholders to address some of the contentious and unclear clauses in the Marriage and Divorce Bill 2009 that had raised concerns and had contributed to the delayed full consideration and passage of the Bill. Top on the list was the subject of cohabitation and its different dimensions. The Commission was directed to undertake a comprehensive study on cohabitation in Uganda to establish other factors other than property rights that affect cohabiting persons. It is against this background that the Commission undertook the study to explore mechanisms that can address the issues arising from cohabitation that may merit legal redress.

1.5 Scope of the study

The study examined the practice of cohabitation in Uganda, the legal issues that arise out of cohabitation and explored possibilities of addressing them.

CHAPTER TWO COHABITATION IN UGANDA

2.0 Introduction

This chapter presents a review of the nature of cohabitation, the forms it takes, the prevalence of cohabitation, its causes and effects. The chapter further identifies the implications of cohabitation and examines whether or not there is need to regulate the practice of cohabitation.

2.1 Nature of cohabitation

2.1.1 Definition of cohabitation

Black's Law Dictionary defines cohabitation as the act of a man and a woman openly living together without being married to each other.¹⁰ Some scholars have defined cohabitation to be a consensual union among youth, who choose to cohabit with a partner without performing any marriage ceremony.¹¹ Ogunsola adds that cohabitation involves shared accommodation, shared sex life, shared economic resources, shared matrimonial duties, and sometimes procreation as its common features.¹² Karen, et al, define cohabitation as a tentative, non-legal coresidential union which does not require or imply a lifetime commitment to stay together.¹³ Brown observes that cohabitation is an

10 Black's Law Dictionary, 7th Edition www.thelawdictionary.org

11 Claves A E, Kobiane J.F and Martel E, Changing Transition to Adulthood in Urban Burkina Faso. *Journal of Comparative Family Studies* 38 (2): (2007) 265-283.

12 Ogunsola, M.O, The Effect of Premarital Cohabitation on Quality of Relationship and Marital Stability of Married People in Southwest, Nigeria. *African Nebula* 3: (2011). 16-24

13 Karen Benjamin Guzza, *The Changing Nature of Cohabitation*. Bowling Green State University, May 2014

arrangement whereby two people decide to live together on a long term or permanent basis in an emotionally and or sexually intimate relationship.¹⁴ Cohabitation may be narrowly defined as an intimate sexual union between two unmarried partners who share the same living quarters for a sustained period of time.¹⁵

Countries have defined cohabitation differently. In the western world, Ireland defines cohabitation as two adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.¹⁶ In the UK, cohabitation is considered as a state in which two persons are neither married to each other nor civil partners of each other but are living together as husband and wife as if they were civil partners.¹⁷ In Sweden, cohabitation is termed as a situation where two people live together as a couple on a habitual basis and share a household (this excludes short term relationships).¹⁸

In Africa, in countries where studies on cohabitation have been comprehensively carried out like in Namibia, cohabitation is referred to as a situation where two adults are living together in a relationship resembling a marriage in some key respects, without being married under civil or customary law.¹⁹ Nigeria defines cohabitation as a situation where two people who are

14 Brown, S.L Family Structure and Child Welfare: The Significance of Parental Cohabitation. *Journal of Marriage and Family*. (2004:1)

15 Bachrach, C., Hindin, MJ. and Thomson , The Changing Shape of ties that bind: An overview and Synthesis. *The ties that Bind: Perceptions on Marriage and Cohabitation*. Waite L NewYork (2000):13-18)

16 Part 15, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Ireland)

17 Section 62 (1) (a) of the Family Act of 1996(UK).

18 Section 1 (2) of the Cohabitation Act 2003 (Sweden)

19 A Family Affair: The Status of Cohabitation in Namibia and recommendations for Law Reform. Research Brief 2016 pg 8

romantically involved choose to live together without making a formal commitment of marriage.²⁰

In Uganda attempts have been made to explain the concept of cohabitation. These have however been restricted in scope and coverage. Some of these studies include: the Relationship between Cohabitation and its Impact on Religion in Ggaba;²¹ and the Impact of Urbanisation on Cohabitation in Kampala City;²² Cohabitation and Union Dissolution in central Uganda and its Implications.²³ Byamukama, for instance, states that cohabitation is a type of marriage where a man and a woman decide to live together without complying with legal requirements and is regarded as the beginning of other types of marriages²⁴ as provided in laws related to marriage in Uganda.²⁵ Lwanga considers it to be a union when a man and woman agree to live together in an intimate relationship as husband and wife.²⁶

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- 20 Augustinah N.D, Nireti Duyilemi, Bola Margret Tundie-Awe, Louis Omolaya Adekola, Cohabitation in Nigeria. Tertiary Institutions: A case study of Adekunle Ajasin University, Akungba- Akoko' Ondo State Nigeria, Volume 3, No. 1 of 2018 The International Journal of Social Sciences and Humanities.:28.
 - 21 Galiwango Twaha, Cohabitation and its impact on religion in Ggaba mission-Makindye Division-Kampala District (Bachelor's degree Dissertation, Kampala International University) July 2014.
 - 22 Dr Fredrick Ruguma TUMWINE and Prof. James NTOZI. Impact of urbanization on co-habitation in Kampala city accessed on 5th June 2020 <<http://uaps2011.princeton.edu/papers/110226>>.
 - 23 Charles Lwanga, Ismail Kalule- Sabiti and Natal Ayiga. Cambridge University press 17th April 2017.<https://www.cambridge.org/core/journals/journals-of-biosocial-science/article/cohabitation-and-union-dissolution-in-central-uganda-differences-between-cohabitators-and-noncohabitators/48EE9CC4C1022FB065783081EB7A944A> Accessed on 14th Aug.2020.
 - 24 Byamukama, D.CK, Is your Marriage Legally Recognized? New vision Newspaper, Kampala, Tuesday September 12th 2006.
 - 25 See also Tumwine and Ntozi: Impact of Urbanization on co-habitation in Kampala city A paper presented at the 6th APC-2011 <<http://uaps2011.princeton.edu/papers/110226>> accessed on 14th June 2019
 - 26 Charles Lwanga, Cohabitation and its Implications on Marital Stability and First Birth: A case of the Central Region of Uganda , Online Publication by Cambridge University press 18th April 2017 (2015:12) <<https://dspace.nwu.ac.za>>

Considering the restricted nature of the above studies undertaken in Uganda, it follows that they are not representative of national perceptions on cohabitation. This study sought to establish perceptions on the subject of cohabitation to make recommendations for legal redress for persons in cohabitation.

2.1.2 Forms of cohabitation

Studies on the subject of cohabitation suggest three typologies of cohabitation which are conceptualized as premarital cohabitation (trial marriage), *de facto* cohabitation (an alternative to marriage) and casual cohabitation (an alternative to being single).²⁷

Villeneuve-Gokalp distinguishes four different types of cohabitation: cohabitation as a temporary situation preceding marriage (either as a 'prelude to marriage' or as a 'trial marriage' allowing for a period of testing); cohabitation without strong commitment leading to a 'temporary union' with separation after a short period of time; cohabitation as a 'stable union without commitment, a long-lasting co-residence without children or marriage; and cohabitation as a 'free union' in which couples behave as if they are married, having children but without caring about marrying.²⁸

Kiernan presents a four-stage theoretical model of cohabitation diffusion. Where, casual cohabitation is at the first stage of cohabitation diffusion since it is usually limited to marginal groups like youths and students, and the arrangement is treated as a deviant behaviour by society. Premarital cohabitation is at the second stage because it is considered as a trial period preceding

27 Thatcher, A. *Marriage after Modernity: Christian Marriage in Postmodern Times*. (1999). London: Sheffield Academic Press

28 Villeneuve-Gokalp as cited in *The changing pattern of cohabitation: A sequence analysis approach*. Volume 40, Article 42, Pages 1211-1248 Published 14 May 2019 <<https://www.demographic-research.org/Volumes/Vol40/42/>> DOI: 10.4054/DemRes.2019.40.42 (1991)

marriage and it is increasingly acceptable to many social groups. *De facto* cohabitation is at the third and final stage of cohabitation diffusion.²⁹ This cohabitation assumes equivalence with marriage and marriage becomes less functional and more symbolic.³⁰ This implies that the *de facto* stage becomes the fourth stage in a sense that it can become the ultimate end of that relationship. Gold, classifies cohabitation as premarital, ‘testers’, college age cohabiters and a group he called “no interest in marriage”.³¹

Essentially, three forms of cohabitation are highlighted. These include premarital, *de facto* and casual as illustrated below.

(i) Premarital cohabitation (trial marriage)

Premarital cohabitation can be described as a precursor to marriage. It is considered as a trial period preceding marriage and it is increasingly acceptable to many social groups.³² Individuals who see marriage as an ultimate commitment might prefer to test ‘living together’ before committing.³³ This way, the individuals believe they can avoid the mistake of marrying someone with whom they are fundamentally mismatched and if the trial fails, it is easy to end the relationship without

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- 29 Kiernan, K, Cohabitation in Western Europe. Trends, issues and implications. (2002) As cited in Olugbenga and Olusola. Cohabitation: Harbinger Or Slayer Of Marriage In Sub-Saharan Africa?
- 30 Cherlin A, The Deinstitutionalization of American Marriage. Journal of Marriage and Family. Volume 66, Issue 4: (2004) 848–861 accessed on 10th June 2020 < doi:10.1111/j.0022-2445.2004.00058.x.>
- 31 Joshua M. Gold, Typologies of Cohabitation: Implications for Clinical Practice and Research, The Family Journal: Counseling and Therapy for Couples and Families (2012) 3-8).
- 32 Kiernan, K, Cohabitation in Western Europe. Trends, issues and implications. In: Booth, A., Crouter, A. C., (eds.) Just living together: Implications of cohabitation on families, children and social policy. Mahwah, NJ: Lawrence Erlbaum Associates: (2002) 3-31.
- 33 Miller, A., Sessler, S., and Kusi-Appouh, D, The Specter of Divorce: Views From Working- and Middle-Class Cohabiters. Journal of Applied Family Studies 60(5): (2011) 602-616.

experiencing the trauma of the divorce courts.³⁴ This perception about cohabitation has resulted in a situation where it is almost a deviant act to marry without first cohabiting.³⁵

(ii) *De facto* cohabitation (an alternative to marriage)

De facto cohabitation is seen as a substitute union to marriage³⁶ or “a poor man’s marriage” According to Oppenheimer, it requires no customary, religious, or formal ceremonies to establish.³⁷ Most socio-economically disadvantaged youth who face difficulty in meeting financial thresholds for marriage often enter into this arrangement, with no explicit plans for marriage.³⁸ It is preferred by individuals who desire non-committed relationship³⁹ or when marriage is not immediately desirable, practical, or possible.⁴⁰

34 Hatari P, Cohabitation – A risky western trend spreading to Africa. The New Times Rwanda. June 2006 (2009)<<https://www.newtimes.co.rw/section/read/8833>>(2009).

35 Budinski R.A and Trovato F, The Effect of Premarital Cohabitation on Marital Stability over the Duration of Marriage. Canadian Studies in Population 32(1): (2005) 69-95. doi:10.25336/P6B304; Ogunsola, M.O, The Effect of Premarital Cohabitation on Quality of Relationship and Marital Stability of Married People in Southwest, Nigeria. African Nebula 3; (2011)16-24.

36 Ogunsola, M.O, The Effect of Premarital Cohabitation on Quality of Relationship and Marital Stability of Married People in Southwest, Nigeria. African Nebula 3; (2011)16-24.

37 Oppenheimer V.K, Cohabiting and marriage during young men’s career development process. Demography 40(1): 127–149. (2003)doi:10.1353/dem.2003. 0006.

38 Mernitz S.E, A cohort comparison of trends in first cohabitation duration in the United States. Demographic Research (2018) 38(66): 2073-2086. doi:10.4054/DemRes.2018.38.66.

39 Kiernan K, Cohabitation in Western Europe. Trends, issues and implications. In: Booth, A., Crouter, A. C., (eds.) Just living together: Implications of cohabitation on families, children and social policy. Mahwah, NJ: Lawrence Erlbaum Associates: (2002) 3-31; Attah M, Extending Family Law to Non-Marital Cohabitation in Nigeria. International Journal of Law, Policy and the Family (2012)26(2): 162–186.

40 Cherlin A, The Deinstitutionalization of American Marriage. Journal of Marriage and Family. Volume 66, Issue 4: (2004) 848–861. doi:10.1111/j.0022-2445.2004.00058.x.

(iii) Casual cohabitation

This is not necessarily a premarital phase or an alternative to marriage, but a temporary cohabitation for other reasons.⁴¹ This practice is common among college age youth for whom cohabitation serves as a statement of liberation and independence from parental concerns, values or approvals.⁴² Casual cohabitation is preferred by ‘purposeful delayers’⁴³ and youth due to its characterised shared household, sexual intimacy, independence, low commitment and no children.⁴⁴

This study sought to establish the types of cohabitation relationships in Uganda and to examine whether a distinction of the types of cohabitation will be vital in making legal and policy interventions related to the practice of cohabitation.

2.1.3 Prevalence of cohabitation

Empirical data from some Western countries reveal that cohabitation became a dominant part of the cultural landscape in the mid-2000s⁴⁵ and between 75% and over 90% of the people living together before marriage.⁴⁶ The percentage of cohabiting

41 Miller, Sassler, and Kusi-Appouh Miller, A., Sassler, S., and Kusi-Appouh, D, The Specter of Divorce: Views From Working- and Middle-Class Cohabitors. *Journal of Applied Family Studies* 60(5): (2011) 602-616, Hatari P, Cohabitation – A risky western trend spreading to Africa. (2009) *The New Times Rwanda*. <<https://www.newtimes.co.rw/section/read/8833>>

42 Joshua M. Gold, Typologies of Cohabitation: Implications for Clinical Practice and Research (2012:317) <http://tfj.sagepub.com>

43 Mokomane Z, Cohabitation in Botswana: An Alternative or a Prelude to Marriage? *African Population Studies/Etude de la Population Africaine* (2006) 20(1): 19-3

44 Claves A E, Kobiane J.F and Martel E, Changing Transition to Adulthood in Urban Burkina Faso, (2007) *Journal of Comparative Family Studies* 38 (2):265-283.

45 Popenoe, D, Cohabitation, Marriage and Child Wellbeing: A Cross-National Perspective. Piscataway, NJ: The National Marriage Project (2008) (Rutgers University)

46 Kiernan (in.40)

unions among all unions was close to 30% in Sweden, 24% in New Zealand, 18% in Canada, 17% in France, 15% in United Kingdom, and 7% in the United States, while Catholic Italy (4%) and Spain (3%) have the least occurrence.⁴⁷

In Uganda, there is no readily available national level statistics relating to the magnitude of cohabitation. This study explored matters of the prevalence of cohabitation from national and individual documentations to establish a detailed picture of the prevalence of cohabitation in Uganda.

2.1.4 Causes of cohabitation

Cohabitation, as argued by many scholars, is attributed to economic factors. Living together enables cohabiters to reduce the cost of living by splitting costs and combining funds for food, rent and utilities.⁴⁸ Many even purposively cohabit with those whom they perceive are capable of solving their financial problems.⁴⁹ This is also propounded by the hypothesis that the time of marriage formation for young men is impeded by unemployment, unstable and low status jobs.⁵⁰ As such, men may delay or avoid marriage not only because of the difficulty

47 Popenoe (in. 46)

48 Nazio, T. and Blossfeld, H-P. The Diffusion of Cohabitation Among Young Women in West Germany, East Germany and Italy, *European Journal of Population* 19: (2003) 47-82; See Goodwin, P.Y., Mosher, W.D., and Chandra, A. Marriage and Cohabitation in the United States: A Statistical Portrait Based on Cycle 6 (2002) of the National Survey of Family Growth. National Center for Health Statistics. *Vital and Health Statics* 23(8); See also Svodziwa, M and Kurete, F. (2017). Cohabitation among Tertiary Education Students: An Exploratory Study in Bulawayo. *Human and Social Studies* VI (1): 138-148.

49 Oppong, C., Oppong, Y.P.A. and Odotei, I. Sex and Gender in an Era of AIDS: Ghana at the Turn of the Millennium. Accra, Ghana: Sub-Saharan Publishers (2006). See also Ojewola F.O. and Akinduyo T.E, Prevalence and Factors Responsible for Cohabitation among Undergraduates of Adekunle Ajasin University, Ondo State, Nigeria. (2017) *American Journal of Educational Research* 5(6): 650-654..

50 Oppenheimer, V.K, Cohabiting and marriage during young men's career development process. (2003) *Demography* 40(1): 127-149.

of paying for a wedding but also because of fear of financial hardship if a marriage were to end in divorce. Unsuccessful young adults therefore may opt for “a poor man’s marriage” i.e. cohabitation.⁵¹ Edin, Kefalas, and Reed observed that many couples thus choose to cohabit until circumstances are ideal.⁵² Economic factors play a big role when assessing the notable increase in the occurrence of cohabitation. This creates circumstances where such a relationship may be the most beneficial form of union.

Many people choose cohabitation as a way to test-drive the relationship before getting married. According to Miller, Sassler, and Kusi-Appouh, cohabitation gives partners opportunity to study each other, test for compatibility and fertility (if man is virile or woman is fecund) and build trust.⁵³ Ariyo reveals that in Lagos, Nigeria, more than half of married couples were said to have lived together before getting married.⁵⁴ People often believe that living together in a “trial marriage” will tell potential partners something about what marriage would be like. The National survey of Families and Households shows that many couples have a belief that this would help one make good choices and avoid bad ones. Most cohabitants say that making sure that they are compatible before marriage is an important reason why they would live together.⁵⁵

51 Oppenheimer, V.K. Ibid.

52 Edin, Kathryn, and Joanna M. Reed. “Why Don’t They Just Get Married? Barriers to Marriage among the Disadvantaged.” *The Future of Children*, vol. 15, no. 2, 2005, pp. 117–137. JSTOR, www.jstor.org/stable/3556566.

53 Miller, A., Sassler, S., and Kusi-Appouh, D. The Specter of Divorce: Views From Working- and Middle-Class Cohabitators. *Journal of Applied Family Studies* (2011) 60(5): 602-616

54 Ariyo, A.M. Pre-marital cohabitation factors: Evidence from Nigeria. *Psychology and Social Behavior Research* (2013). 1(4): 128-136.

55 Galiwango Twaha; Cohabitation and Its Impact on Religion In Ggaba Mission-Makindye Division. Kampala District. Kampala International College of Humanities and Social Sciences. (July 2014) (A dissertation)

Other people fear marriage and opt to live together instead of tying the knot at all. Isupova opines that mistrust and fear may also motivate one to cohabit, noting that, the difficulty individuals have in trusting each other and institutions have extended to intimate partners and relationships.⁵⁶ Some women avoid marriage in an attempt to avoid the male domination so often associated with marriage. They may wish to protect their independence, particularly if they have income earning opportunities on their own, and fear that marriage might entail losing decision making autonomy or control over their own income. They may also fear being tied to an abusive spouse.⁵⁷ The British Household Panel Survey found that 70% of partnerships after divorce were not marital. The decision to cohabit rather than marry following divorce may be made for various reasons, ranging from the emotional (the experience of a “bad divorce” apparently discourages many from remarrying to protecting the fruits of the divorce settlement.⁵⁸ Even people who have no personal experience with divorce (say, of their parents or friends) are concerned about it happening to them.

The erosion of religious values has also contributed to cohabitation. Studies carried out note that cohabiters tend to be less religious⁵⁹ and the level of cohabitation is lower in countries

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- 56 Isupova, O. Trust, responsibility, and freedom: Focus-group research on contemporary patterns of union formation in Russia. (2015). *Demographic Research* 32(11): 341–368.
- 57 A Family Affair. The Status of Cohabitation in Namibia and Recommendations for Law Reform. Legal Assistance Centre 2010;11
- 58 Cohabitation: The Financial Consequences Of Relationship Breakdown. The England and Wales Law Commission Consultation Paper No 179 (2007)
- 59 Nazio, Tiziana & Hans-Peter, Blossfeld.), The Diffusion of Cohabitation among Young Women in West Germany, East Germany and Italy. *European Journal of Population*. (2003) 19. 47-82. 10.1023/A:1022192608963; Calvès, Anne-Emmanuèle & Kobiane, Jean-Francois & Martel, Edith. (2007). Changing Transition to Adulthood in Urban Burkina Faso. *Journal of Comparative Family Studies*. 38. 265-283. 10.3138/jcfs.38.2.265. Mashau, Thinandavha. (2011). Cohabitation and premarital sex among Christian youth in South Africa: A missional reflection.. *HTS Theologiese Studies / Theological Studies*. 67. 1-7. 10.4102/hts.v67i2.899.

with a strong influence of organized religion.⁶⁰ Most Christian denominations condemn it as a grave offence against the dignity of marriage but the Church of England accepts it as a step towards marriage⁶¹ and some religious groups do not necessarily reject cohabiting unmarried couples.⁶² Tumwine and Ntozi studied the impact of urbanization on cohabitation in Kampala City and noted that the percentage of cohabitation before formal marriage was much higher among Moslems (28%) than Catholics (12%) and Protestants (15.8%). Christianity discourages cohabitation because cohabitation encourages sex before wedding in church, which is considered by Christians as a sin and fornication. In the Catholic Church, penalties are even imposed on parents of couples cohabiting, they are prevented from taking Holy Communion in church and being godparents at baptism.⁶³

Mashau states that the African traditional authority and communal living patterns have been watered down by colonialism, urbanisation and globalisation. This deterioration has been shown by some African parents who have even allowed their daughters to sleep at their boyfriend's house.⁶⁴ Urbanisation allows partners to stay together despite rejection by the parents. Cohabitation is more likely to be practiced in urban centers than

60 Mokomane, Zitha. (2006). Cohabiting Unions in Sub-Saharan Africa: Explaining Botswana's Exceptionality. *Journal of comparative family studies*. 37. 25-42+iv+ix. 10.3138/jcfs.37.1.25.; Popenoe, David. (2009). Cohabitation, Marriage, and Child Wellbeing: A Cross-National Perspective. *Society*.46. 429-436. 10.1007/s12115-009-9242-5

61 Thatcher, A. *Marriage after Modernity: Christian Marriage in Postmodern Times*. London: Sheffield Academic Press. (1999).

62 *ibid*

63 Dr Fredrick Ruguma TUMWINE and Prof. James NTOZI. Impact of urbanization on co-habitation in Kampala city accessed on 5th June 2020 <<http://uaps2011.princeton.edu/papers/110226>>.

64 Calvès, A.E., Kobiané, J.F., and Martel, E. (Changing Transition to Adulthood in Urban Burkina-Faso. *Journal of Comparative Family Studies* (2007). 38(2): 265–283.

rural areas where it is accepted.⁶⁵ The increased media exposure to and acceptance of foreign cultures has liberalised sex and placed more emphasis on self oriented pursuit of individual goal attainment rather than family centered orientations.⁶⁶ The study sought to explore the causes of cohabitation in the context of Uganda.

2.2 Implications of cohabitation

Cohabitation has far reaching implications. These can be legal, socio-cultural and economic terms as reviewed below.

2.2.1 Protection of property

One of the issues that arise in cohabitation is the right to property acquired during cohabitation. Article 26 (1) of the Constitution provides that every person has a right to own property either individually or in association with others.

Section 39 of the Land Act⁶⁷ which deals with restrictions on transfer of family land provides as follows;

No person shall –sell, exchange, transfer, pledge, mortgage or lease any family land;

enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land; or

65 Dr Fredrick Ruguma TUMWINE and Prof. James NTOZI. Impact of urbanization on co-habitation in Kampala city accessed on 5th June 2020 <<http://uaps2011.princeton.edu/papers/110226>

66 B. Okyere-Manu. Cohabitation in Akan Culture of Ghana : An Ethical Challenge to Gatekeepers of Indigenous Knowledge System in the Akan Culture).2015

67 Cap. 227

give away any family land, inter vivos, or enter into any other transaction in respect of any family land; except with the prior consent of his or her spouse.

The Contract Act, 2010 allows people of full age and capacity with free consent for lawful consideration to enter into a contract.⁶⁸

Section 56 of the Registration of Titles Act⁶⁹ provides that two persons or more who are registered as joint proprietors shall be deemed to be entitled to the land as joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares.

Section 18 of the Insolvency Act⁷⁰ prohibits insider dealing, stating that a transaction entered into by a company or individual relating to the assets of the insolvent is voidable if the transaction involves spouses, siblings, children of the insolvent, or any person with close social proximity to the insolvent.

2.2.2 Protection of children

Cohabiting unions are becoming an increasingly common family context for having and raising children.⁷¹ Children born out of these relationships often face challenges that merit redress. These challenges include loss of child identity, child neglect and disenfranchisement of property inheritance. These issues usually arise during breakdown of the relationship or death of a parent.

68 Section 10 of the Contract Act, 2010

69 Cap.230

70 Cap. No.14 of 2011

71 Wendy D. Manning: Future Child accessed on <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4768758>

Article 34(1) of Constitution provides that, subject to laws enacted in their best interest, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.

Section 4 of the Children Act⁷² provides for the rights of a child. Every child shall have the right to be registered after birth, have a right to a name and nationality, inherit property where applicable, be treated without discrimination of any kind, irrespective of his or her race, colour, religion, belief, family status, culture, language, ethnicity, nationality or social origin, citizenship, gender, disability if any, political or social opinion, property or any other condition.

Some policy experts claim that even though the shift is not a “tragic” change it still remains disastrous for children who are bearing the brunt of being born in such relationships. Mothers suffer looking after the children single-handedly and without much income, as the man moves on. The Minister of Justice and Constitutional Affairs at the time, noted with concern that the practice of cohabitation should be recognized because it leads to offspring and their protection is not guaranteed absolutely. He also stated that there are other obligations to the people involved which should be provided for in the law.⁷³

2.2.3 Inheritance

Section 27 of the Succession Act provides that subject to section 29 and 30, the estate of a person dying intestate, excepting his principal residential holding shall be divided among the following classes in the following manner.

- (1) where the intestate is survived by a customary heir, a wife, a lineal descendent and a dependant relative;

72 Cap 59

73 Carol Natukunda, Marriage, Divorce Bill: Where are the children? New Vision newspaper, 10th March 2013

- (a) the customary heir shall receive 1 percent,
- (b) the wives shall receive 15 per cent,
- (c) dependant relative shall receive 9 per cent,
- (d) lineal descendant shall receive 75 per cent of the whole of the property of the intestate.

Section 24 of the National Social Security Fund Act⁷⁴ provides for survivor's benefits. It provides that the dependant relative of the fund shall be entitled upon his or her death to the survivor's benefit which shall be payable in accordance with this section and regulations made there under. Section 24(5) dependant relatives to mean; wife or husband of the deceased.

In *Kajubi V Kabali*,⁷⁵ court held that mere having children with the deceased does not entitle a woman to the deceased's estate.

In *Kahrmann V Harrison Morgan*,⁷⁶ a former cohabitee was ordered to refund to her late partner's estate, the 2.2m Pounds which she had received for agreeing to vacate her partner's property in order for it to be sold. The Court of Appeal held that there was no basis for the payment as she did not have the right to occupy the property. Her partner had died intestate and due to the invalidity of his will (which would have provided for her on behalf of her children) she was not eligible to make a claim on his estate as a dependant because he had died while domiciled in Germany.

2.2.4 Social protection

Section 3 of the Domestic Violence Act⁷⁷ defines domestic relationship to mean a family relationship, a relationship similar to a family or a relationship in a domestic setting that exists

74 Cap.222

75 1944 E.ACA 14

76 [2019] EWCA Civ. 2094

77 No.3 of 2010

or existed between a victim and a perpetrator and includes a relationship where the perpetrator or victim share or shared the same residence or a relationship determined by court to be a domestic relationship.

Section 3(2) provides that a court, in making a determination of whether a relationship is a domestic relationship has regard to the amount of time the persons spend together, the place where the time is spent, the manner in which that time is spent and the duration of the relationship.

Problems arise in the areas of child custody, insurance, real and personal property, wills and estates.⁷⁸ When a cohabiting couple's relationship comes to an end, the court's powers to intervene are limited to occasions where the couple have entered into a legally binding written agreement setting out their respective rights should the relationship break down. In exceptional circumstances, the court may also make orders where it finds that one party, whilst not having legal ownership of a property, has nevertheless acquired a beneficial or equitable interest in the property. In most cases then, when a cohabiting couple's relationship comes to an end, they have no right against the property or finances of the other party and are left without recourse to spousal maintenance on the breakdown of the relationship.⁷⁹

Persons in cohabiting relationships lack formal recognition by the legal system, for medical care, or health insurance. In the case of relational dissolution, there are no legal safeguards for either party or no legal recourse for how to divide assets, address any child care issues, and so on.

78 E. Bernstein *Legal Problems of Cohabitation; The Family and the Law* Vol. 26, No. 4, (Oct., 1977), pp. 361-366

79 Anthony Gold, *The consequences of cohabitation* <https://www.lexology.com/contributors/anthony-gold-solicitors> (2015) February 23/Blog

According to Di Giulio and Rosina⁸⁰ and Schröder⁸¹, in countries where cohabitation is not widely accepted, choosing cohabitation as a living arrangement may lead to a deterioration in a person's relations with his or her family. Cohabitation has shifted from a marginal behaviour to one that has become acceptable and normal. In many countries cohabitation is now even the expected way of starting a family.⁸² This has provided a challenge to legal institutions, since unions no longer have clear markers for when serious relationships begin and end.⁸³ Hence, the increase in cohabitation is changing the nature of partnership formation and dissolution, with implications not only for couples but also for other family members, social networks, state support and society in general.⁸⁴

Twaha also argues that, there is a lack of blessings from parents or guardians. The foundation of peace in marriages is dependent on the parents' or guardians' blessings. The union of wife and husband without parents', guardians' or religious leaders' blessings will have little hope for a lasting marriage and survival of the family as a stable unit.⁸⁵

According to Waite and Gallagher, people in cohabiting relationships, tend to be cautious about investing in their

80 Di Giulio, P. & Rosina, A. (2007). Intergenerational family ties and the diffusion of cohabitation in Italy. *Demographic Research*, 16(14), 441–468.

81 Schroder, C. (2008). The influence of parents on cohabitation in Italy: Insights from two regional contexts. *Demographic Research*, 19(48), 1693–1726.

82 Hiekel, N., Liefbroer, A.C. & Poortman, A. Understanding Diversity in the Meaning of Cohabitation Across Europe. *Eur J Population* 30, 391–410 (2014). <https://doi.org/10.1007/s10680-014-9321-1>

83 Perelli-Harris, B. How Similar are Cohabiting and Married Parents? Second Conception Risks by Union Type in the United States and Across Europe. *Eur J Population* 30, 437–464 (2014). <https://doi.org/10.1007/s10680-014-9320-2>

84 Sánchez Gassen, N., & Perelli-Harris, B. (2015). The increase in cohabitation and the role of union status in family policies: A comparison of 12 European countries. *Journal of European Social Policy*, 25(4), 431–449.

85 Galiwango Twaha; Cohabitation and Its Impact on Religion In Ggaba Mission-Makindye Division. Kampala District. Kampala International College of Humanities and Social Sciences. (July 2014) (A dissertation)

relationships (accumulating less marital-specific capital) because of the uncertainty regarding the stability of the relationship and the lack of institutional protection against the risks of the investments.⁸⁶ These cohabiting individuals make lower investments in their relationships, forming less interdependent dealings both financially and emotionally.⁸⁷

Cohabitation also opens a person up to serious financial consequences if a relationship ends without any of the protections of a legal marriage. Unless both parties' names are on the title to property that the couple acquire during the relationship, there is no legal presumption that the property belongs to both parties. Even though cohabitating couples often pool their resources, there is no obligation for one party to provide any kind of financial support to the other if the relationship should end. Additionally, there is no responsibility to share debt if, for instance, one person's credit card was used for joint purposes.

2.3 The need to regulate cohabitation

Cohabitation is on the increase worldwide and there is hardly a country left in the world which does not provide some measure of recognition to cohabitation.⁸⁸ The law must evolve to deal with these changed circumstances.⁸⁹ The need to regulate the practice

86 Waite, L. J. and Gallagher, M. (2001). The case for marriage. Why married people are happier, healthier, and better off financially cited in Maira Covre-Sussai and Koen Matthijs; Socio-economic and Cultural Correlates of Cohabitation in Brazil, ResearchGate 16 June 2015. <https://www.researchgate.net/publication/265194848>

87 Maira Covre-Sussai and Koen Matthijs; Socio-economic and Cultural Correlates of Cohabitation in Brazil, ResearchGate 16 June 2015. <https://www.researchgate.net/publication/265194848>

88 A Family Affair: Gender Research and Advocacy Project. Legal Assistance Centre 2010. The Status of Cohabitation in Namibia and Recommendations for Law Reform

89 Rebecca Probert. Cohabitation: Current Legal Solutions Downloaded from <https://academic.oup.com/clp/article-abstract/62/1/316/344663> by guest on 25 July 2020:320

of co-habitation was realised close to thirty years ago in the western world and steps were taken to provide for the practice in the law.

As far back as 1973, Sweden⁹⁰ had already regulated informal relationships. Other jurisdictions that have regulated such relationships include Hungary⁹¹ and Slovenia⁹² (1977), Croatia⁹³ (1978), Catalonia⁹⁴ (1998) and Portugal⁹⁵ in 1999. In recent years, Scotland⁹⁶ (2006), Ireland⁹⁷ (2010) and Finland⁹⁸ (2011) have each regulated informal relationships, 'albeit in many different forms with different functions.'⁹⁹

For these countries, five aspects stood out as motivating the regulation of informal relationships. The five aspects are: (1) the steady increase of informal relationships as a new social reality; (2) the financial protection of a vulnerable party; (3) the influence of the national Constitution; (4) the recognition of same-sex couples; and (5) the protection of the common child.¹⁰⁰

90 The Act of Unmarried Cohabitants' Joint Dwelling 1973

91 See Civil Code in 1977. See also Civil Code which came into effect in 2014 (please note that it also provides for same sex couples, an undesirable situation in Uganda,

92 The Marriage Act of 1977

93 Marriage and Family Relations Act, 1978.

94 Law 10/1998

95 Law No. 135/99. See also

96 The Family Law (Scotland) Act of 2006. Currently, Scottish law regulates the informal relationship of 'cohabitation' in two main statutes within family law; the Matrimonial Homes (Family Protection) (Scotland)

Act and the Family Law (Scotland) Act.

97 Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

98 Finnish Act on the Dissolution of the Household of Cohabiting Partners 2011

99 Charlotte Mol. Reasons for Regulating Informal Relationships: A comparison of nine European jurisdictions. www.utrechtlawreview.org | Volume 12, Issue 2 (June) 2016

100 Charlotte Mol. *Ibid.*

The social realities that merited the regulation of such relations included developments like increased co-habitation,¹⁰¹ the rapid increase of informal relationships,¹⁰² the frequency of unmarried companionship¹⁰³ and the rapid increase of extramarital cohabitation,¹⁰⁴ among others, resulted in calls to address the lack of regulation for informal relationships and the awareness of this trend increased support for legislative reform in the listed countries.¹⁰⁵ This trend is clearly a result of the cultural shifts and social trends surrounding modern partnering and parenting practices.

During consultations held across the country, over 60% of the respondents acknowledged that cohabitation is a social reality. Due to the irregular manner in which the relationship commences, it remains shaky and as such is characterised by frequent breakups which are accompanied by property wrangles and child custody issues, among others, all of which are potentially disastrous to the parties as well as their direct beneficiaries.

Much as there is no specific legislation on cohabitation in Uganda, there are several legal provisions that cohabiting persons can benefit from in the different pieces of legislation. These include:

The Registration of Titles Act which¹⁰⁶ allows more than one person to own land jointly or under a tenancy in common. Such owners are entitled to have a certificate of title in their names which is conclusive evidence of title to that property.

101 The case for Catalonia

102 The case of Finland

103 The case for Hungary and Portugal

104 The case of Ireland

105 Charlotte Mol. in 100

106 S.55, 56, 57 and 59 Cap. 20

Cohabitants can use this to ensure that their land rights are protected.

The Constitution,¹⁰⁷ Children Act and Succession Act¹⁰⁸ all protect children whether born in marriage or otherwise.

The Domestic Violence Act defines a domestic relationship as a family relationship or one similar to a family relationship or a relationship in a domestic setting or what court may determine as one.¹⁰⁹ This definition has a wide interpretation that not only caters for married persons but also those in a cohabiting relationship.

The International Convention on Civil and Political Rights¹¹⁰ and the Convention on the Elimination of All forms of Discrimination against Women¹¹¹ have explicitly stated that the protections for the family in these conventions apply to cohabiting families.¹¹² International law on family and cohabitation is important to Uganda because public International law and binding international agreements become part of the law of Uganda by virtue of Article 287 of the Constitution. These provisions are loosely interpreted to benefit cohabiting couples.

This study sought to explore whether there is need for specific protection for cohabiting parties.

107 Article 34 of the 1995 Constitution

108 Section 87, Cap. 162

109 Section 3(1) No. 3 of 2010

110 Human Rights Committee, General Comment 19: Protection of the family, the right to marriage and equality of the spouses (Art 23), HRI/GEN/1/Rev.2 (1990).

111 Committee on the Elimination of Discrimination Against Women, General Recommendation No 21: Equality in marriage and family relations, HRI/GEN/1/Rev.7 (1994) (emphasis added).

112 Committee on the Elimination of Discrimination Against Women, General Recommendation No 21: Equality in marriage and family relations, HRI/GEN/1/Rev.7 (1994)

In Uganda, there has been an increase in cohabitation relationships over the years¹¹³ which can be attributed to population growth, urbanisation and intermarriages.

Article 16 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)¹¹⁴ provides for the elimination of discrimination against women at the inception of marriage, during marriage and at its dissolution by divorce or death. The Committee¹¹⁵ in its General Comment 29 has noted that women enter *de facto* unions for a variety of reasons. Some State Parties provide a legal framework for recognising *de facto* unions at some point such as upon the death of a partner or the dissolution of the relationship. Where such legal frameworks do not exist, women may be exposed to economic risks when a cohabiting relationship ends, including when they have contributed to maintaining a household and building other assets.

The CEDAW Committee determined in its General Recommendation 21 that elimination of discrimination against women in *de facto* unions is included in State party obligations under Article 16 (1). In States Parties where such unions exist, and with regard to relationships in which neither partner is married to another person or is in a registered partnership with another person, the Committee recommends that the State Party consider the situation of women in these unions, and of the children resulting from them, and take the necessary measures to ensure the protection of their economic rights.

113 Observer News paper 29th July 2012. See also Ndugura. P et al. Cohabitation in Sub-Saharan African. A regional analysis pg.13.

114 Uganda ratified CEDAW in 1985.

115 Committee on Elimination of Discrimination against women

CHAPTER THREE METHODOLOGY

3.0 Introduction

This chapter presents the methodology that was used to undertake the study. It details the study design, population and study sites. It further details the methods used for collecting and analyzing the data collected during the study.

3.1 Study design

The study used both qualitative and quantitative methods of data collection. The qualitative method of research was used to collect views, opinions and perceptions on cohabitation and to enable a deeper understanding of the issues surrounding and impacting cohabitation. The quantitative method on the other hand was used to generate statistical facts and figures, to illustrate issues of magnitude, frequency and occurrence.

3.2 Study population

In particular, the study targeted rural communities in selected districts in all the sub regions of the country, civil society organisations and religious institutions, advocates for cohabitation, stake holder agencies and institutions, Members of Parliament, and representatives of academia. Altogether, a total of 2010 respondents were consulted directly using consensus building fora.

3.3 Study sites

The study was conducted in 21 districts of Uganda and it targeted mainly rural communities. These districts were clustered under the Central, Eastern, Northern, Western and West Nile as follows.

Table 1 Study districts

Study area	Selected Districts
Central	Preliminary consultations were undertaken among stakeholders in Kampala
Eastern	Kamuli, Palisa, Kumi, Kaberamaido and Napak
Northern	Alebtong, Amuru, Apac, Oyam and Nwoya
Western	Mubende, Bushenyi, Kyenjojo, Kabale and Masaka
West Nile	Nebbi, Maracha, Koboko, Yumbe and Adjumani

3.4 Data collection

Data was collected using both primary and secondary methods. These included literature review and direct consultations. The literature review process was on-going and took place during the lifetime of the project to ensure that all relevant information and issues were captured and taken care of during the review process. Primary data was collected using the interview schedule for structured interviews and set of thematic concerns to guide the preliminary and the main consultations. Consultations were done at either the district administrative units or sub-county headquarters where either interviews or dialogues were conducted with the following categories of persons:

Table 2 Category of respondents interviewed

Method and category of persons	No. persons per district	Total no. of districts	Sub-total
Kampala (Preliminary)	10	1	10
Dialogues community members from 18years and above)	100	20	2,000
Grand total			2,010

Other views and findings to complement the study were gathered through literature review, stakeholder and institutional

preliminary meetings and national feedback and consensus building workshops. In addition, comparative studies were undertaken to map out best practices that could be adopted.

3.5 Data analysis

The data for this study was analysed using the Statistical Package for the Social Sciences (SPSS) for purposes of manageability and generation of thematic and specific statistics. The results of the analysis was interpreted and backed up by the use of verbatim responses recorded during the study. This formed the basis of the study report.

CHAPTER FOUR FINDINGS AND RECOMMENDATIONS

4.0 Introduction

This chapter presents the findings and provides an analysis of the findings. The findings and analysis are premised on literature reviewed and consultations on the subject of cohabitation.

4.1 Nature of cohabitation in Uganda

Perceptions of cohabitation varied amongst respondents across the country. These ranged from cohabitation being a form of marriage, a precursor to marriage, a relationship between a man and a woman who have lived together for a long time and deviant behaviour.

4.1.1 Definition of cohabitation

Some respondents perceived cohabitation as *“a kind of relationship where a man and a woman agree to live together, but unofficially,¹¹⁶ the man even fears to introduce the woman to his friends and relatives.”¹¹⁷* Other respondents described cohabitation as *“a process of pretending to be married without formalisation, a way of dodging to pay dowry”,¹¹⁸* others said it is *“where two people decide to live together and have no problems until things backfire. You only know it is cohabitation when all goes bad”.¹¹⁹ “It is when people live together as if they are husband and wife,”¹²⁰* and that it is a situation where *“a man*

116 Pallisa District dialogue

117 Iganga District dialogue

118 Pallisa District dialogue

119 Kumi District dialogue

120 Nwoya District dialogue

and a woman stay together for more than two years when not formally married.”¹²¹

While a section of community members described it as a situation where “*a man and a woman stay together without fulfilling traditional requirements or a marriage where a man and a woman stay together without paying dowry and without a formal agreement.*”¹²²

Culturally, it is considered to be “*deviant behaviour where one goes against cultural laws and values.*”¹²³ A situation where partners avoid going to their parents for a discussion about their relationships. Another respondent observed that “*in the process of marriage, the boy no longer informs his parents but just brings a girl home. The girls also do not inform their parents and they move on to live together and even have children.*”¹²⁴

Among the religious, it is considered as “*having sex before marriage*”,¹²⁵ also considered “*living in sin or without ‘nikah’ among the Muslims,*”¹²⁶ A participant observed that “*cohabitation is disobedience to the laws or the laws of the church when they start to stay with one another.*”¹²⁷

In general, cohabitation is considered as an arrangement without legal formalisation,¹²⁸ a situation where parties have never been to their parents, to the Chief Administrative Officer’s office or not married religiously, a view commonly held by respondents

121 Bushenyi District dialogue

122 Kaberamaido District dialogue. This same view was also expressed at the Kabale District dialogue.

123 Kumi District dialogue

124 In Amuru and Nwoya Districts. A similar view was also expressed at the Maracha district dialogue

125 Adjumani, Alebtong, Oyam and Apach

126 Koboko and Yumbe District dialogues

127 Maracha District dialogue

128 Palisa District dialogue

across the country. As noted from the above, the practice of cohabitation is common in all communities in Uganda and there is a common thread in the way it is described. There is need however, to have a contextual definition of the concept of cohabitation for purposes of clarity and regulation.

Some jurisdictions have enacted legislation on cohabitation which provides a definition of the term cohabitation. This has made it possible for them to determine redress in situations where issues arise that merit redress.

In Kenya, the Marriage Act 2014 defines “cohabit” to mean to live in an arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage.¹²⁹ In Namibia, where two adults live together in a relationship resembling a marriage in some key respects, without being married under civil or customary law¹³⁰ it is considered cohabitation.

The Republic of Ireland on the other hand, considers cohabitation as a situation where two adults live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.¹³¹

Cohabitation in India is seen as a living arrangement in which an unmarried couple lives together in a long term relationship that resembles a marriage.¹³² In the UK, ‘cohabitants’ is defined in section 62(1)(a) of the Family Law Act 1996 as two persons who are neither married to each other nor civil partners of each

129 Definition section, Section 2.

130 A Family Affair: The Status of Cohabitation in Namibia and recommendations for Law Reform. Research Brief 2016:8

131 Part 15, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Ireland)

132 “Commitment” to live together. Crime against women, domestic violence, live in relationship, marriage laws by Nnlrj India on December 20, 2010

other but are living together as husband and wife or as if they were civil partners.

In other jurisdictions, phrases have been used to refer to cohabitation. Living together for instance, is the term used in South Africa¹³³ and Israel.¹³⁴ The terms common law marriage¹³⁵ and domestic partnership¹³⁶ are also used in South Africa. In Botswana, cohabitation is referred to as either a cohabiting union¹³⁷ or consensual union.¹³⁸ In Scotland it is referred to as a domestic relationship,¹³⁹ close personal relationship¹⁴⁰ or common law partnership.¹⁴¹

It should be noted that none of the terms above can effectively describe cohabitation but at the same time the context in which they are used may not necessarily apply to the Ugandan context. The use of words and phrases such as ‘living together’, ‘domestic partnership’, ‘domestic relationship’, ‘consensual union’ does not differentiate cohabitation from a marriage. The use of the phrase ‘common law marriage’ and ‘common law partnership’ is a foreign concept.

What is common about cohabitation in many jurisdictions is “living together in the same residence, generally either as husband and wife or for an extended period of time as if the parties were married.”¹⁴²

133 Domestic Partnership Bill 2008

134 Recognized an institute of yeduimbatsibur meaning a couple who are “known in the public” as living together as husband and wife.

135 Domestic Partnership Bill 2008

136 Domestic Partnership Bill 2008

137 Zitha Mokomane. Cohabitation in Botswana: (2005) An alternative or a prelude to Marriage? Department of Population Studies, Faculty of Social Sciences , University of Botswana . Pg 19. www.aps.journals.ac.za

138 ZithaMokomane ibid pg20 www.aps.journals.ac.za

139 The Property Relations Act 1984.

140 Domestic Partners Property Act 1996.

141 The Family Law Act 1975

142 Ethiopia under the 1960 Civil Code and Family Code 2000

Similarly, case law has defined cohabitation variously. In *Kimber v Kimber*,¹⁴³ the judge considered the important definition of a household and concluded that this should mean that the parties live under the same roof. In that respect, a generally accepted list of potential influencing factors listed in the case include:

- (i) whether the parties are members of the same household and share their daily life;
- (ii) the parties' intention and motivation; whether there is stability to their relationship;
- (iii) whether there is an aspect of financial support and pooling/sharing of finances;
- (iv) whether there is a sexual relationship;
- (v) whether the parties have a child or children or have taken on responsibility for a child of one of the parties; and
- (vi) whether there is public acknowledgement of the relationship.

In the context of Uganda, emphasis should be put on the key elements that amount to cohabitation. Some of the possible circumstances which could fit the description of cohabitation in Uganda include: *mutual consent of the parties, intimacy, period of living together, degree and nature of contribution and investments, and public acknowledgement of the relationship.*

In light of the above context, a credible definition of cohabitation would be: *An intimate relationship between two persons who have lived together for a duration of time during which they have made contributions and investment in cash or kind.*

143 [2000] 1 FLR 383

4.1.2 Forms of cohabitation

(i) Cohabitation as a form of marriage

A majority (90%) of the respondents perceived cohabitation as a form of marriage. According to them, cohabitation is a form of marriage where a man and a woman live together in an intimate relationship, found a family and acquire property. Some of the respondents observed that, *“Cohabitation is a kind of relationship where a man and a woman agree to live together, but unofficially. The man even fears to introduce the woman to his friends and relatives.”*¹⁴⁴

In Kyenjojo District, it was stated that it is a situation in which “friends of the opposite sex stay together for various reasons before they decide to formally marry”¹⁴⁵ or where *“people in a sexual relationship stay together without formalising it”*.¹⁴⁶ In Bushenyi it was observed that cohabitation is where *“a man and a woman stay together for more than two years without formally getting married”*.¹⁴⁷

Although findings indicate that cohabitation is perceived as a marriage, it is not recognised as a form of marriage under the laws of Uganda. The forms of marriages recognised include; Civil, Christian, Islamic, Hindu and Customary marriages. In the case of *Baryamureeba James v. Kabakonjo and six others*,¹⁴⁸ Court held that the marriages recognised in Uganda are those provided for under the Marriage Act, Customary Marriages (Registration) Act, the Marriage and Divorce of the Mohammedan Act, the Hindu Marriages and Divorce Act and the Marriage of Africans Act. That the law does not recognise

144 Iganga District dialogue

145 Kyenjojo District dialogue

146 Kyenjojo District dialogue

147 Bushenyi District dialogue

148 Civil Suit No. 20 of 2013 (High Court of Uganda in Kabale) Unreported.

cohabitation as a marriage notwithstanding the amount of time spent in the cohabitation.

While the law does not recognise cohabitation, the study established that the practice of cohabitation in Uganda has been in existence since time immemorial and is on the increase. Findings indicate that 90% of the respondents recognised cohabitation as a form of marriage and that it should therefore be recognised. A study undertaken in 2011 reported that 26.9% of the relationships in Uganda were cohabitation relationships, making Uganda the country with the highest number of cohabiters in East Africa.¹⁴⁹ In 2013, the Uganda Women Parliamentary Association (UWOPA) forum observed that at the time, the number of those cohabiting in Uganda was at 60%. The then Chairperson of the Forum observed the need for a law to be enacted to serve the interest of cohabiters stating that *“these are all Ugandan citizens, they should be legislated for. We cannot ignore them and make a law for the minority and leave the majority out”*.¹⁵⁰

Whereas many people viewed cohabitation as a form of marriage, there are cultural biases against cohabitation relationships. Many communities in Uganda view cohabitation as going against cultural norms and values. This was mainly attributed to the fact that in cohabitation, often the man has not paid bride price, there is no formal introduction to the two families, and there is no respect of the relationship by the two families. For example, in some communities, upon the death of a woman or a child born in a cohabitation relationship, the man is expected to pay bride price to formalise the relationship.

149 Ndgurwa. P et al. Cohabitation in Sub-Saharan Africa: A regional Analysis. (2018) Pg 13 <<https://uaps2015.princeton.edu/papers/150817>> accessed on 5th September 2020

150 Taremwa Alex. Cohabiting or marriage: What way is your relationship. (2017) www.observer.ug/lifestyle/51469-cohabiting-all-marriage-what-way-is-your-relationship, accessed on 17th August 2020

According to a respondent, in Ankole culture when a man is cohabiting and has not paid bride price he is not respected or recognised as an in-law locally referred to as “*omukwe atajugire*”¹⁵¹ In the Lugbara culture a man who has lost his partner has to pay bride price before the partner is buried.¹⁵² Culturally, cohabitation is not socially acceptable.

(ii) Cohabitation as a precursor to marriage

Cohabitation was considered to be a precursor to marriage. Those who perceived cohabitation to be a precursor to marriage argued that it is a practice in many communities in Uganda. This practice is prevalent country wide especially in urban settings.¹⁵³ The study established that in some communities the practice of cohabitation as a precursor to marriage is based on culture. This is intended for partners to test for compatibility, fertility, build trust and give time to the partners to accumulate resources for marriage.

To illustrate this, a participant stated that “*In our culture, if a man identifies a woman for marriage, he takes her to his home for the night. A message is then sent to the girl’s home. The girl stays there for 6 months to test her worth as material for marriage. The bride price is then paid if she is deemed worthy*”.¹⁵⁴ During a dialogue in Nebbi District, participants observed that at least 95% of marriages start like this.

The general consensus country-wide is that 95% of marriages start with such relationships. People choose to live this way for several reasons. It is believed that cohabiting is a roadmap

151 A respondent in Bushenyi District dialogue

152 Participants at the Maracha District dialogue, This practice is also common in the Luo communities of Northern Uganda.

153 A view that was commonly held by 90% of participants across the country.

154 Participant at the dialogue in Nebbi district Town Council Hall held on the 8/8/2019. This similar view was expressed in all the other regions across the country.

to formal marriage. A participant in Mubende observed thus *“Omusajja no mukyala besinkana ne bewasa. Okuberawo nga mwegatta mubyabafumbo naye nga tewaliwo ka documenti kona alakaga nti muli bafumbo”*.¹⁵⁵ Meaning it is an agreement between male and female for purposes of staying together.

In Napak District, it was observed that marriage is very expensive so one needs to prepare and this takes time and so people pay something little and stay together as they continue collecting resources for finalising the marriage.¹⁵⁶

From the above illustration, it can be construed that cohabitation acts as a form of social cohesion in the process of marriage which ensures that parties stick together as they work towards achieving their marriage goals. Although this is prompted by varying forces including resource mobilisation, testing character, irresponsible behaviour, cultural and religious differences. The practice holds the parties together as they work towards formalising their relationship.

Cohabitation as a precursor to marriage is a worldwide phenomenon. It is consciously viewed by one or both parties from the outset as a trial which may lead to marriage, or the parties may drift into cohabitation and from there to marriage.¹⁵⁷ The British household survey suggests that eventually 60% of the cohabitation relationships convert into marriage.¹⁵⁸ According to Karen, a substantial proportion of cohabiting couples have definite plans to marry, and these couples tend to behave

155 Participant at Mubende District dialogue 26/8/2019

156 As stated by participants at the Napak district dialogue. This similar view was raised by a participant at the Maracha district dialogue 6/8/2019.

157 United Kingdom Law Commission. Consultation Paper No. 179 Cohabitation: The Financial Consequences of Relationship Breakdown (2006:35)

158 Ermisch J. and Francesconi M, (Partners of Households and Family Formation) in, R Berthoud and Gershuny, Seven Years in the Lives of British Families (2000:27)

like already-married couples.¹⁵⁹ In the USA, cohabitation has become a typical pathway to family formation.¹⁶⁰

In urban areas of Africa, cohabitation is becoming a norm and can be a precursor to marriage, a substitute for marriage or an alternative to singlehood. It allows people to share, live together, and test their compatibility before marriage.¹⁶¹

According to Kramer, cohabitation is often seen as a natural step in the dating process.¹⁶² Goodwin et al observe that “cohabitation is increasingly becoming the first co-residential union formed among young adults.”¹⁶³

In Namibia, some couples live together as a prelude to marriage, often while they are saving for the expenses attendant with marriage. Traditional church weddings are costly (entailing food and drinks for many guests as well as special clothes), and customary marriages can involve expensive gifts and *lobola*.¹⁶⁴

The above discussion points to the fact that today various marriages are preceded by a period of cohabitation.

159 Fran Wasoff et al. Legal Practitioners’ Perspectives on the Cohabitation Provisions of the Family law (Scotland) Act 2006. October (2010:5)

160 Essential Cohabitation facts and statistics. <https://www.thespruce.com/cohabitation-facts-and-statistics-2302236> accessed on 16th August 2020

161 Olugbenga and olusola. Cohabitation: Harbinger or Slayer of Marriage in Africa? Pg 13029 in Gender & Behaviour, 17(2), 2019, 13029 -13039 Copyright (c) 2019 © Ife Centre for Psychological Studies/Services, Nigeria ISSN: 1596-9231

162 Kramer, Elise “Cohabitation: Just a Phase?”. Psychology Today. (September–October 2004) 37: 28.

163 Goodwin, P.Y.; Mosher, W.D.; Chandra, A. (2010). “Marriage and cohabitation in the United States: A statistical portrait based on Cycle 6 (2002) of the National Survey of Family Growth (National Center for Health Statistics)”. Vital Health Statistics.23: 1–55.

164 A FAMILY AFFAIR: The Status of Cohabitation in Namibia and Recommendations for Law Reform. Gender Research and Advocacy Project. LEGAL ASSISTANCE CENTRE (2010:11)

(iii) Cohabitation as deviant behaviour

A section of respondents considered cohabitation as deviant behaviour. They argued that cohabiting persons are those who have flouted societal norms and values that govern marriage. They stated that *“it is where one goes against cultural laws and values”*. *A situation where partners shun going to the mother and father anymore. In the process of marriage, the boy no longer informs his parents but just brings a girl home. The women also do not inform their parents; they move on to live with a man and even have children.*¹⁶⁵

A section of respondents perceived cohabitation as an unlawful, unreligious and uncultured act. Among the religious, it is considered as having sex before marriage. It is considered an arrangement without a legal formalisation,¹⁶⁶ a situation where parties have never been to their parents, to the Chief Administrative Officers’ (CAO) office or not married religiously.¹⁶⁷

From the above perceptions, it is evident that cohabitation is real and for many it is considered as a process that males and females go through in establishing a marriage although it may not be recognised by the families of the partners.

While most of the respondents considered cohabitation to be a form of marriage, it is not among the recognised forms of marriage in Uganda. Persons who cohabit do not have the legal protection that is available to the married people. Cohabitation has been perceived as a *de facto* union between a man and a woman that merits equal protection as a marriage. The Committee on the Convention on the Elimination of all forms of

165 In Amuru and Nwoya Districts. A similar view was also expressed at the Maracha District dialogue

166 Pallisa District dialogue

167 Kumi District dialogue

Discrimination Against Women (CEDAW),¹⁶⁸ determined in its General Recommendation 21 that elimination of discrimination against women in *de facto* unions is included in State Party obligations under Article 16 (1). This was mainly attributed to the fact that women enter *de facto* unions for a variety of reasons and as such there is need for protection because upon dissolution or death of a partner, women may be exposed to economic risks.

4.1.3 Prevalence of cohabitation

Those in favour of recognition and regulation in Uganda, argued that cohabitation is prevalent and on the increase in Ugandan communities. According to respondents, *“closing our eyes and pretending that the practice does not exist and therefore does not merit our attention is deceiving ourselves”*.¹⁶⁹ In Bushenyi District, a participant proposed that *“it should be recognized but with conditions because there are many cases which turn out to be problematic, adding that the law should be there to bring stability in the relationship”*.¹⁷⁰ In Kyenjojo District, a respondent observed that *“We should appreciate that cohabitation exists and we need to make it secure as marriages are protected”* while another observed that *“recognition is the best way to resolve problems of cohabitation.”*¹⁷¹

Other respondents argued that *“Yes, people cohabiting are the biggest number in our community and therefore there is need to regulate such relationships”*.¹⁷² *“We have many in the village, most women are not sure what happens after death, so women are insecure in such relationships.”*¹⁷³ *“They should be*

168 Uganda ratified CEDAW in 1985.

169 A participant at the Kumi District dialogue

170 According to a paralegal social worker.

171 Kyenjojo District dialogue

172 Bushenyi District Dialogue

173 Bushenyi District dialogue

recognised because there are many cases in the communities¹⁷⁴ and “the biggest number of people are cohabiting, at least 60% are cohabiting. If we do not recognise it, it will be problematic.”¹⁷⁵

According to the National Population and Housing Census 2014, about 65% of the population aged 18 and above were married or cohabiting in a monogamous or polygamous relationship.¹⁷⁶ Although the report did not distinguish between marriage and cohabitation, it shows that Government, for planning purposes considers cohabitation as a form of marital status.

The need for regulation to address the increasing number of people in cohabitation relationships has further been advanced by women activists.¹⁷⁷

The International Centre for Research on Women (ICRW) report indicates that 28% of homes in Uganda are in a cohabitation relationship. The report further noted that women’s claims over assets acquired during the period of cohabitation relationship had limited legal and social protection. The report observed that legislation to recognise property rights for cohabiting women could be helpful in clarifying, and if well enforced, protecting the rights of women in male headed households.¹⁷⁸ It has further been argued that the statistics alone speak for themselves and

174 Paralegal Social worker in Bushenyi District

175 Bushenyi District dialogue

176 The Uganda Bureau of Statistics 2016. The National Population and Housing Census 2014. –Main report, Kampala- Uganda pg 16, available at <http://www.ubos.org>

177 Hon Betty Amongi, the then Chairperson of UWOPA, Esther Obaikol, the then Executive Director Uganda Land Alliance, Hon. General Kahinda Otafire, the Minister of Justice and Constitutional Affairs.

178 Aslihan Kes Krista Jacobs Sophie Namy, “Gender Differences in Asset Rights in Central Uganda” international research for center on women (2011) <https://www.icrw.org/wp-content/uploads/2016/10/Gender-Land-and-Asset-Survey-Uganda.pdf>

demand a legal response if the law is to continue in its role of protecting vulnerable family members.¹⁷⁹

While marriage remains the norm, it cannot be denied that many people today prefer to cohabit before marriage. The extraordinary rise of cohabitation is not unique to Uganda. Worldwide unprecedented developments have taken place in some common-law countries and across the civil-law nations of northern and central Europe.¹⁸⁰ The England and Wales Law Commission observed that:

“We accept that marriage is a status deserving of special treatment. However, we have identified, in the course of this project, a wider need for the law to recognise and to respond to the increasing diversity of living arrangements in this country. We believe that further consideration should be given to the adoption – necessarily by legislation – of broader based approaches to personal relationships, such as the registration of certain civil partnerships and/or the imposition of legal rights and obligations on individuals who are or have been involved in a relationship outside marriage”¹⁸¹

In *Marvin v Marvin*,¹⁸² the California Supreme Court urged, that the prevalence of non-marital relationships in modern society and the social acceptance of them required courts to forgo the application of traditional legal standards based on alleged moral considerations that have apparently been so widely abandoned by so many. The court stated that:

179 Bailey-Harris, R., “Law and the Unmarried Couple - Oppression or Liberation?” Child and Family Law Quarterly (1996), 137-147.

180 Kathleen Kiernan, Unmarried Cohabitation and Parenthood: Here to Stay? European Perspectives, in The Future of The Family 66 (2004) Daniel P. Moynihan Et Al. Eds.,

181 Law Commission Report (2002) Page 86

182 557 P.2d 106, 121-22 (Cal. 1976)

“[T]he non enforceability of agreements expressly providing for meretricious conduct rested upon the fact that such conduct, as the word suggests, pertained to and encompassed prostitution. To equate the non marital relationship of today to such a subject matter is to do violence to an accepted and wholly different practice. ... We conclude that the judicial barriers that may stand in the way of a policy based upon the fulfilment of the reasonable expectations of the parties to a non marital relationship should be removed.”

The increase in incidences of cohabitation has led countries across the world to enact specific legislation to govern these relationships. For example, various Canadian provinces now impose support obligations on cohabitants who have lived together for periods ranging from one to three years.¹⁸³ All Australian states have adopted legislation that extends marital property rights to cohabitants who have a common child or have lived together for at least two years.¹⁸⁴ New Zealand has extended all of the rights and obligations of marriage to couples who have been “*de facto* partners” for three years.¹⁸⁵ In Europe, nine countries have enacted cohabitation specific legislation. They include Ireland, France, Spain, Portugal, Finland, Croatia, Catalonia, Hungary and Scotland.

In Africa some countries like Kenya, Tanzania and Malawi recognise cohabitation relationships as a form of marriage in their legislation. In Malawi, the Constitution and the Marriage, Divorce and Family Relations Act, 2016 recognise marriages by

183 Nicholas Bala, Controversy Over Couples in Canada: The Evolution of Marriage and Other Adult Interdependent Relationships, 29 QUEEN'S L.J. 41, 45-49 (2003) (describing provincial support rules). The only exception is Quebec. S

184 Lindy Wilmott et al., De Facto Relationships Property Adjustment Law-A National Direction, 17 AUsTL. J. FAM. L. 1, 2-5 (2003) (describing differences in state rules).

185 Property (Relationships) Amendment Act 2001, <http://www.austlii.edu.au/nzlegis/consolact/paa2001378.pdf> (last visited Aug. 4, 2008).

repute or cohabitation.¹⁸⁶ In Tanzania, section 160 of the Law of Marriage Act makes a rebuttable presumption of marriage after a man and a woman have been together for two years or more or have acquired the reputation of being husband and wife. In Kenya, the Marriage Act, Cap.150 of 2014 defines “cohabit” to mean to live in an arrangement in which an unmarried couple lives together in a long term relationship that resembles a marriage.

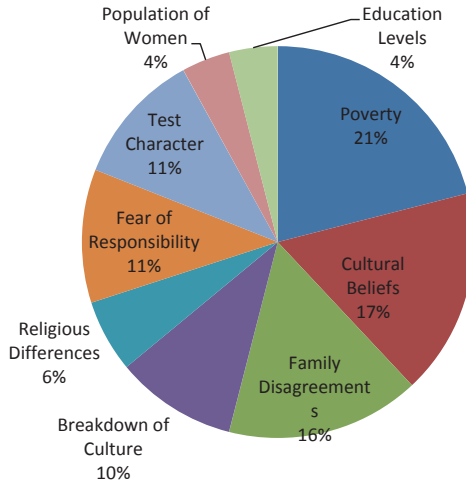
Considering the increase in the prevalence of cohabitation in Uganda, there is need to critically consider regulation of the practice.

4.1.4 Causes of cohabitation

Findings indicate that poverty (21%) constitutes the main cause of cohabitation in Uganda. This is followed by cultural beliefs (17%), family disagreements (16%), breakdown of culture (10%), religious differences (6%), fear of responsibility (11%), the need to test a partner’s capabilities (11%), high population of women (4%) and low education levels (4%) as illustrated in figure 1.

186 Yasin vs Yasin (Matrimonial Appeal No.18 of 2015) [2016] MWHC 626

Fig. 1 Reasons advanced for cohabitation in Uganda



Source: ULRC compilation

(i) Poverty

In all the districts visited, poverty was cited as the core reason why people cohabit. Poverty manifests in different ways. These include: the inability to pay the cost of dowry,¹⁸⁷ inability to meet the costs and expectations of an introduction ceremony,¹⁸⁸ being unable to meet the expenses of a marriage ceremony,¹⁸⁹ and excessive demands from parents.¹⁹⁰

There is consensus from respondents that the economic situation today forces parties to stay unmarried as the demand from the parents of a girl cannot be met by the man. Accordingly, in Iganga district, it was observed that *“parents demand a lot because they want the school fees they paid to be paid back.”*¹⁹¹

187 Raised in all study sites

188 John Kamara- Kyenjojo District dialogue

189 Maracha District dialogue 6/8/2019

190 Councillor Kamanira- Kabale District dialogue

191 Iganga District dialogue

They further observed that *“sometimes it is the girl who is demanding a lot because of peer pressure and the tendency to compare families.”*¹⁹² In Napak district, participants stated that the number of goats or cows to be paid is high and in most cases one is not able to pay it all at once. As a result the lady is always not yours and another man with resources can marry the woman with all her children.¹⁹³

Money is a requirement to formalise a marriage whether traditionally or religiously. This also applies to an introduction ceremony. This practice exists in all communities in Uganda and is called by different names. In Buganda, the ceremony is called *“kwanjula”*, in Lango it is called *“penyo nyom”*, for instance. In many cases bride price also has to be paid before parties are considered married. As a result, many couples end up living together without undergoing these formalities.

(ii) Testing

The period when parties live together without having their marriage formalised whether traditionally, civilly or in church, a mosque or temple was considered by over 70% of the respondents to be a period of testing each other as well as a test by parents and relatives. To support this thinking, the following arguments were advanced:

In Nebbi district, participants argued that parents of the man want to determine whether the lady can produce and to check if the girl has the qualities of a good woman.¹⁹⁴ In Maracha district, it was stated that *“this is a time for partners to study each other so as to be certain about the person they are marrying”*,¹⁹⁵ while

192 Iganga in 194

193 According to participants at the Napak district dialogue. A similar view was expressed at the Koboko district dialogue 6/8/2019

194 Nebbi District Dialogue

195 Maracha District dialogue

in Masaka district participants stated that *“this is the period when parties are still trying each other. It is called okutwala obudde okwetegera bulungi”*.¹⁹⁶

While the rationale for cohabiting listed above can be considered to be credible, there is a general observation across the country that *“men have a very bad habit of testing or sampling girls and women to get the best candidate for marriage. In doing this, they end up ruining the future of some women.”*¹⁹⁷

The practice of spending time together in a sexual relationship without any formal process taking place is becoming widespread in communities in Africa and Uganda is not an exception. Researchers suggest that couples live together as a way of trying out marriage to test compatibility with their partners, while still having the option of ending the relationship without legal implications.

The viability of the relationship is tested to check if the partner is suitable for marriage,¹⁹⁸ individuals who see marriage as an ultimate commitment might prefer to test ‘living together’ before committing. Individuals believe in this way they can avoid the mistake of marrying someone with whom they are fundamentally mismatched and if the trial fails, it is easy to end the relationship without experiencing the trauma of the divorce courts.¹⁹⁹

196 Masaka District dialogue

197 A view raised by a participant at the Masaka district dialogue, an LC III during the Kyenjojo district dialogue and participants at the Maracha district dialogue held on 6/8/2019.

198 Olugbenga Popoola 1(PhD) & Olusola Ayandele; Cohabitation : Harbinger Or Slayer of Marriage in Sub-Saharan Africa? file:///Users/apple/Downloads/(PDF)%20COHABITATION:%20HARBINGER%20OR%20SLAYER%20OF%20MARRIAGE%20IN%20SUB-SAHARAN%20AFRICA%3F.webarchive Accessed on 2nd June 2019

199 Hatari, P. Cohabitation – A risky western trend spreading to Africa. The New Times Rwanda. 06 June 2009, <https://www.newtimes.co.rw/section/read/8833>

This perception about cohabitation has resulted in a situation where it is almost a deviant act to marry without first cohabiting²⁰⁰ for some period. For some, it is short while for others it can last many years. During this time, the parties may make some developments together and the security of each party in respect of such property needs to be protected.

(iii) Population of women

In all study districts, respondents observed that one of the main reasons why cohabitation is rife in the country is because women are more than men and that most often men die more often than women. This has tended to leave many women searching for a male figurehead to live with.

During the consultations a participant argued that *“The ratio of women to men is high so men need to have more than one woman,”*²⁰¹ while at the Masaka district dialogue participants observed that “because women cannot easily find unmarried men, they decide to cohabit with married men”.²⁰²

Some participants observed that there are many women and because they have nowhere to go the men have decided to save some abandoned women.²⁰³ At the Bushenyi district dialogue, a participant also stated that women are more than men and that these days women pay for men.

According to the United Nations Department of Economic and Social Affairs: Population Division, the sex ratio of the

200 Budinski, R.A and Trovato, F. The Effect of Premarital Cohabitation on Marital Stability over the Duration of Marriage. Canadian Studies in Population(2005).32(1): 69-95.doi:10.25336/P6B304 accessed on <https://journals.library.ualberta.ca/csp/index.php/csp/article/view/15943>

201 Participant at the Kyenjojo district dialogue

202 Masaka district dialogue

203 Masaka district dialogue. This similar view was expressed by a participant at the Kyenjojo district dialogue.

total population in Uganda was 1.000 (1,000 males per 1,000 females) population of women as at 31st December 2019. Specifically, there are 21,677,086 persons between 15 and 64 years old. Out of this, 10,921,738 are males and 10,754,897 are females.²⁰⁴

Given the above population statistics, the earlier argument cannot be considered credible as the ratio of women to men at the age of marriage is 50:50 in Uganda. This should render the listing of the population as a factor fuelling cohabitation weak.

(iv) Fear to take responsibility

Findings indicate fear of responsibility as another cause of cohabitation. This is mostly practiced by men who are not serious and only interested in enjoying their sexual life. Accordingly, a respondent observed that *“many men fear to marry because they like to have many women and marriage would cut off such opportunities”*.²⁰⁵ In addition, the study revealed that men cohabit because *“they fear to take responsibility that comes with marriage”*.²⁰⁶ As a result, they resort to cohabitation where there is perceived to be no responsibilities and obligations.

(v) Disagreement of families

Disagreements of families occur when the in-laws do not like or appreciate the other party.²⁰⁷ Parents sometimes ask for too much in exchange for their daughters' hand in marriage.²⁰⁸ In other cases, parents may have preferred suitors for their children. This forces the parties to stay with their preferred lovers without the

204 Uganda Population Clock (live) https://countrymeters.info/en/Uganda#population_2020

205 Participant Iganga dialogue

206 Dialogue at Maracha 6/8/2019

207 Dialogue at Bushenyi 27/6/2019

208 According to Bashir at the Masaka dialogue

parents' consent.²⁰⁹ Sometimes children do not respect or agree with the partners chosen by parents,²¹⁰ and they decide to proceed on their own.²¹¹

(vi) Religious differences

The study established religious differences as one of the causes of cohabitation. In families where parents do not allow a relationship between parties of different religions, most commonly a marriage between Muslims and Catholics and vice versa²¹² is discouraged. In Buganda, this is locally termed *Enjawukana muddiini*, meaning difference in religious beliefs.²¹³ As a result, parties who feel strongly about their relationship move on and cohabit.

(vii) Cultural beliefs

In some African cultures a man is considered to be polygamous by nature, monogamy is considered western civilization. In such communities, women go into marriage knowing this fact and therefore allow it to happen. More often than not the women in such relationships are not married. To illustrate this, respondents in Masaka district observed thus, "For us polygamous Africans, cohabitation is in existence, we go into a relationship knowing this fact and those in it agree to live loosely like that."²¹⁴ This illustrates that parties end up cohabiting in the belief that it is a normal practice.

209 Male participant Masaka

210 Kyenjojo dialogue

211 Participants Iganga dialogue

212 Dialogue at Bushenyi 27/6/2019

213 Dialogue Masaka

214 Participant Masaka dialogue

(viii) Breakdown of culture

Findings further indicate that the youth, who are disrespectful of their parents as well as societal norms and values end up in cohabitation because their rebellious nature does not allow them to follow the norms, values and practices in their communities. This position was summed up by a respondent in Iganga District who observed that *“compared to our times in the 1970s, most youth today are not disciplined and therefore are not willing to follow guidance from parents and community. This behavior can be considered as a creature of the current development trends that expose children to all sorts of European practices which are alien to our values. These practices promote the so called freedom”*²¹⁵ in addition to this, some ladies are forced into living with the man after conceiving²¹⁶ for fear of persecution.²¹⁷ All these promote the practice of cohabitation.

(ix) Level of education

From the findings, education levels, especially low education levels contribute greatly to the practice of cohabitation. The study established that women and girls with low levels of education tend to enter into cohabitation relations. This is because they are frequently unable to fend for themselves and their families are eager to give them away to a relationship either to reduce the burden of maintenance or to lessen the level of poverty in the home. Accordingly, *the men take advantage of the women’s illiteracy*²¹⁸ for their insatiable desires.²¹⁹ It is evident that the level of education makes 4% of the causes of cohabitation.

215 A participant at the Iganga District community dialogue.

216 Iganga district dialogue

217 A participant at the district dialogue in Masaka district

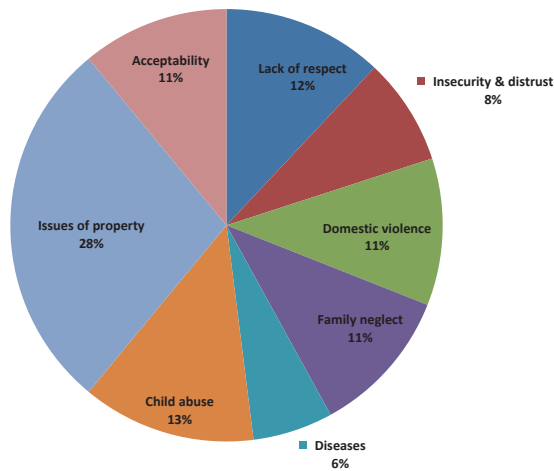
218 Participants Iganga dialogue

219 According to a respondent at the Apac District dialogue. This similar view was echoed in most of the community dialogues held across the country.

4.1.5 Challenges arising out of cohabitation relationships

In all districts visited, ownership of property was highlighted as the number one challenge facing cohabitants. This is followed by child neglect, domestic violence, lack of respect, family neglect and mistrust as core challenges of cohabitation as illustrated in figure 2 and elaborated further on the next page.

Fig. 2 Challenges of Cohabitation



Source ULRC

(i) Ownership of property

According to respondents, in case of death especially, the woman is frequently disowned,²²⁰ children are referred to as bastards and are not entitled to property. In Islam, the children out of such a relationship do not benefit from their father's inheritance.²²¹ In case of separation, the woman usually

220 This position was stated in all 20 districts of the study.

221 Participants in Yumbe and Koboko districts

walks away without anything despite her contribution and the fact that the partners have stayed together for a long period of time putting together their resources is not considered.²²² Even where attempts are made to share property, there is no equal sharing of property.²²³ In as far as property distribution is concerned, cohabitation negatively affects women.²²⁴

(ii) Lack of respect

The tendency for a cohabitation relationship not to be respected was presented in the context of disrespect for the man from the girl's family. Relatives tend to show no respect for the man who is considered to be abusing the woman. The man also has a tendency not to respect the woman arguing that there are so many women around and that he will get someone else to marry in case things go bad.²²⁵

(iii) Insecurity

According to respondents, security is not guaranteed in such a relationship. There is undue pressure on both parties to show their potential amongst themselves as well as from their families.²²⁶ It is characterised by infidelity and there is no truth among partners right from the period of courtship.²²⁷

(iv) Commercialization of marriage

According to participants, marriage has been commercialized. People are no longer interested in display of gifts as practiced especially in Buganda but are more interested in money.²²⁸ In

222 Mubende District dialogue

223 Maracha District dialogue

224 Masaka District dialogue

225 Iganga District dialogue

226 Nebbi District dialogue

227 As expressed by participants in all the 20 districts visited.

228 Observation by participants at the Mubende District dialogue

the Karamoja sub region, marriage is very expensive and one needs to prepare which takes time. Therefore, Some people opt to pay something little and stay together.²²⁹ This curtails the interest of cohabiting parties or persons intending to marry. This view is echoed by Mbiti, who posits that the extremely demanding bride price and high dowry requested from prospective in-laws are forcing many Africans to cohabit.²³⁰

(v) Diseases

The likelihood of contracting diseases was observed in all study sites as one of the challenges of cohabitation relationships. In particular, diseases that are sexually transmitted such as gonorrhoea and HIV were cited as common as a result of this practice. This may be attributed to the fact that cohabitation is not necessarily a monogamous relationship

(vi) Family neglect

In such relationships, because there is no commitment, the man tends to neglect provision of basic needs for children and the family.²³¹ As a result, the children and the family suffer when there is no responsible person to cater for their needs.²³²

(vii) Indisciplined children

Findings indicate that this occurs because none of the parents has the time to pay attention to the children,²³³ in some extreme cases of child abuse, termed as *edembe lyabwe lytyobwa nyo*

229 A participant at the Napak District dialogue

230 Mbiti, J. S. *African Religions and Philosophy*. (1989). (2nd ed.). Portsmouth, New. Hampshire: Heinemann Educational Books.

231 Nebbi District dialogue

232 Mubende District dialogue

233 Maracha District dialogue

in Luganda, meaning moral decay; they grow up in a very bad environment and end up being a nuisance to the community.²³⁴

(viii) Social acceptability

Over 70% of the study respondents were of the view that cohabitation is not acceptable. According to them it is not acceptable because it is exploitative, promotes promiscuity, indiscipline and irresponsibility. To illustrate this, respondents stated that *“socially it is not acceptable because it encourages bad habits like stealing and may lead to murder and consequently single motherhood”*,²³⁵ and that *“in case of breakdown, a woman may fear to go back home so she stays on the streets”*.²³⁶ According to a participant at a dialogue, *“cohabitation encourages people to be sinners”*.²³⁷

Those who argued that cohabitation is acceptable stated that *“It is acceptable as a process of marriage”*.²³⁸ According to them *“cohabitation shares many qualities with marriage, often couples who are cohabiting share a residence, personal resources, exclude intimate relations with others and, more than 10% of cohabiting couples, have children”*.²³⁹

4.2 Implications of cohabitation

The general rule of law in Uganda is that cohabitation does not give rise to specific legal consequences irrespective of how long a relationship has existed. For example, cohabitation does not give rise to property rights unless a cohabitee invokes the

234 Masaka District dialogue

235 Iganga District dialogue

236 Iganga District dialogue

237 Hajat Mubende District dialogue

238 Pallisa District dialogue. This similar view was raised at the dialogue in Bushenyi District

239 Brown, S.L.; Booth, A. “Cohabitation versus Marriage: A Comparison of Relationship Quality”. (1996). *Journal of Marriage and Family*.58 (3): 668–678.

ordinary rules of law relating to contracts, property, or principles of equity in order to enforce any rights acquired in each other's property. As a result, practical problems often arise at the breakdown of the relationship or at the death of either partner. The study established that cohabitation poses legal implications with regard to property, inheritance and children rights.

4.2.1 Property ownership

Findings indicate that the practice of cohabitation poses legal challenges in terms of property ownership during and at the breakdown of the relationship and inheritance on the death of either party. There is consensus that there is no legal protection for cohabitees in relation to property acquired jointly during and at breakdown of cohabitation.

A majority (90%) of women were of the view that contributions to the acquisition of property during cohabitation should be recognised and provided for by the law. This was mainly attributed to the fact that both parties contribute to acquisition of the property or consider themselves married and therefore should be protected.

A section of male respondents opined that property acquired during cohabitation should be considered as family property. This may be attributed to cultural norms and practices of communities in Uganda. The context of family is premised on patriarchy.

According to respondents, *“there is insecurity and instability causing divided investments.”*²⁴⁰ *“There is often property ownership wrangles. Once your husband dies, you get issues over property, and the man's relatives only recognise the*

240 Participant ant the Kyenjojo District dialogue

children.”²⁴¹ *“In case one partner dies, sharing the property becomes problematic.”*²⁴² A respondent in Amuru District observed thus, *“Pe gi ryemo dako ma otedo kwon igang”*.²⁴³ Meaning that when the man dies, the woman stays. The Acholi fear curses that may arise from a woman who has cooked for the family. It is only bad people who chase away women.

Regarding property disagreements, a respondent observed that *“when it comes to issues of sharing property, especially where they have both contributed, it brings chaos in the family. Therefore, a law should be made to help in distributing property which they have acquired together”*.²⁴⁴

According to respondents, on separation, people should be entitled to share equally the property they have acquired together. This position is illustrated thus, *“At the time of separation, the woman usually walks away without anything despite her contribution. Men own the property even if a woman has contributed, the woman has no share”*.²⁴⁵

Other respondents observed that *“The services of a cohabiting woman are the same as those of a legally married woman, sometimes even better. Today many cases, of property wrangles, child maintenance, sexual violence are a result of non- recognition of the status of cohabiting parties. Recognition and regulation of such unions will reduce the incidence of challenges of cohabitation highlighted above”*.²⁴⁶

241 Participant at the Kyenjojo District dialogue

242 Kyenjojo District Dialogue

243 A participant at the dialogue in Amuru District.

244 A participant at the Bushenyi District dialogue

245 Participant at the Maracha District dialogue

246 Participant Kyenjojo and Amuru District dialogues

Whereas the law recognises the right to property owned individually or jointly or in association with others,²⁴⁷ there is no specific law that addresses issues of property acquired during cohabitation relationships. In case of a dispute arising out of a cohabitation relationship, regard should be had to the law of contract, property or principles of equity.²⁴⁸

In the case of *Haji Musa Kigongo v Olive Kigongo*²⁴⁹ the court established that there was no marriage between the plaintiff and the defendant and therefore they were in a cohabitation relationship. The court invoked section 14 of the Judicature Act to find that the defendant was entitled to share in the property. Court took into consideration the fact that for 27 years the plaintiff and the defendant resided together in the same house, with the assurance of the plaintiff that she was his wife and that she had a home for life. The plaintiff therefore was estopped from denying her an interest in the suited property.

In other jurisdictions, property rights of cohabiting parties are founded on practical arrangements between partners or on presumption of such a relationship as a marriage. For example in Kenya, property rights of cohabiting persons are determined upon a presumption of marriage.

From the above illustration, the need to recognise the property rights of cohabiting persons can no longer be ignored.

4.2.2 Protection of inheritance rights

The law does not recognise the inheritance rights of parties in a relationship of cohabitation unless they have been provided for under a will. The study established that on the death of either

247 Article 26 of the Constitution, Section 56 of the Registration of Titles Act, Cap. 230

248 Section 14 of the Judicature Act, Cap. 13

249 HCCS No. 295 of 2015

partner, a cohabitee usually faces hardships that arise from the failure by the law to recognise inheritance rights of cohabitees. There was consensus that the current succession law does not provide sufficient protection of inheritance rights for cohabitees.

According to a respondent, *“the women who are widows leave their homes and lose their property”*²⁵⁰, *“in case of death, your children do not have any property especially land from their deceased parents”*²⁵¹ Another respondent stated that *“On death of the “husband” the widows are chased away by the relatives of the deceased”*,²⁵² *“upon death of the woman, the husband is not recognised or entitled to any benefit,”*²⁵³ while another observed that *“In situations of death especially of men, children end up suffering. Widows are usually sent away empty handed.”*²⁵⁴

Section 27 of the Succession Act states that subject to sections 29 and 30, the estate of a person dying intestate, excepting his principal residential holding, shall be divided among the following classes which includes where the intestate is survived by a customary heir, a wife, a lineal descendant and a dependant relative. In essence, the section excludes inheritance by a cohabitee since they do not fall under any of the above classes. In the case of *Kajubi v Kabali*,²⁵⁵ court held that merely having children with the deceased does not entitle a woman to having a share in the estate of the deceased.

Some jurisdictions across the world have recognised inheritance rights for cohabitees and made specific legislation to provide for them. For example, in Scotland, the Family Law of Scotland Act of 2006 deals with succession of property after the death of one

250 A participant at the Koboko district dialogue

251 Bushenyi District dialogue

252 Kabale District dialogue

253 Pallisa District dialogue

254 Kabale district dialogue

255 (1994) EACA14

of the cohabittees. It states that the surviving cohabitee would be able to inherit all the property acquired during the union if there was no will left behind.²⁵⁶ In Kenya, whereas the succession law does not recognise the inheritance rights for cohabittees, courts have recognised inheritance rights where the cohabitation relationship was long enough to be presumed as a marriage. *In the matter of the Estate of Charles Muigai Ndun' gu (deceased) of Karinde Kiambu District*,²⁵⁷ the court recognised the woman who had been cohabiting with the deceased as a wife due to their prolonged cohabitation. However, due to the fact that she remarried she was not entitled to the life interest in the estate and her child was found to be the sole beneficiary of the estate.

In England and Wales, the Law Reform (Succession) Act²⁵⁸ extended the category of persons expected to make a claim for financial provision to include surviving cohabittees.²⁵⁹ Under the Act, it is not necessary to establish dependency, it is enough merely to establish that the cohabitee lived with the deceased as man and wife for two years prior to the deceased death. In considering surviving cohabittees application, the court will have regard to the age of the applicant and any contributions direct or indirect made by the applicant to the household.²⁶⁰

In the South Wales, two pieces of legislation have been enacted to provide for succession rights to qualified cohabittees. Under the Family Law Provisions Act²⁶¹, if a person dies without making financial provisions for family members, the latter may apply to court to have such provision made for them out of the estate.²⁶² The parties to *de facto* relationships (meaning

256 Sections 26- 29.

257 [2002] ECLR

258 Law Reform (Succession) Act 1995

259 Section 2

260 Irish Law Reform Consultation papers on Rights and Duties of Cohabittees (LRC CP 32-2004)

261 Family Law Provisions Act of 1982

262 Section 7

cohabitation) are included within the category of close family members. Under the Will, Probate and Administration (*De facto* Relationships) Amendments Act 1984, where a person dies intestate, a qualified cohabitee inherits on the same basis as a spouse. Where a person dies intestate leaving a spouse or *de facto* partner but no issue, the real and personal estate of the person will be held on trust for the spouse or *de facto* partner absolutely.²⁶³ Further, the section provides that where a person dies intestate leaving a spouse or a *de facto* partner and issue, the spouse or qualified cohabitee is entitled to a fixed portion of the estate plus a half share of the residue. Where a person dies leaving both a spouse and a qualified cohabitee, the latter takes priority to the spouse provided that the *de facto* relationship lasted for two consecutive years prior to the death of the intestate.

In the case of *Elizabeth Nalumansi Wamala V Jane Kasande and 2 Others*²⁶⁴ The Supreme Court held that the respondent who was cohabiting with the deceased was not entitled to a share in the estate considering that there was no valid marriage contracted between her and the deceased. Justice Tibatemwa stated as follows

“..... even if the 1st respondent was not entitled to share in the estate of the deceased, as the natural guardian of the four minor children of the deceased who was responsible for their necessities, it would be logical in order to provide necessities of life to the minor children to allow her and the children accommodation out of the estate as this was a necessity of life for the minor children ...”

A study undertaken by the Uganda Law Reform Commission established that many people are living in cohabitation

263 Section 61 (b)

264 Supreme Court Civil Appeal No. 010 of 2015

relationships but their property rights at inheritance are not secured. The study recommended for the amendment of the law to recognise cohabitees interests where either partner dies intestate. The study further recommended that the amendment should define cohabitees and their interest in each other's estate. The proposed definition should contain a time span as to when a cohabiting partner qualifies to benefit from such an estate.²⁶⁵ The need to secure property rights of cohabitees of an intestate in a single or multiple unions²⁶⁶ was also emphasised.

The study findings as well as practices and literature from other jurisdictions clearly show that the failure of the law to address inheritance arising from cohabitation relationships is a blindfold to the realities of this world. It causes uncertainties that lead to family disputes, property disputes and disenfranchising women and children's rights to inheritance.

4.2.3 Protection of children

Cohabitation often results into children. The law provides protection to children whether they are born in a marriage or in a cohabitation relationship.²⁶⁷ The study established that there is a growing number of children born in cohabiting relationships. Cohabiting parents are under a legal duty to provide for the children. The study established that often issues of custody and maintenance of the child arise out of a breakdown cohabitation relationship or death of the partner.

Findings indicate that when there is a disagreement between cohabiting partners, the children of such unions are neglected. The man usually abdicates his duty to maintain and provide

265 Uganda Law Reform Commission. Study report on Succession in Uganda July 2013:49

266 Uganda Law Reform Commission. Study report on Succession in Uganda. July 2013:47.

267 Section 4(1(j)) of the Children Act Cap.59 as amended

for the children. Respondents observed that children suffer as they are ignored or neglected by both parents.²⁶⁸ The woman abandons the children, the man marries another woman who usually mistreats the children,²⁶⁹ they will not love them the way their mother did, such children end up in the streets and are often defiled.²⁷⁰ Children in such relationships suffer a lot in case of death, such children do not get an inheritance from their father.²⁷¹ Children do not study well, they drop out of school,²⁷² the children have no address, not at the fathers' side nor at the mothers' side. The man might even deny them and there is a likelihood of the children getting sexually abused²⁷³

Children are at least three times more likely to be physically, sexually or emotionally abused in cohabiting households. If a mother is living with a boyfriend, they may have less trust, less emotional security in their relationship, less sexual fidelity and all of these characteristics in a relation, which are not good seem to bleed over into the children's lives.²⁷⁴ According to Bradford, children living in cohabiting households are more likely to suffer from a variety of emotional and social problems, including drug use, depression, and dropping out of high school as compared to those in married homes²⁷⁵

According to Goodman and Greave, children born to (and living with) cohabiting parents have worse outcomes than children whose parents are married. In seeking to explain such findings,

268 Bushenyi. A similar view was expressed at the dialogues in Kabale and Iganga Districts

269 Participants at the Iganga District dialogue

270 Participants at the community dialogues in the Districts of Nowoya and Amuru

271 Iganga District dialogue

272 Kabale District dialogue

273 A participant at the Kabale District dialogue

274 A Catholic Review. Archdiocese of Baltimore. Study finds cohabitation even more harmful to children than divorce. (2012:1) <http://www.archbalt.org/study-finds-cohabitation-even-harmful-to-children-than-divorce>

275 W. Bradford Wilcox. Why marriage Matters. 3rd Edition: Thirty conclusions from thoughts from the Social Sciences Institute for American Values (2011: 1)

many commentators have pointed to the fact that cohabiting parents are more likely to separate than married ones with relationship instability associated with negative outcomes for children.²⁷⁶ Previous commentators have observed that children living with married parents show better cognitive and behavioural outcomes than children living in other family forms, including cohabiting families.²⁷⁷

A small number of papers do set out some theoretical reasons why formal marriage between parents might lead to greater investment in their children, which leads to better outcomes. A formal marriage entails greater legal and social commitments than cohabitation. As a result, marriage is generally more difficult to dissolve, both from a legal and a social perspective, than cohabitation. For example, in contrast to cohabiting relationships, ending a marriage requires legal separation of property and custody rights. It also entails a different balance of gains and losses for partners on dissolution (as well as on death).²⁷⁸

According to Bowman, the fact that a child's parent is a cohabitant has a variety of impact on a child's life both economic and psychological. A serious problem for children living in these households is that cohabiting unions are less stable than marriages, so the improvement in economic situation may not be long lasting. The law should give protection to relationships between cohabitants and their children to avoid the economic and emotional trauma that may be caused by separation. The law should address issues of custody when the cohabitants separate or die with the possibility of joint custody in some

276 Goodman, Alissa and Greaves, Ellen; Cohabitation, marriage and child outcomes. Institute for Fiscal Studies. April 2010. Pg 1.

277 Ibid. pg 2.

278 Ibid pg 10

cases, visitation of both the ex-cohabitants should the child desire it and obligations to pay child support.²⁷⁹

To emphasise the above view, in 2013, the Minister of Justice and Constitutional Affairs observed that the practice of cohabitation should be recognised because it leads to offspring. There is therefore a need to compel the people involved to perform their obligations.²⁸⁰

From the findings and literature reviewed, issues relating to child welfare in cohabitation relationships pose social and legal challenges that should be addressed. In particular the element of child custody and maintenance, during and at breakdown of cohabitation relationships and at death of a partner should be addressed.

4.2.4 Domestic violence

Intimate partner violence has been identified as a global public health and human rights issue. The high prevalence of intimate partner violence in Sub Sahara Africa including Uganda and the short, medium and long implications of violence on the health of women and children provides a strong case to understand its drivers in order to develop prevention programs.²⁸¹

Statistics show that 68% of ever married women aged from 15- 49 years had experienced some form of violence inflicted

279 Cynthia Grant Bowman. "The Legal Relationship Between Cohabitants and Their Partners' Children". 13 *Theoretical Inquiries in Law*. (2012:127)

280 Caroline Natukunda. Marriage, Divorce Bill; Where are the children? *New Vision Newspaper* 10th March 2013. The Minister re-echoed this position at the Marriage Bill feedback and consensus building workshop Organised by the Uganda Law Reform Commission in July 2017 at the Speak Resort in Munyonyo in Kampala (U)

281 Sasha Zegenhagen, Meghna Ranganathan, Ana Maria Buller; Household decision-making and its association with intimate partner violence; Examining differences in men's and women's perceptions in Uganda. Vol. 8 *SSM Population Journal*, August 2019.

on them by their spouses or intimate partner.²⁸² A 2006 study report by the Uganda Law Reform Commission showed that 66% of men and women had experienced some form of domestic violence.²⁸³

The study established that domestic violence is prevalent in cohabitation relationships. This was mainly attributed to misunderstanding, infidelity, and disrespect between cohabiters.

To illustrate this, respondents observed thus: *“cohabiting brings violence”*.²⁸⁴ *“Cohabitation leads to fights, wrangles and death.”*²⁸⁵ Another respondent stated that *“married men who cohabit with single women can contract sexual transmitted diseases which results in violence”*.²⁸⁶

In response to the high prevalence of domestic violence, Uganda enacted the Domestic Violence Act, 2010. The Act prohibits domestic violence in all its forms whether physical, economic, verbal and psychological and provides a wide range of remedies for victims of domestic violence.

Section 3 of the Act defines domestic relationship to include the relationship where the perpetrator shares or shared the same residence. Further more, section 3(2) empowers court to determine domestic relationship having regard to the amount of time the persons spend together, the place where the time is ordinarily spent, the manner in which that time is spent, and the duration of the relationship.

282 Uganda Bureau of Statistics Report, 2007

283 Uganda Law reform Commission. Study Report on Domestic Violence 2006

284 Community dialogue in Mubende District

285 Community dialogue in Kyenjojo District

286 Community dialogue in Koboko District

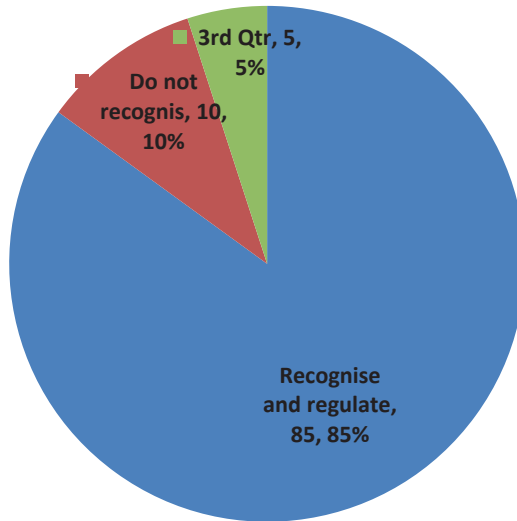
Studies have showed that there is a higher rate of domestic violence among cohabiting couples as compared to married couples. This is largely premised on the fact that cohabitation is governed by a different set of institutional controls than marriage.²⁸⁷

From the above illustrations, it is evident that domestic violence is widespread among cohabiting parties. The Domestic Violence Act addresses domestic violence in all circumstances including cohabitation. What appears to be lacking is the level of awareness about how to deal with matters of domestic violence. This will call for deliberate sensitisation on the law governing domestic violence, especially in situations of cohabitation.

4.3. The need for regulation

The study sought to explore whether there is a need for recognition and regulation of the practice of cohabitation. During the study there was consensus for the need to recognise and regulate cohabitation. Findings indicate that 85% of the respondents were in favour of recognition and regulation of cohabitation (majority of these were women). 10% (majority of these were men) were not in favour of recognition and regulation of cohabitation in Uganda while 5% were not sure as illustrated in figure 3.

287 Catherine.T Kenney and Sara S. McLanahan; Why Are Cohabiting Relationships More Violent than Marriages? (2006) *Demography* Vol.43 No.1:127-140)

Fig. 3 Views on regulation of cohabitation in Uganda

Source: ULRC Compilation

During the study, prevalence of cohabitation, acceptability by society and protection of vulnerable persons in cohabitation were advanced as key reasons for the regulation of the practice of cohabitation.

4.3.1 Acceptability by society

The study established that cohabitation has become an acceptable practice in most societies in Uganda. During consultations, there was consensus by majority (85%) that cohabitation is practised and should be recognised. Different reasons were advanced as to why cohabitation has become acceptable. These include: the increase in numbers of people cohabiting, the fact that cohabitation helps in giving time to prepare for formal marriage when one is sure of the partner. It helps the partners to learn each other's behaviour and know

the likes and dislikes of each other. According to participants at the Mubende District dialogue, *“people cohabiting are above 18 years and so the law must recognise their relationships and have them well regulated. After all, the society already recognises them the law should recognise them too”*.²⁸⁸

In Kyenjojo District, a participant observed that *“what matters is love, the Church and Government are third parties and can come in later,”*²⁸⁹ while in Kumi District another observed that *“If it is to be regulated, an agreement should signed”*.²⁹⁰

In Maracha district, while a majority of participants were married they recommended that Government should legislate for cohabitation so that in case of death, bride price is paid. In Mubende district, participants stated that this practice should be recognised and regulated because the parties spend many years putting together so much and when they separate one party (the woman) loses and their children suffer more if there is no protection.

In Kyenjojo District, a respondent observed that *“most of us recognise it as a marriage, but it is “Kuturahamwe” (meaning to live together) but both need to be safeguarded in the event of separation or death especially women. The biggest number of us here are cohabiting or start by cohabiting. Therefore cohabitation should be recognised and given a legal document like a marriage certificate”*.

Another respondent observed that *“cohabitation is real. It is not going to reduce anytime soon. Having a partner is human and sometimes you move on hoping that the formalisation will be done later instead of sticking to the Constitution.”*²⁹¹

288 Deputy Chief Administrative Officer , Mubende District

289 Sylvia Rukundo, Counselor, at the Kyenjojo District dialogue

290 Kumi District dialogue

291 LCV Chairperson Kumi district.

Acceptability and recognition of cohabitation relationships is derived from some laws enacted by Parliament to protect persons in such a cohabitation relationship. For example, the Domestic Violence Act, 2010 in section 3 defines a domestic relationship to include where the perpetrator and the victim share the same residence. Section 3 (2) provides that in determining whether a domestic relationship exists, court shall have regard to the duration of a relationship.

According to Barlow, the social acceptance of cohabitation by all strata of society as being at par with marriage and the woeful ignorance of people in general and cohabitants in particular about the different legal treatment of cohabitation as compared with marriage cannot be overlooked. There is almost complete social acceptance of cohabitation as a parenting and partnering form and no great resistance to marriage-like treatment of heterosexual cohabitants.²⁹² Although reform of the law in this sphere cannot replace those values held in place for centuries by the moral imperatives of religion, it can protect the vulnerable within family relationships.²⁹³

It can therefore be concluded that despite the fact that the practice is considered unacceptable, the current and emerging society trends and technological developments world over are steadily increasing the number of cohabiting persons. This demands that it is considered as a form of family formation despite its informal nature.

4.3.2 The need to protect vulnerable persons in cohabitation

The chaotic characteristic of such relationships was also highlighted as a justification for legislation. Respondents stated

292 Anne Barlow Cohabitation Law Reform – Messages from the Researchers (2006) pg 19 (<https://core.ac.uk/download/pdf/43093609.pdf>)

293 Anne Barlow *ibid*

that regulating cohabitation would go a long way in providing protection for children and property and creating stability for such relationships. To illustrate this, the following arguments were captured:

One participant observed that *“If it is recognised, it will reduce cases of diseases and do away with illegitimate children.”*²⁹⁴ Another participant opined that *“a woman considered to be ‘side dish’ should also be recognised because she serves the husband better than the one officially married.”*²⁹⁵

In Iganga District, 40% of the participants were agreeable with regulating the relationship. In their opinion this would be helpful in situations of death and separation. There is need to regulate such relationships as it is usually characterised by chaos. In Pallisa district, 25% were of the opinion that it should be regulated. They did not however give reasons why it should be regulated, while in Kumi district, it was observed that if it is to be regulated, an agreement should be signed.

In Kaberamaido District, 50% of the participants were in favour of regulation arguing that there is need to protect children, curb abuse of rights, to make men responsible, give respect to the institution of the family and prevent spread of diseases. In Napak District, participants argued that regulation would ensure respect of the child and their property especially in case of the death of both partners. According to them, the law will curb the number of street children as most times this situation arises when people grab their land and they are displaced. Similarly, in Nebbi District, participants stated that if it is to be regulated, it should be in relation to sharing of property. Recognising cohabitation should be within a time frame of 5 years.

294 Deputy Chief Administrative Officer Mubende District

295 According to a policemen at the Mubende District dialogue.

The study also established that a marginal number of respondents did not want cohabitation to be recognised and regulated. The reasons advanced for this position included the fact that it is illegal: the presumed threat that cohabitation poses to the institution of marriage. Some argued that it is against their cultural norms and values, that the costs involved in marriage are payable over a period of time and should therefore not be a hindrance to marriage.

Those who argued that it is illegal stated that *“it is not good to legalise something that is illegal,”*²⁹⁶ and that *“even the bible did not approve of it”*.²⁹⁷

Those who argued that it poses a threat to the institution of marriage observed that *“in christianity, marriage is an obligation which is not subject to discussion and that if we legalise cohabitation, marriage will lose meaning. Let us give God respect and not commit adultery,”*²⁹⁸ that *“churches have encouraged couples to get married. Women are willing but the men are not willing. The church has called for mass weddings to combat this,”*²⁹⁹ *“cohabitation is not accepted in both religion and our culture in Yumbe, it is considered immoral”*³⁰⁰ and that *“We are christians and people should marry properly. There should be no cohabitation.”*³⁰¹

Regarding culture, respondents observed that *“cohabitation is against our norms and values and that this practice just began with modernisation.”*³⁰²

296 The Mayor of Mubende District. This similar view was echoed by a participant at the Kumi district dialogue.

297 Participants at the Pallisa and Kumi district dialogues

298 Participant at the Masaka District dialogue

299 Yumbe District dialogue

300 Deputy Chief Administrative Officer and Chairperson LC III

301 Amuru District dialogue

302 Participants at the Mubende District dialogue

Those who disputed the claim that the cost of marriage was prohibitive and pushed people to cohabit argued that *“you do not need money to get married.”*³⁰³ In Nwoya District a respondent observed that *“There is a common saying in Acholi “keny pe tum” meaning the process of payment of dowry is continuous. You keep paying for the bride price progressively until you complete. There is no need to provide for cohabitation in the law.”*³⁰⁴ *“Women are seeking for their rights and position, respect, acceptance such as in a marriage.”*³⁰⁵

It is important to note that even those who were not in favour of recognising cohabitation hastened to observe that cohabitation should be regulated to protect the vulnerable.

According to respondents, *“once a child is born then such a relationship should be recognised to ensure the welfare and protection of the child.”*³⁰⁶ *“Cohabitation delays marriage and promotes infidelity and results into lack of commitment in the relationship. This leads to irresponsible partners who easily leave their relationships since there is no formal recognition. There is insecurity between the parties because of mistrust,”*³⁰⁷ *“partners can leave whenever they want no matter the circumstances for example children”.*³⁰⁸ Cohabitation leads to unequal status in the relationship where women are treated as lower partners.³⁰⁹

In Kumi District, a respondent stated that *“Instead of sticking to the Constitution, we should think about reviewing it or somehow introducing laws or regulations so that the rights*

303 A participant at the Kyenjojo District dialogue

304 Community Dialogue, Nwoya

305 Nebbi District dialogue

306 Participants at the Koboko District dialogue

307 A participant in Koboko and Nwoya

308 Adjumani District dialogue

309 Maracha District dialogue

and responsibilities of such parties and their beneficiaries are protected". ³¹⁰

A study undertaken by the Commission in 2000³¹¹ observed that the practice of cohabitation is not supported by the Constitution.

While the above expressions were strongly held views, counter arguments were raised against them. The earlier reference to the Bible as prohibiting cohabitation was challenged by a participant who argued that even in the Bible there were men who had many wives.³¹² This though was not the original plan of God, since He created Adam and Eve.³¹³

310 LCV Chairperson Kumi District.

311 Study report on Marriage and Divorce in Uganda. ULRC publication No 2 of 2000, Revised Ed (2010:89).

312 The Community Development Officer in Kyenjojo district

313 Genesis 2:4-3:24

CHAPTER FIVE CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter presents the summary of conclusions and recommendations on the implications of cohabitation, the need to regulate cohabitation and the need to protect vulnerable persons in cohabitation relationships.

5.1 Nature of cohabitation in Uganda

5.1.1 Conclusion

The practice of cohabitation is common in all communities in Uganda and there is a common thread in the way it is described. There is need though to have a contextual definition of the concept of cohabitation for purposes of clarity and regulation.

In Uganda, cohabitation is considered as a form of marriage or a precursor to marriage. Cohabitation acts as a form of social cohesion in the process of marriage which intends to ensure that parties stick together as they work towards achieving their marriage goals. Cohabitation is, however, not recognised as a form of marriage under the laws of Uganda. Despite this, the practice is on the increase. The increase has been steadily rising from 26.9% in 2011 to 60% by 2013, making cohabitation relationships more than the number of formal relationships (marriages) in Uganda. Considering this development, the need to legislate cohabitation relationships is not in doubt.

Poverty constitutes the main cause of cohabitation in Uganda. The economic situation today forces the parties to stay unmarried

as the demand from the parents of the girl and the cost of the accompanying ceremonies cannot be met by the man. The desire to test the viability of the relationship, cultural and religious differences and fear of responsibility, especially by the men, constitute the causes of cohabitation. The challenges that come with cohabitation include property ownership, domestic violence, mistrust, diseases and family neglect.

5.1.2 Recommendations

1. The definition in the law should include the elements of mutual consent of the parties, intimacy, period of living together, degree and nature of contribution and investments, and public acknowledgement of the parties all of which are aspects of cohabitation.
2. Considering the steady increase in the practice of cohabitation in Uganda and the challenges that come with it especially for the vulnerable partner, the children and the beneficiaries, there is need to critically consider the need for regulation of the practice. This can be done in the form of cohabitation agreements.

5.2 Implications of cohabitation

5.2.1 Protection of property rights

5.2.1.1 Conclusion

Cohabitation does not give rise to specific legal consequences irrespective of how long a relationship has existed. The parties are devoid of property rights unless a cohabitee invokes the ordinary rules of law relating to contracts, property, or principles of equity in order to enforce any rights acquired in or to each other's property. As a result, practical problems often arise at the breakdown of the relationship or at the death of either

partner in as far as property, inheritance and children rights are concerned.

Whereas the law recognises the right to property owned individually or jointly or in association with others, there is no specific law that addresses issues of property acquired during cohabitation relationships. In case a dispute arises out of a cohabitation relationship, regard is had to the law of contract, property or principles of equity.

5.2.1.2 Recommendation

There is need for a specific law that addresses issues of property acquired during cohabitation relationships.

5.2.2 Protection of inheritance rights

5.2.2.1 Conclusion

The law does not recognise the inheritance rights of parties unless they have been provided for under a will. Consequently, a cohabitee usually faces hardships that arise from the failure by the law to recognise their inheritance rights. Other related laws linking the law on succession do not provide sufficient protection of inheritance rights for cohabitees. The failure by the law to address inheritance arising from cohabitation relations is a blindfold to the realities of this world. It causes uncertainties that lead to family disputes, property disputes and disenfranchising women and children's rights to inheritance.

5.2.2.2 Recommendations

1. Contributions to the acquisition of property during cohabitation should be recognised and provided for by the law. This was mainly attributed to the fact that both

parties contribute to acquisition of the property or consider themselves married and therefore should be protected.

2. There is need to put in place a law to recognise cohabitees interests where either partner dies intestate. The law should define cohabitees and their interest in each other's estate. The need to secure property rights of cohabitees of an intestate in a single or multiple unions is also emphasised.

5.2.3 Protection of children

5.2.3.1 Conclusion

There is a growing number of children born in cohabiting relationships and parents are under a legal duty to provide for the children. Often issues of custody and maintenance of the child arise out of a breakdown of a cohabitation relationship or death of the partner. When there is a disagreement between cohabiting partners, the children of such unions are neglected and are more likely to be physically, sexually or emotionally abused. The law provides protection to children whether they are born in a marriage or in a cohabitation relationship.

5.2.3.2 Recommendations

1. The practice of cohabitation should be recognised because it sometimes leads to offspring. There is therefore need to have the people involved have obligations. Such obligations relate to issues of child welfare, child custody and maintenance.
2. There is need for mass sensitisation of the Children Act since most people believe that children born in cohabitation relationships have lesser rights.

5.2.4 Domestic violence

5.2.4.1 Conclusion

Statistics show that domestic violence is prevalent in cohabitation relationships. This was mainly attributed to misunderstanding, infidelity, and disrespect between cohabitants. Studies show that 68% of ever married women aged between 15- 49 years had experienced some form of violence inflicted on them by their spouses or intimate partner. A 2006 study report by the Uganda Law Reform Commission showed that 66% of men and women have experienced some form of domestic violence. The Domestic Violence Act, 2010 provides remedies for all situations of domestic violence but the level of awareness about how to deal with matters of domestic violence is lacking. This calls for deliberate sensitisation on the law governing domestic violence including situations of cohabitation.

5.4.1.2 Recommendation

There is need for deliberate sensitisation on the law governing domestic violence including situations of cohabitation.

5.3 The need to regulate cohabitation

5.3.1 Acceptability by society

5.3.1.1 Conclusion

Acceptability of cohabitation by society was advanced as key to regulation of the practice of cohabitation. Different reasons were provided as to why cohabitation has become acceptable. These include: the increase in numbers of people cohabiting, that cohabitation helps in giving time to prepare for formal marriage when one is sure of the partner. It further helps the

partners to learn each other's behaviour; likes and dislikes. The social acceptance of cohabitation as a parenting and partnering form calls for the legal protection of those cohabiting persons as well as the vulnerable within such relationships.

In addition, the current and emerging society trends and technological developments world over are steadily increasing the number of cohabiting persons. This demands that it be considered as a form of family formation relationship despite its informal nature.

5.3.1.2 Recommendation

The practice of cohabitation should be considered as a form of family formation and regulated through the drafting of cohabitation agreements.

5.3.2 The need to protect vulnerable persons in cohabitation

5.3.2.1 Conclusion

Cohabitation relationships are frequently characterised as being chaotic. This leaves parties to it vulnerable. Regulating cohabitation would go a long way in providing protection for children and property and creating stability for such relationships. For this reason, even those who were not in favour of recognising cohabitation hastened to observe that cohabitation should be regulated to protect the vulnerable.

5.3.2.2 Recommendation

There is need to regulate the practice of cohabitation for purposes of sharing property as well as custody and maintenance of children.

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Appendix 1 Summary of respondents

Districts	Gender		Number of respondents
	Female	Male	
Iganga	54	46	100
Kaberamaido	48	51	99
Kumi	34	68	102
Napak	43	56	99
Pallisa	33	64	97
Nebbi	24	75	99
Maracha	43	57	100
Adjumani	36	57	93
Koboko	48	52	100
Yumbe	12	79	91
Bushenyi	45	55	100
Kabale	55	52	107
Kyenjojo	59	41	100
Masaka	52	45	97
Oyam	47	54	101
Apac	47	53	100
Alebtong	41	59	100
Amuru	43	66	109
Nwoya	15	34	49
Mubende	55	45	100



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