

Legal consideration of same sex marriages in Uganda; A perception of the  
Ugandan legal regimes governing marriage.

By

P. K. Muwanguzi\*



\* PhD ICT Law, LL.M (ICL with Merit – Leic.).

# Chapter I

## 1.0. Introduction;

Marriage, as is contemporarily known, could be said to be the relationship between two people who are married<sup>1</sup>, or the union of man and woman<sup>2</sup> to the exclusion of all others with a view of founding a family<sup>3</sup>. The right to marry is one that can well be found enshrined under international codification particularly, the international Bill of Human Rights<sup>4</sup>, which emphasizes the need to respect people's rights, be it civil, political, economic, social or cultural. This definition will later in this paper be examined and evaluated along side other regimes, especially the European Convention of Human rights, to which Great Britain, Uganda's former colonial masters; subscribes.

The gist of this paper is to examine the notions that have been advanced in regard to same sex marriages, or gay marriages, giving the pros and cons of gay marriages. In considering this topic, this paper will explore the position of Marriage as an institution in Uganda and the world over, as well as a social right under international codification; while also considering the reasons advanced in supporting same sex marriages. This is well appreciated to be a controversial issue the world over that has caused great concern in many economies as well as forums including religious circles. Thus far, through this paper, I intend to consider the arguments that have been put forward in support of recognition of such marriages where they have been recognized, while advancing my argument that although the right to marriage has long been considered to be absolute (enjoyable by anyone), it is indeed restrictive and as a right, does not extend to same sex marriages. I further argue that the exclusion of same sex marriages from the possible broad definition of 'marriage' is for all intents and purposes, for the better of society, not only today, but also tomorrow, trying to avoid the complications that this would introduce.

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<sup>1</sup> - Longman Dictionary of contemporary English

<sup>2</sup> - In this context, 'man and woman' refers to a male and a female, respectively; of the age of 18 and above.

<sup>3</sup> - Article 31, constitution of the Republic of Uganda, 1995, Laws of Uganda; also the import of HYDE –vs- HYDE (1866) LR 1 PD 130.

<sup>4</sup> - International Bill of Human Rights, which consists of the Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810, International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), the International Convention on Civil and Political rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976; and both optional protocols.

In discussing this topic, I will adopt a debate approach on the subject, taking on both the Longman definition of marriage as noted above, as well as that in *Hyde – vs- Hyde*<sup>5</sup>; juxtaposing both definitions and considering the best way forward. In so doing, I hope to adopt the following approach as the structure of this paper.

### **1.1. Statement of the problem;**

Over the years Uganda has seen a growing rise in the number of agitators calling for a consideration and legalization of same sex marriages; whilst there has also been a considerate pressure on the government to take action against not only those found to practice homosexuality, but also those that sympathize with the practice; which has often been instigated by the church among others. Suffice it to say that Uganda has a Christian foundation which can be found in its aspirations as a nation as well as depicted in its national emblem, 'for God and my country'. Despite this, Uganda, like many other countries has ratified a number of international codifications among which is the Universal declaration of Human rights, and the bill of rights to mention but a few. Notwithstanding, in its municipal law, particularly in respect to marriage, there is an express prohibition of marriages of same sex couples, making it punishable under the law. This has inevitably brought Uganda to be criticized by a number of organizations and individuals the world over for gross abuse of human rights in this context.

### **1.2. Objectives of the study;**

The primary objective of this paper is to consider the position regarding same sex marriages in so far as their recognition is concerned, through careful investigation and evaluation; in order to substantiate a number of conclusions, particularly the following (among others);

- a. Same sex marriages in Uganda if recognized would have a grave bearing and risk on the economies social and moral values, enhancing moral turpitude;
- b. Same sex marriages in Uganda would deal a blow to the conventional marriage institution as has long been understood, in the sense that marriage (heterosexual) having been perceived as the primary cell of society, by recognizing same sex marriages; would be undermined and

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<sup>5</sup> - see n.3 above.

perceived as merely a commitment for convenience, whose products cannot be perceived any less;

- c. The concept of legal recognition of same sex marriages is a big misconception that should not even be heard of especially in the context of freedoms and liberties (social or civil); as there is a possible option to legal recognition thereof without fear of contravening any individual's rights.
- d. Essentially, this paper will go to prove that by legally recognizing same sex marriages in Uganda, there would have been more problems and complications created, than resolved.

### **1.3. Hypothesis;**

This study is drawn on particularly two different instances in the societal perception of same sex marriages and relationships; the consecration of the gay bishop (Dr Jeffrey John) in the diocese of Oxford, as bishop of Reading in June 2003. This was later followed by the appointment of Gene Robinson as the bishop of New Hampshire<sup>6</sup> (church of the United States of America). Despite earlier criticisms that saw Dr Jeffrey John step down from his initial bishopric appointment, the prime minister of Great Britain, upon consultation with the Archbishop of Canterbury; appointed him to the Deanery of st. Albans, which was a position of equal or greater prominence and prestige<sup>7</sup>. The second hypothesis is drawn from the recent enactment of the Civil Partnership Act<sup>8</sup> in the United Kingdom whose legal framework has more often determined the possible future of Uganda's legal framework, by virtue of the former's capacity as former colonial masters to Uganda.

### **1.4. Scope of study;**

The study and discussion in the course of this shall be drawn from a geographical scope of primarily Uganda, although, through its comparative study, it will consider the situation in quite a number of jurisdictions. Nonetheless, primary discussion of this paper is made focusing on Uganda. In terms of time scope, this discussion will stretch as far back as 1864 when the universal declaration of human rights came into effect. This however, will be discussed synonymously with the position in 1967 when Uganda acceded to the convention. In terms of time scope however, the

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<sup>6</sup> - *The Columbia Encyclopedia, Sixth Edition*. Columbia University Press (2001-05) as at 09<sup>th</sup>.09.2007

<sup>7</sup> - British Broadcasting Corporation website; lent talks: Jeffrey John on 04<sup>th</sup>. 04. 2007, also available at [http://www.bbc.co.uk/religion/programmes/lent\\_talks/scripts/jeffreyjohn.html](http://www.bbc.co.uk/religion/programmes/lent_talks/scripts/jeffreyjohn.html)

<sup>8</sup> - see n.7 above.

years 1995 and 2000 will be of great significance, seeing as 1995 marked the promulgation of the Constitution of the Republic of Uganda, and 2000 marked amendment to the Marriage Act, among other.

### **1.5. Synopsis;**

Chapter two will present a discussion of the background of marriages in Uganda in so far as its perception has evolved over the time. In this discussion, I discuss the legal elements of marriage in Uganda, its significance as well as the origin of marriage practices in Uganda. The legal efficacy of marriage under domestic legislation as well as international codification will also be found discussed herein. This paper deals with a great deal of concepts evolving around the question of rights, freedoms and liberties (social and civil). Whether the state should be justified in regulating individual and personal activities or the rights, freedoms and liberties of an individual should be left to rein in supremacy; is the center most point of focus in this chapter. True, the state has the obligation to ensure that it's citizens enjoy a healthy and clean environment; among others; does this obligation prevail to the exclusion of others, or better even; would this obligation necessarily mandate the state to intervene with the decisions by its citizens, say how they intend to live their lives, whether one should smoke, or voluntarily subject themselves to situations that may endanger their lives? These and more questions will form the mantle of chapter two herein.

Chapter three of this paper deals with the thrust of this discussion by considering the most pertinent questions thereof. In it, I deal with the questions of; i). What would be the risk in recognizing single sex marriages, ii). What possible threat would the recognition of single sex marriages pose on the conventional marriage institution as has long been known, iii). Is there a possible alternative to single sex marriages that would eliminate the possibility of breach of the proponents' rights and liberties? These questions, as will be seen; form the crust of this discussion, and as will be noted, not only justify my position on this subject.

In the next chapter, I present different accounts of why the recognition of same sex marriages should be given some attention, as well as why this has, since time immemorial been thought of as something unthinkable and inhumane, thus no warranting any consideration. In this chapter, a comparative analysis will be made with jurisdictions that have accepted this practice.

Chapter five, being the last chapter of this paper, deals with the conclusions of the study, making recommendations as to how best the problem ought to be resolved.

### **1.7. Significance of the study;**

Many times has it been said that by ignoring, or refusing to recognize marriages of the same sex, there is an outright abuse of the right to marriage, and indeed this can as well be found in 2002 when the European Commission for Human Rights decided that not allowing transgender people to marry breached their rights under Article 12. The right to start a family may only apply to people who are married. If it does, people who are not married will have to rely on the right to respect for family life under Article 8 to argue for their right to have children<sup>9</sup>. This interpretation coupled with the enactment of the Civil Partnerships Act<sup>10</sup> in the United Kingdom; could be said to be triggering a strong consideration for same sex marriages. This argument will be later adopted and substantiated in the course of this paper. This development cannot be over emphasized; neither can the significance of a study in its development. Thus, it is worth posing certain questions at this point, thus; is there a possibility of a threat being posed on society if same sex marriages were to be recognized? Would this threat, if any have any consequence on the legal institution of marriage as viewed in any context? Is there an alternative to recognition of same sex marriages that could do away with the possibility of discrimination or breach of the proponents' rights? All these questions essentially would go a long way to explain the study that this paper is centered on, as well as the conclusions that will be found.

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<sup>9</sup> - Your rights organization website, available at; <http://www.yourrights.org.uk/your-rights/the-human-rights-act/convention-rights/article-12-marry-and-found-family.shtml>

<sup>10</sup> - Civil Partnerships Act, 2004.

## Chapter II

### 2.0. Introduction;

Whilst the concept of same sex marriages in Uganda could be such a novel one, it has not escaped catching the attention of a number of scholars, and as such, may be said to be a fairly familiar topic in Uganda. The looming question, however; could be why has there persisted great persecution of homosexuals despite the insight about same sex relationships that may be considered not to be a novel one? Below, are a number of texts that have been adopted in the course of this discussion; which attempt to shade some light as to why perhaps there still looms great persecution of homosexuals in Uganda. The texts highlighted hereunder, are simply those that have attempted to discuss the position of marriage in Uganda, with some shading some light on the subject under investigation. A review of these texts follows below in so far as they have been useful in discussing this subject.

### 2.1. Literature review;

S. Tamale, *when Hens begin to crow; Gender and Parliamentary politics in Uganda*<sup>11</sup>; in this book, the author gives an account of how current marriage practices in Uganda evolved, right from the early times, prior to the colonial era. In what she describes as a transition from monarchies to parliamentary politics, she highlights the major developments within the economy, that later saw the introduction of western cultures into the African system that Uganda enjoyed at the time.

Through this book she considers gender in parliamentary politics seriously. Passed the body count approach the book stretches to studying women in politics, into the arena of gender and gendered practices. Tamale follows female politicians through their initial entry into politics, to their campaigns for election, into Parliament, and on to politicians' home districts. She also explores the gendered nature of media portrayals of Ugandan politicians, and seeks to evaluate the impact of these different images on women's political careers. Men are never out of the picture. They are there at every step, and their impact is both demonstrated and evaluated.

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<sup>11</sup> - S. Tamale, *when Hens begin to crow; Gender and Parliamentary politics in Uganda*, 1999, Westview press. ISBN 0813338964

The intriguing title of Sylvia Tamale's study, *When Hens Begin to Crow*, sets the pace for this rich and fascinating study of gender and politics in Uganda. Popular mythology claims that hens cannot crow, hence, in many African cultures, a crowing hen is considered an omen of bad tidings that must be expiated through the immediate slaughter of the offending bird, and because of this, she considers women not to have any business standing for political office. In spite of a historical tradition of political marginalization, women across Africa are increasingly taking their place in the public arena of politics, as she addresses in this book.

Culture remains the largest obstacle to equitable treatment of women, whether they are politicians or rural agriculturalists; as well as a number of other groups due to different orientations. Policies such as affirmative action provide the space for women's entry into politics and a potential for change, along with other marginalized groups.

Kaduuli, Stephen C., *Kwandhula, Cultural Engagement and Marriage in Busoga and Buganda*, (October 2006). Kwandhula or Kwanjula is an elaborate introduction ceremony of a husband to the wife's family, among the Basoga and Baganda, respectively, of Uganda. Through their paper, the authors explore the values of African societies, particularly the Baganda and Basoga, as well as the marriage practices. According to their paper, marriage plays many roles in these societies and it is considered to be a cardinal institution of social organization. It unites not just individuals but also families and even clans. The paper shows who the main actors are during the kwandhula ceremony. It looks at how, over time, exogenous factors have altered this age-old institution. It compares how kwandhula was in yesteryears and how it is today, bearing in mind the changing times. The methodology is unstructured, qualitative and is an ethnographic insider's insight of what occurs during an introduction or marriage ceremony among the said societies. It is a narrative and interpretative discussion of this institution which has a lot of bearing on the family life of the said societies.

Adrian Hastings, *The Church in Africa: 1450-1950*. (1994)<sup>12</sup>; Covering five centuries from the rise of the Ethiopian Orthodox Church in the 15th century and the early Portuguese missionaries right through to the Church and its key role in Africa today Adrian gives a complete history of the Christian Church in Africa. After having spent many years in Africa, she looks at all aspects of

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<sup>12</sup> - Adrian Hastings, *The Church in Africa: 1450-1950*. Oxford: Clarendon Press, 1994. pp. 371-84.

Christianity in Africa, including its relationship to traditional values and customs, politics, and the comparable rise of Islam in Africa during the period.

Elizabeth Isichei, *A History of Christianity in Africa from Antiquity to the Present*.(1995)<sup>13</sup> Elizabeth Isichei offers a comprehensive account of the history of the different Christian enterprises and communities on the African continent. Professor Isichei lived, taught and wrote in Nigeria for many years, and does give an in depth appreciation of the development of the church in Mediterranean Africa, Nubia and Ethiopia from the ancient times. The second deals with the "middle years," approximately 1500 to 1800, focusing on the Portuguese efforts to interact with and establish some Christianity among African societies, mainly at or near the coast. It deals with the vexed issue of the Atlantic slave trade and missionaries' associations with it.

Isichei then concentrates for the rest of the book on the modern missionary movement and responses to it over the last 200 years. While the work is abundantly documented, it does not contain a bibliography or guide to further reading at the end. The index is minimal, limited to personal and place names. The maps are not adequate. Two continental maps, dealing with the environmental and modern boundaries, decorate the beginning. A number of more specific maps can be found in the chapters, but no table warns the reader of their existence. All are general maps which do little to illuminate the situations of the Christian communities. Perhaps in their haste to make this important reference work available, author and publisher have not made this volume as useful as it might have been.

By choosing to write a survey, and to include in the definition of survey all instances of Christianity, of whatever persuasion, Professor Isichei has forced herself to move quickly and rather superficially over the mass of data and communities on the continent. Her chapters are typically broken into small sections of one to three pages each. She notes the ethnocentrism and Eurocentrism of most European missionaries and the very different understandings of African communities, and she affirms the variety of forms of Christianity which have emerged. She notes the controversies that have divided African Christians, including the knotty problems faced by the Ethiopian Orthodox Church; gives due emphasis to the independent churches that have

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<sup>13</sup> - Elizabeth Isichei, *A History of Christianity in Africa from Antiquity to the Present*. London: SPCK, 1995. pp. 145-50

emerged in Africa over the last century; and provides vignettes of a range of heroes, African and European alike, who have fought for the integrity of African societies and Christianities. Her sympathy for the struggles of Africans to create meaningful Christian lives is palpable.

Isichei is not able to take the reader very far into the dynamics of the Christian communities, their struggles with modernization, and the interface between the religious domain and social, economic and political realities. She addresses fundamental issues within the churches and communities, across gender and class lines, and between Christians and the larger societies and the state, but she does this in small sections buried in the regional and chronological chapters.

Michael S. Wald, et al, *Same sex couples; marriage, families and children. An analysis of proposition 22 the Knight initiative*<sup>14</sup>. This report analyzes the arguments for and against a ballot initiative, Proposition 22, which would ban recognition of same- sex couple marriage in California. The analysis focuses on the likely effects of passage of the initiative on the well-being of children. It also looks at the issue of same-sex marriage in the context of California family law and policies. The report assesses the research examining the relationships of same-sex couples and the research on the development of children raised by gay parents. The report concludes that allowing same-sex couples to marry would benefit the adults, their children, and society as a whole. The report also assesses the issues raised by state statutes that would deny "full faith and credit" to same-sex couple marriages, if some state decides to authorize such marriages.

Edward O. Laumann, John Gagnon, Robert T. Michael and Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States*(1994)<sup>15</sup> Based on the National Health and Social Life Survey, a 1992 nationwide survey of 3432 American men and women between the ages of 18 and 59, this book reports on the findings. Beginning with the theoretical foundations, rationale for, and design of the methodology, the authors put the work in historical context as they assert its accuracy and generalizations, urging caution about interpretation and implications of their sometimes surprising findings. Though the study was designed largely to "fill significant gaps in our knowledge of sexual behavior associated with the acquisition of the AIDS virus," this book achieves a refreshingly readable examination of masturbation, sexually transmitted

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<sup>14</sup> - Michael S. Wald, et al, *Same sex couples; marriage, families and children. An analysis of proposition 22 the Knight initiative*, p.7; also available at [http://papers.ssrn.com/paper.taf?abstract\\_id=203649](http://papers.ssrn.com/paper.taf?abstract_id=203649)

<sup>15</sup> - Edward O. Laumann, John Gagnon, Robert T. Michael and Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* (Chicago: U. of Chicago Press, 1994)

infections, cohabitation and marriage, fertility, and homosexuality. The text throughout is buttressed by graphs, charts, tables, diagrams, appendixes, bibliographic references, and author and subject indexes.

William N. Eskridge, Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (1996)<sup>16</sup>; Presents an interdisciplinary exploration of the nature of parenthood and its various manifestations in contemporary society. Issues involving gay rights have a tendency to separate those who normally fall on opposing sides and join those who are usually at odds. Both Clinton and Dole, for example, have supported a recent bill in the Senate to allow other states the right not to recognize same-sex marriages made in Hawaii. Eskridge, a Georgetown University professor, through this book polarizes this issue, taking the position that Americans should extend the right of legal marriage to same-sex couples because of the civilizing influence of the marriage bond.

E. J. Graff, *What is Marriage For?* (1999)<sup>17</sup>; Graff came to her strange social history through a strange and circuitous route. As a child, she watched her mother and decided that she herself would never become a wife. As an adult, being a lesbian seemed to preclude marriage and she didn't experience any pull to enter something which appeared to reflect traditional, patriarchal attitudes. Over time, though, her experiences with the weddings of heterosexual friends inspired her to investigate the nature of marriage more closely; what she found caused her to change her mind and eventually marry herself.

The most fundamental and important way in which marriage has changed is economic. As Graff explains in a very detailed but engaging history, marriage through most of human history was primarily an economic institution: who you married was the most powerful determining factor of your economic future. If you were rich, marrying well meant marrying someone who could ensure your economic future by making political, financial, and social connections. If you were poor, marrying well meant marrying a hard worker who could help you create a future in which

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<sup>16</sup> - William N. Eskridge, Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: Free Press, 1996)

<sup>17</sup> - E. J. Graff, *What is Marriage For?* (Boston: Beacon Press, 1999).

you stood a decent chance of surviving and maybe even having a couple of children who would survive.

Economics may have been of great importance, but it wasn't the only factor in marriages through history. Marriage today may be largely about happiness and fulfillment, but it's not the only reason people continue to marry. Graff explores a multitude of issues and thus helps readers not only understand marriage itself, but also human culture because marriage has been such a fundamental human institution.

Graff's book was deliberately written as a response to those who want to "freeze" marriage in time and keep it at a certain stage of its evolution. Even if she didn't keep linking her arguments to the idea that same-sex marriage should be legalized, though, the same goal would be accomplished because simply teaching people the fact that marriage has evolved, continues to evolve, and will evolve in the future is sufficient to demonstrate that marriage is not what it once was and shouldn't be treated as a crystalline object that never changes.

Robert M. Baird & Stuart Rosenbaum, eds., *Same-Sex Marriage: The Moral and Legal Debate*, (1997)<sup>18</sup>; The editors ask why homosexuals, perhaps one of the most "counterculture" of groups in the US, would want to marry. The contributors of the 37 articles in this collection answer in a variety of ways, reacting to the Goodridge v. Massachusetts Department of Public Health controversy, the emotional dimensions of the debate, and its philosophical arguments. Topics and contributors range from a call for a constitutional amendment on marriage from George W. Bush, an analysis of the road to gay marriage from the editorial staff of the New York Times, personal declarations, case studies and position papers from all sides. The editors include texts of some of the documents that started the debate.

Should government sanction gay marriages? Although it is clear from his introduction that Sullivan (*Virtually Normal: An Argument About Homosexuality*), is in favor of same-sex marriage, he presents here an astonishing variety of readings from the Bible and legal decisions to Hannah Arendt, James Q. Wilson, Katha Pollitt, William Safire, Montaigne and Plato that offer points of view on both sides of the argument. Of particular interest is the chapter on same-sex

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<sup>18</sup> - Robert M. Baird & Stuart Rosenbaum, eds., *Same-Sex Marriage: The Moral and Legal Debate*, (Amherst, N.Y.: Prometheus Books, 1997)

marriage throughout history, which makes it apparent that bonds between homosexuals that were similar to marriage were accepted in many cultures: unions between women and unions between men existed in traditional Chinese society; upper-class women could take girls as wives in parts of Africa; and marriage, or "making of a brother," ceremonies occurred between men in medieval Europe. The author believes that homosexual marriage can be discussed on many levels, and thus he includes statements from religious and political figures, conservatives, liberals, legal scholars and, of course, gay men and lesbians. Sullivan argues that societal acceptance of same-sex marriage would mean complete equality for homosexuals. This impartial anthology will encourage debate on all aspects of the topic.

John M. Finnis, "*Law, Morality, and 'Sexual Orientation,'*" (1994)<sup>19</sup>, Proposals to legalize same-sex marriage evoke strong response from those on both sides of the debate. Much has been written about the legal policy issues over the legal recognition of same-sex unions in the United States, yet there has been little dialogue and exchange between participants in the debate. This book attempts to open that dialogue, and to exemplify the high quality of thoughtful discussion and debate that is possible. Authors are paired to address and respond to a particular topic, one in favor of state recognition of same-sex relationships and one in favor of limiting state recognition to those relationships that have been traditionally recognized as marriages. This ideal introduction is designed to lead the reader through the relevant issues, progressing from the general to the particular. Debates are contextualized, offering comparative, historical, and family-policy perspectives, asking fundamental questions such as what is the purpose of a family, and what interests, if any, that state has in promoting a particular type of family over others. Issues of jurisprudence and political philosophy are examined, addressing the public benefits of marriage and equal treatment before the law, among other items. The constitutionality of same-sex marriage or domestic partnership policies is explored. Finally, this book covers the broad implications when states--such as Vermont--legally recognize same-sex unions, and the impact of international recognition of same-sex marriage rights.

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<sup>19</sup> - John M. Finnis, "*Law, Morality, and 'Sexual Orientation,'*" Vol. 69, *Notre Dame Law Rev.* (1994), 1049-76, at 1064

Despite the above works seeming to have great relevance to the subject at hand, it goes without say that they come short of throwing light on the situation in Uganda. It is imperative that a distinct study on the subject be undertaken, such as is the foregoing one.

## CHAPTER III

Marriage in the Ugandan context connotes a score of aspects, particularly; the union of man and woman in matrimony under Article 31<sup>20</sup>, the ceremonisation in any of the ways under the Hindu marriage and divorce Act<sup>21</sup>; Islamic culture, or according to rites and customs such as payment of bride price<sup>22</sup>. Regardless the definition, marriage in Uganda has often been characterized by the union of man and woman, over the age of 18 and at times<sup>23</sup>, 16 with the consent of a parent or guardian of the minor<sup>24</sup>.

### 3.1. BACKGROUND;

Like any other society, marriage has been practiced in Uganda since time immemorial, although in variant ways. Traditionally, marriage was practiced in different ways depending on the society that the boy and girl to be married hailed from. Infact, there was little or nothing to do with faith and denominations<sup>25</sup>. In Buganda, for example it was the girl's parents who had the final say on the matter as to whom she was to be married and this was followed by the suitor's family meeting with that of the bride to be and discussing the items of dowry<sup>26</sup>. In the eastern part among the bagishu, the ceremony was often preceded by a circumcision ceremony during which the boy (on becoming of age), was initiated into the culture by undergoing circumcision and later a virgin girl betrothed to him<sup>27</sup>. Basically, this was all an 'elder's determined' process. By 1904<sup>28</sup>,

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<sup>20</sup> - The 1995 Constitution of the Republic of Uganda.

<sup>21</sup> - Cap 250, either saptapandi, anan karaj; and according to the rites and ceremonies of either party to the marriage as provided under s. 4 thereof

<sup>22</sup> - provided for under s. 4 of the Marriage of Africans Act cap 253.

<sup>23</sup> - under Article 31 of the Constitution of the republic of Uganda, 1995

<sup>24</sup> - Under Ss. 17 and 19 of the Marriage Act, cap 251; as well as s. 5 of the Marriage of Africans Act, cap 253. This may also include a registrar, as provided under s. 6 of Cap 253.

<sup>25</sup> - S. Tamale, *when Hens begin to crow; Gender and Parliamentary politics in Uganda*, 1999, Westview press. ISBN 0813338964.

<sup>26</sup> - Kaduuli, Stephen C., *Kwandhula, Cultural Engagement and Marriage in Busoga and Buganda*, (October 2006). Available at SSRN: <http://ssrn.com/abstract=985246>

<sup>27</sup> - see n. 26 above.

<sup>28</sup> - It is worth noting that the first missionaries in Uganda had settled long before 1904, and going as far back as 1878, when Alexander McKay, the first missionary came to Uganda; however, their activity in the legal context was not significant up until the enactment of the early marriage legislation, particularly, the Marriage of Africans (registration) Act

Uganda had witnessed the coming of the missionaries<sup>29</sup>, this started a spread of Christianity which was later to be responsible for a number of fundamental changes, including and most predominantly the way marriages were to be ceremonised<sup>30</sup>. With the establishment of the church, marriages were seen to only be blessed in church, implying that any marriage not celebrated in church was not legally recognized. It is no doubt that section 29 (of the Marriage Act)<sup>31</sup> refers to marriages celebrated in church (English marriages) as legally binding marriages. The marriages institution was yet to see more changes in the way marriages were celebrated in Uganda. In 1973, the customary marriages (registration) act<sup>32</sup> was enacted, creating different marriage districts<sup>33</sup>. This not only modified marriages and their celebration by requiring the solemnization of marriages in Uganda, but also providing for the registration of those marriages that had already been customarily contracted. Despite the changes in the marriage spectrum, one significant aspect has remained unaltered, the union between man and woman. This is so because all the changes above were later incorporated into legislation, substantiated by the constitution's provision for their recognition under article 31<sup>34</sup> thereof.

### 3.1.a. Legal efficacy of marriage in Uganda;

With the wording of article 31 of the constitution, it is prudent to say that founding of a family is preceded by marriage. The (rebuttable) presumption being that every family is representative of a marriage and that upon marriage, one automatically acquires the right to found a family<sup>35</sup>.

It follows that upon marriage, the husband and wife acquire the right to share the property equally upon the dissolution of the marriage<sup>36</sup>. Infact, a marriage has such a great effect upon a

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<sup>29</sup> - Adrian Hastings, *The Church in Africa: 1450-1950*. Oxford: Clarendon Press, 1994. pp. 371-84; also see, Charles Miller, *The Lunatic Express: The Building of an Impossible 600 mile Railroad across East Africa*. London: MacMillan, 1971. pp. 130-171; and, John Bauer, *2000 Years of Christianity in Africa* (Nairobi: Paulines, 1994) pp. 233-44.

<sup>30</sup> - Elizabeth Isichei, *A History of Christianity in Africa from Antiquity to the Present*. London: SPCK, 1995. pp. 145-50;

<sup>31</sup> - Cap 251, Laws of Uganda, 2000 Edition.

<sup>32</sup> - Cap 248, Laws of Uganda, 2000 Edition.

<sup>33</sup> - see n. 22 above 1<sup>st</sup> schedule.

<sup>34</sup> - of the Constitution of the republic of Uganda, 1995.

<sup>35</sup> - see n. 20 above, and Art. 30.

<sup>36</sup> - s. 26 Divorce Act, Cap. 249, Laws of Uganda, 2000 Edition. This certainly depends on any settlement order as may be made by the Court.

testamentary disposition<sup>37</sup> to the effect that any such disposition made prior to a marriage will be held invalid<sup>38</sup> if there is a later marriage contracted<sup>39</sup>.

Most importantly however, is the position of the children born in the subsistence of the wedlock. The basic rights of these children prevail at all times<sup>40</sup> as would their right to parental care<sup>41</sup> and love<sup>42</sup>. The appreciation of this position has golden bestowment as a rule, having courts ever inclined to looking nowhere else than the conditions in the best interest of the child<sup>43</sup>. Suffice it to say that any circumstances that may impose great distress and torment on the child shall most certainly dictate that the child be taken up into an alternative environment in custody proceedings<sup>44</sup>. The same would prevail as determinants in an adoption proceeding<sup>45</sup>, judging by whether the applicant hoping to be the putative parent can adequately provide for the child's interests, most considerably, parental love and care<sup>46</sup>.

### 3.2. THE QUESTION OF SAME SEX MARRIAGES;

Thus far, it could aptly be said that the only change that the marriage spectrum was yet to see was that of same sex marriages. Attributed to the growing influence of the western culture, same sex marriages have been legalized in countries like Belgium<sup>47</sup>, South Africa<sup>48</sup>, which has recognized more rights in this area than perhaps any other African country<sup>49</sup>, Canada<sup>50</sup>; Spain<sup>51</sup>,

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<sup>37</sup> - Succession Act, Cap. 162, Laws of Uganda, 2000 Edition, Part VI.

<sup>38</sup> - see n. 37 above, s. 34.

<sup>39</sup> - see n. 37 above.

<sup>40</sup> - Children Act, Cap. 59, Laws of Uganda, 2000 Edition, Part II s. 3.

<sup>41</sup> - see n. 40 above, Ss. 4 and 5 and Art. 1 to the 1<sup>st</sup> schedule.

<sup>42</sup> - see n. 41 above.

<sup>43</sup> - Andrew Bainham, Shelley Day Sclater, Martin Richards, *What Is a Parent: A Socio-Legal Analysis*, p.91, Hart Publishing, ISBN 1841130583, 1999. Also see *Re B (a minor) (Wardship: Sterilization)* [1988] A.C. 199

<sup>44</sup> - see n. 40 above, s. 73 (3)

<sup>45</sup> - see n. 40 above, s. 48 (1) (b).

<sup>46</sup> - see n. 40 above, Ss. 46 (1) (d), 47 (1) (b), and 51 (a) and (b).

<sup>47</sup> - Belgium Civil Code, Title V-bis, 1999, enacted on the 1<sup>st</sup> of January 2000.

<sup>48</sup> - Civil Unions Act, enacted on the 30<sup>th</sup> of November, 2006.

<sup>49</sup> - following five decisions of the Constitutional Court setting the status of civil unions. The decisions recognized same-sex partnerships in immigration (1999), granted same-sex couples the same financial status to married heterosexual partners (2002), allowed adoption by same-sex couples (2002), entitled same-sex couples to the same financial benefits as unmarried cohabiting heterosexual couples (2003), and recognized that the children born to same-sex couples by way of artificial insemination are legitimate (2003). In July 2002, the High Court in Bloemfontein ruled that denying same-sex couples the right to marry equally is discriminatory and thus is unconstitutional.

<sup>50</sup> - Civil Marriage Act, enacted on the 19<sup>th</sup> July 2005.

Netherlands<sup>52</sup>, and Great Britain<sup>53</sup> as one of the latest. In the discussion of this paper, the term 'same sex marriages' shall be used synonymously with 'gay marriages' which shall include bisexuals or persons that undergo an operation for the purpose of changing their sex. Many forums have had the subject discussed rather at length<sup>54</sup>, with some lobbying for the rights of gay persons to be recognized, including marriage. The question that this paper sets out to explore is the validity of same sex marriages in Uganda in respect to their recognition. In so doing, the paper will adopt three questions, i). What would be the risk in recognizing single sex marriages, ii). What possible threat would the recognition of single sex marriages pose on the conventional marriage institution as has long been known, iii). Is there a possible alternative to single sex marriages that would eliminate the possibility of breach of the proponents' rights and liberties?

To explore these questions, there is great need to consider the arguments made for each side, which is in favor of or against same sex marriages. These shall be incorporated in the foregoing discussion. Suffice it to say that the wider position of society in Uganda is against the gay factions of society<sup>55</sup>; with the church comprising the bigger portion of the society that is against it<sup>56</sup>. This has most often than not been expressed in different forums with church leaders attacking the government for not being proactive in curbing the practice. Infact in Uganda there have been calls for the government to detain anybody found to be a sympathizer of the act<sup>57</sup>. However; this has only seen some Human Rights activists, domestic<sup>58</sup> and international<sup>59</sup>; add to the voices of gay factions in the struggle for the recognition of their rights.

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<sup>51</sup> - Law 13/2005 enacted on the 3<sup>rd</sup> July 2005, despite the rough time given to it by the senate that had vetoed it.

<sup>52</sup> - Which introduced to its marriage Act (The Civil Code) the provision that changed article 1:30 in the existing marriage law into: *Een huwelijk kan worden aangegaan door twee personen van verschillend of van gelijk geslacht.* (A marriage can be contracted by two people of different or the same sex)

<sup>53</sup> - under the auspices of the Civil Partnership Act 2004.

<sup>54</sup> - including some states in the United States of America, China, Argentina, Croatia, Lithuania, Greece, Italy, Poland, Ireland, Jersey, Romania, Taiwan, Cuba, Ecuador, Chile, Costa Rica, Australia, to mention but a few.

<sup>55</sup> - A simple reference to s. 10 of the Constitutional (Amendment) Act, 2005 expressly prohibits same sex marriages.

<sup>56</sup> - see the Monitor Newspaper, *Gay row: Ugandan bishops boycott UK conference*, Wednesday 15<sup>th</sup> February, 2008. Kampala.

<sup>57</sup> - see <http://gayuganda.blogspot.com/2007/08/un-reported-facts.html>, a pro gay site; as at 26<sup>th</sup> February 2008.

<sup>58</sup> - See The New Vision Newspaper, *Makerere Don Regards Homosexuality a Human Right*, 25<sup>th</sup> February, 2003.

<sup>59</sup> - see [http://www.amnesty.org.uk/news\\_details.asp?NewsID=16329](http://www.amnesty.org.uk/news_details.asp?NewsID=16329), official website for Amnesty international, reported on the 3<sup>rd</sup> August, 2005 and accessed on the 27<sup>th</sup> February 2008.

In comparison to what many would have to say about same sex marriages, proponents have more often fronted the notion of having an equal plain field of human rights in application<sup>60</sup>. In this realm, it is therefore inevitable to call into consideration an analysis of the law. Suffice it to say that this discussion evolves around the provisions of not only international law, particularly the universal declaration of human rights as well as the Bill of rights. But most significantly, the Constitution of the Republic of Uganda<sup>61</sup>. The regimes named above carry a resonance in their provision for rights, freedoms and liberties, but as is the subject matter of this paper, primary concern is given to the right to marry and found a family. Infact, in its provision for the right to marry, which through this paper shall be used synonymously with the right to found a family; the constitution particularly lays two conditions i.e. the contacting parties to be of majority age<sup>62</sup>, and that where one does not satisfy this requirement, to have obtained their guardian's consent<sup>63</sup>. In a number of different enabling laws<sup>64</sup> different requirements ought to be fulfilled depending on the nature of marriage being contracted.

The situation under international codification does slightly vary in a way that seems to suggest that the right to marry is absolute<sup>65</sup>. It goes without say that there would ultimately arise conditions to be met depending on the jurisdiction where the parties contract the marriage<sup>66</sup>, but from the outset, the right to marry is absolute<sup>67</sup>. Thus far, it is worth asking why there should be limitations as to certain marriages. That the position underlying all marriage regimes regardless the jurisdiction, seems to be inclined towards the concept of mutual consent among the contracting parties<sup>68</sup>. That for there to be a valid marriage, there ought to be mutual consent voluntarily given by each of the contracting parties. It follows that under international

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<sup>60</sup> - see n. 58 above.

<sup>61</sup> - see n. 20 above.

<sup>62</sup> - Constitutional (Amendment) Act, s. 10 (a) (1), the majority age being 18 (eighteen) years and above.

<sup>63</sup> - see n. 23 above.

<sup>64</sup> - Cap. 251, 250, and 253, Laws of Uganda, 2000 Edition.

<sup>65</sup> - Universal Declaration of Human Rights (A/RES/217, 10 December 1948 at Palais de Chaillot, Paris) Article 16.

<sup>66</sup> - the most relevant in the circumstances being the situation in Uganda, with conditions such as the age of consent as 18 years under the Constitution, notice under the Marriage Act, to mention but a few.

<sup>67</sup> - only conditional to the aspect of age referred to as 'full age' under Article 16 of the Universal Declaration of Human Rights, which may as well be variant depending on the particular jurisdiction.

<sup>68</sup> - see n. 65 above, Art. 16 (2).

codification, the element of free will is held as the penultimate yard stick to validate any given marriage<sup>69</sup>. In its wording, it says;

‘Marriage shall be entered into **only with the free and full consent** of the intending spouses.’<sup>70</sup> (Emphasis added)

Essentially, this imports to the effect that marriage on the international scene has greater chances of being recognized as valid and legitimate when there has been an exercise of free will between the two parties, than for any other reason<sup>71</sup>. This is not in denial of the requisite qualities depending on a particular jurisdiction<sup>72</sup>. While in certain jurisdictions there may be questions such as the role of the parents in their children's marriage *vis a viz* consenting to their children's marriage<sup>73</sup>, in others, the children may be expected to totally handle their marriage arrangements without the intervention of their families. Whatever the conditions, it now seems evidently clear that the standard condition or requirement for marriage is consent of the parties<sup>74</sup>, regardless the jurisdiction.

### 3.3. THE POSITION OF SAME SEX MARRIAGES;

In consideration of same sex marriages in Uganda, a comparative analysis ought to be done in comparison with different jurisdictions; drawing lessons from how the rest of the world has dealt with the subject and what has been done in respect to the different concerns that remain to be dealt with in the context of Uganda. In its 03<sup>rd</sup> August 2005 news page<sup>75</sup>, Amnesty international reported Uganda as [perhaps] the leading perpetrator of Human rights abuses in the context of

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<sup>69</sup> - see n. 68 above; while Art. 16 does lay the right to marry, clause 2 thereof does provide to the effect that the for the right to be recognized, there ought to be one significant element, consent.

<sup>70</sup> - see n. 68 above.

<sup>71</sup> - also enshrined under the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231, *entered into force* Dec 9, 1964, Art. 1.1. this was in fact illustrated in *Re K.R. (a minor)* 1999 [2] FLR 542 where the court's wardship powers were used to protect a young girl from a forced marriage overseas, where she was being held against her will, and to facilitate her safe return to the UK<sup>5</sup>.

<sup>72</sup> - Inclusive of which could be age of consent, issues of consanguinity, to mention but a few.

<sup>73</sup> - The situation under Sharia Law and, as well as the practice in India.

<sup>74</sup> - see n. 69 above.

<sup>75</sup> - <http://www.amnesty.org.uk/content.asp?CategoryID=10011>

gay and other minority persons due to their sexual orientation<sup>76</sup>. Of the many concerns that were raised in this report, was the issue of civil rights for minority persons in the context of sexual orientation. Uganda being one of the signatories to the UN Declaration of Human Rights is more often expected to have a high respect for human rights regardless one's race, creed, sexual or other orientation. This has not been the case especially in the context of gay persons considering that as recent as 2005 the government enacted a legislation<sup>77</sup> that expressly forbade marriages between same sex people<sup>78</sup>. Thus far, there is need to draw lessons from those jurisdictions where same sex marriages have been legalized, as follows;

### 3.3. a. The international context;

#### I. Canada;

On July 20, 2005, Canada became the fourth country in the world to legalize same-sex marriage nationwide with the approval of the Civil Marriage Act. Court decisions, starting in 2003, had already legalized same-sex marriage in eight out of ten provinces and one of three territories, whose residents comprised about 90% of Canada's population. Before passing the Act, more than 3,000 same-sex couples had already married in these areas<sup>79</sup>. This could be said to be the ultimate effect of a number of court decisions that were handed down, from as far back as 1999. A brief history of the cases can be summed up as follows; in 1999, same-sex couples in Canada were entitled to receive many of the financial and legal benefits commonly associated with marriage in the Supreme Court of Canada's decision in *M. v. H.*<sup>80</sup>. However this decision stopped short of giving them the right to full legal marriage. Most laws which affect couples are within provincial rather than federal jurisdiction. As a result, rights varied somewhat from province to province.

In 2002 and 2003, court decisions in the federal courts of three provinces<sup>81</sup> then required the federal government to implement full same-sex marriage within the next two years, with the

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<sup>76</sup> - Amnesty International, *Uganda: Gay and lesbian rights activists intimidated, and same sex marriage criminalised*, 03 August 2005, available at; [http://www.amnesty.org.uk/news\\_details.asp?NewsID=16329](http://www.amnesty.org.uk/news_details.asp?NewsID=16329) as at 17<sup>th</sup> February 2008.

<sup>77</sup> - Constitutional (Amendment) Act, 2005.

<sup>78</sup> - see n. 77 above, s. 10 (2)

<sup>79</sup> - CBC News, *Liberals to introduce same-sex marriage bill in January*, 10 December 2004.

<sup>80</sup> - [1999] 2 S.C.R.

<sup>81</sup> - *Halpern et. al. v. Canada* (Ontario Superior Court, July 12, 2002); in Quebec: *Hendricks v. Quebec* (Quebec Superior Court, September 6, 2002); and in British Columbia; *Barbeau v. British Columbia* 2003 BCCA 251 (Court of Appeal for BC, May 1, 2003).

Ontario court of Appeal declaring that the Divorce Act was also unconstitutional for excluding same-sex marriages. It ordered same-sex marriages read into that act, which saw the then plaintiffs, a lesbian couple to divorce<sup>82</sup>. On 8<sup>th</sup> July 2003, the British Columbia court of Appeal issued a rather similar decision to that of Ontario stating that a further delay would result in the unequal application of the law between Ontario and British Columbia. This consequently saw the first men get married in British Columbia, a few hours after the decision of the court. The decision in Quebec was a merely reiteration of the earlier decisions of the *Hendricks and Leboeuf vs. Quebec*. Similar decisions were yet to be seen in different provinces, as Yukon followed<sup>83</sup>, then Manitoba<sup>84</sup>, Nova Scotia<sup>85</sup>, Saskatchewan<sup>86</sup>, Newfoundland and Labrador<sup>87</sup>, New Brunswick, and later the Northwest territories.

## II. Belgium;

Unlike the situation in Canada, the Belgium situation was never initiated by petitions in court but rather the introduction of a bill<sup>88</sup>.

## III. South Africa;

On 30 November 2004, yet another court ruled in favour of same-sex marriage when the Supreme Court of Appeal of South Africa declared that under the Constitution, the common law concept of marriage must be changed to include partners of the same gender.

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<sup>82</sup> - Wikipedia, *Same-sex marriage in Ontario* available at; [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Canada](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Canada) as at 17<sup>th</sup> February 2008.

<sup>83</sup> - *Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)* 2004 YKSC 54

<sup>84</sup> - cbc news, *Manitoba recognizes same sex marriages*, Thursday, September 16, 2004; available at, <http://www.cbc.ca/story/canada/national/2004/09/16/manitobasamesex040916.html>, as at 17<sup>th</sup> February 2008. On September 16, 2004, Justice Douglas Yard of the Manitoba Court of Queen's Bench declared the then-current definition of marriage unconstitutional. The judge said that his decision had been influenced by the previous decisions in B.C., Ontario and Quebec.

<sup>85</sup> - *Boutilier et al. v. Canada (A.G) and Nova Scotia (A.G)* 2003 F.C.J. No. 1238, 26.

<sup>86</sup> - cbc news, *Sask. Court Approves same sex marriages*, Friday, November 5, 2004, available at, [http://www.cbc.ca/story/canada/national/2004/11/05/same-sex\\_marriage\\_041105.html](http://www.cbc.ca/story/canada/national/2004/11/05/same-sex_marriage_041105.html) as at 17<sup>th</sup> February 2008.

<sup>87</sup> - Wikipedia, *Same-sex marriage in Newfoundland and Labrador*, available at, [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Newfoundland\\_and\\_Labrador](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Newfoundland_and_Labrador) as at 17<sup>th</sup> February 2008.

<sup>88</sup> - Wikipedia, *Same sex marriages in Belgium*, available at, [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Belgium#Legislative\\_history\\_of\\_the\\_same-sex\\_marriage\\_bill](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Belgium#Legislative_history_of_the_same-sex_marriage_bill) as at 17<sup>th</sup> February, 2008.

The case had been brought by Marie Fourie and Cecelia Bonthuys, a lesbian couple seeking the right to marry. In the ruling, Judge Edwin Cameron stated that the definition of marriage should be altered to read:

"Marriage is the union of two persons to the exclusion of all others for life."

Perhaps like many other jurisdictions, the development of a legal regime for the recognition of same sex marriages in South Africa began as a grant for unregistered cohabitation which dates back to 1999<sup>89</sup>. Five different court decisions laid down the status of civil unions<sup>90</sup>. This essentially led to substantial reforms in the South African marriage laws<sup>91</sup>. Same-sex marriages are only allowed in terms of the Civil Union Act. Couples marrying in terms of the Civil Union Act may choose whether their union is called a civil partnership or a marriage partnership. Couples joined in a marriage partnership in terms of that act enjoy the same privileges as couples married in terms of the Marriage Act<sup>92</sup>. It can then verily be said that marriages contracted under any one of these marriage regimes are all held valid and as such, it is therefore illegal for any organization to treat any such married persons as if they were unmarried<sup>93</sup>. Thus far, it can be said that South Africa is one of the countries that have completely opened up to legal recognition of same sex marriages and accorded same sex marriages much the same legal status as heterosexual marriages.

#### IV. Spain;

As far back as the 1990s, several Spanish city councils had opened registers for civil unions that allowed benefits for unmarried couples<sup>94</sup>. At the time, the Spanish law allowed single people to

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<sup>89</sup> - Wikipedia, *Same sex Marriage in South Africa*, available at, [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_South\\_Africa#2004\\_Supreme\\_Court\\_of\\_Appeal\\_decision](http://en.wikipedia.org/wiki/Same-sex_marriage_in_South_Africa#2004_Supreme_Court_of_Appeal_decision) as at 17<sup>th</sup> February, 2008.

<sup>90</sup> - these decisions recognized same sex partnerships in Immigration (1999), granted same sex financial status to married heterosexual partners (2002), allowed adoption by same sex couples (2002), entitled same sex couples to the same financial benefits as unmarried heterosexual couples (2003), and recognized that the children born to same sex couples by way of artificial insemination are legitimate (2003).

<sup>91</sup> - Marriage Act (Act 25 of 1961), the Customary Marriages Act (Act 120 of 1998), which provides for the civil registration of marriages solemnized according to the traditions of indigenous tribes, and the Civil Union Act (Act 17 of 2006).

<sup>92</sup> - see n. 79 above.

<sup>93</sup> - see n. 80 above.

<sup>94</sup> - The International Lesbian and Gay Association (1998-06), *Equality for lesbians and gay men; a relevant issue in the civil and social dialogue*, available at, [www.steff.suite.dk/report.htm](http://www.steff.suite.dk/report.htm), as at 17<sup>th</sup> February, 2008.

adopt children, implying that a same sex couple could undertake a defacto adoption. Nonetheless, same sex marriages were illegal in autonomous communities. In 2004, the government introduced a plan to extend legislation to permit same sex marriages either for the legal status of both opposite and same sex common law unions (otherwise referred to as de facto unions); or permitting transgendered people to legally change their name and sex designation without the requirement of surgery<sup>95</sup>. The bill was approved by cabinet and submitted to Parliament in December 2004, before it was rejected by the senate<sup>96</sup>. In July 2005 finally, the bill was approved, making Spain the third country in the world to formally legalize same sex marriages nationwide<sup>97</sup>. There was not much of restriction that was imposed as to the application of same sex marriages in Spain.

#### V. Netherlands;

Since April 2001, the Netherlands has legalized same sex marriages, which was the earliest country in the world to legalise this position<sup>98</sup>. The history of this position dates as far back as January 1998, when the registered partnerships were introduced in law in the Netherlands, as an alternative to marriage. This was after the mid eighties when a group of homosexual activists petitioned government to allow same sex marriages. A parliamentary commission was set up in 1995 to investigate the possibility of same sex marriages; which concluded its work in 1997 recommending for the opening up of civil marriages. A final legislation was drafted and tabled in parliament in 2000<sup>99</sup>.

The early marriages were conducted at the stroke of midnight by the mayor of Amsterdam on the 1<sup>st</sup> of April 2001, although later the Protestant Church of Netherlands decided that individual churches have the right to decide whether or not to bless other relationships between two

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<sup>95</sup> - Advocate.com, *Spanish lawmakers approve bill to let transsexuals change gender without surgery*, 09<sup>th</sup> November, 2006 available at, [http://www.advocate.com/news\\_detail\\_ektid39287.asp](http://www.advocate.com/news_detail_ektid39287.asp) as at, 17<sup>th</sup> February, 2008.

<sup>96</sup> - Ben Townley, *Spain Senate rejects same-sex marriage bill*, June 23, 2005, available at, <http://www.gay.com/news/election/article.html?2005/06/23/2>, as at 17<sup>th</sup> February, 2008.

<sup>97</sup> - Wikipedia, *Same sex marriages in Spain*, available at, [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Spain](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Spain) as at, 17<sup>th</sup> February 2008.

<sup>98</sup> - Wikipedia, *Same sex marriages in Netherlands*, available at [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_the\\_Netherlands](http://en.wikipedia.org/wiki/Same-sex_marriage_in_the_Netherlands), as at 17<sup>th</sup> February, 2008.

<sup>99</sup> - see n. 98 above.

persons as a union of love and faith for the face of God; in practice many churches now conduct these ceremonies<sup>100</sup>.

Currently, Same-sex marriages are fully equivalent to opposite-sex marriages in the Netherlands with one restriction relating to adoption of children. If a woman in a same-sex marriage has a child, her wife will not count as the child's parent; unless and until she adopts the child, she will remain under law a stepparent; on adoption, she will be the (second) mother<sup>101</sup>. A law is now being prepared to remove this discrepancy<sup>102</sup>.

## VI. United Kingdom;

The status of same sex marriages in the United Kingdom, is perhaps the most dramatic as it does carry with it a double edged approach in the sense that although it recognises same sex couples, it; in essence restricts this to a partnerships status as opposed to a marriage. In 2004, the United Kingdom granted civil Partnership rights under the Civil Partnership Act 2004, giving same sex couples rights and obligations in marriage similar to those in marriage<sup>103</sup>. Much to this was to be found in the nature of the Act<sup>104</sup>, providing for the application of the Act in England and Wales<sup>105</sup>, Scotland<sup>106</sup> and Northern Ireland<sup>107</sup>; its formation and registration. Under its part two, the Act enacts and imposes much the same restrictions in regard to the intending parties to the partnership as would be in a heterosexual marriage<sup>108</sup>.

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<sup>100</sup> - PCN, *The United Pentecostal Churches in the Netherlands and Homosexuality*, November, 2004. Available at, <http://www.protestantchurch.nl/default.asp?rIntNavMotherNavId=938&inc=info&rIntNavId=938&rIntId=1649> as at 17<sup>th</sup> February, 2008.

<sup>101</sup> - Ministry of Justice website, available at, [http://www.justitie.nl/english/publications/factsheets/same-sex\\_marriages.asp](http://www.justitie.nl/english/publications/factsheets/same-sex_marriages.asp) as at, 17<sup>th</sup> February 2008. Also see n. 87 above.

<sup>102</sup> - see n. 98 above.

<sup>103</sup> - this would include the right to property as heterosexual couples, as well as the same exemptions as to inheritance tax, social security and pension benefits; as well as the ability to get parental responsibility under the Act.

<sup>104</sup> - United Kingdom Civil Partnership Act, 2004.

<sup>105</sup> - see n. 104 above, Part 2.

<sup>106</sup> - see n. 104 above, Part 3.

<sup>107</sup> - see n. 104 above, Part 4.

<sup>108</sup> - The parties to the proposed partnership must not be within the prohibited degrees of relationship specified in part 1 of schedule 1 of the Act. Any party who is already in a marriage or a civil partnership is also ineligible to register.

Equally does the Gender Restriction Act<sup>109</sup>, in that, transgender people are allowed to change their gender, although this ought to be after dissolution of any existing marriage. In so far as registration of a civil partnership in the United Kingdom is concerned, couples intending to enter a partnership, where they are overseas couples, must reside in the UK for at least 7 days prior to the application for the partnership, and wait a further 15 days for the partnership to be formed<sup>110</sup>. Equally, does the act also provide for the dissolution of the partnership<sup>111</sup>. Suffice it to say that the provisions of the Married Women's Property Act 1882<sup>112</sup> will apply to civil partnerships<sup>113</sup>. Similarly the laws governing wills, administration of estates and family provisions will also largely apply to civil partners as they would to spouses. Thus, provisions governing financial relief under Part 2 of the Matrimonial Causes Act<sup>114</sup> and the Domestic Proceedings and Magistrates' Court Act<sup>115</sup> will also apply to civil partnerships. Tax exemptions available to spouses under s.18 of the Inheritance Tax Act<sup>116</sup> will be available to civil partners under the Civil Partnership Act<sup>117</sup>. In Scotland the centuries old system of minimum legal rights to a deceased estate for a widowed spouse have been expressly extended to civil partners by section 131 of the Civil Partnership Act<sup>118</sup>. Because of the changes affecting the different legislation above, other legislation have had to be brought in conformity, and such is the Family Law Act<sup>119</sup> and the Fatal Accidents Act<sup>120</sup>

With the above in mind, it can verily be said that the restrictions to same sex marriages have been given a similar approach as those to heterosexual marriages. Not only has this been in the restrictions as to eligibility in terms of who can enter a civil partnership. Worth noting that prior marriages or partnerships engaged would inhibit one from engaging in another relationship or partnership, as can be noted from the Civil Partnership Act<sup>121</sup>.

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<sup>109</sup> - United Kingdom Gender Restrictions Act, 2004.

<sup>110</sup> - see n. 104 above, s. 8.

<sup>111</sup> - see n. 104 above, Ss. 37(1) and 44.

<sup>112</sup> - United Kingdom Married Women's Property Act 1882

<sup>113</sup> - see n. 109 above, s. 11.

<sup>114</sup> - United Kingdom Matrimonial Causes Act 1973 (MCA)

<sup>115</sup> - United Kingdom Domestic Proceedings and Magistrates' Court Act 1978

<sup>116</sup> - United Kingdom Inheritance Tax Act 1984

<sup>117</sup> - see n. 104 above.

<sup>118</sup> - see n. 104 above.

<sup>119</sup> - United Kingdom Family Law Act 1996.

<sup>120</sup> - United Kingdom Fatal Accidents Act 1976.

<sup>121</sup> - see n. 104 above also see Part 1 of Schedule 1 of the Act.

Other jurisdictions that are currently considering the subject of legalizing same sex marriages, or granting legal status to same sex marriages, include; Argentina, Austria, Australia, Brazil, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Estonia, Ecuador, Faroe Islands, Greece, Ireland, Italy, Jersey, Latvia, Liechtenstein, Lithuania, Poland, Romania, Taiwan and states in the United States of America<sup>122</sup>.

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<sup>122</sup> - Wikipedia, *Same sex marriages*, available at, [http://en.wikipedia.org/wiki/same\\_sex\\_marriages](http://en.wikipedia.org/wiki/same_sex_marriages), as at 17<sup>th</sup> February, 2008.

## Chapter IV.

An appreciation of the subject at hand would require an in depth understanding of the concept underlying each side's propositions. Thus far, it is rather imperative to venture into the nature of, same sex and heterosexual marriages among others, the merits and demerits of each; as well as the substantive differences (if any) between both marriages.

### 4.0. Introduction;

The essence of this chapter is to give an objective consideration of the subject at hand, giving a thorough consideration of the pros and cons for the recognition of same sex marriages in Uganda. This however has been attempted through a comparative approach of both marriages (same sex and heterosexual). Infact, given the nature of marriages, notwithstanding the nature; it could said that the implications carried do suffice as similar and hardly differ much as shall be considered shortly below. It goes without say that marriage in the divinity sense was meant to fulfill the commandment to fill the world and subdue it<sup>123</sup>; although equally true may it be to say that the legal connotations of marriage have most often than not been considered to provide for the emotional attachment between persons, in form of civil and other liberties; among others<sup>124</sup>. This infact could be said to be the import of Article 16 of the Universal Declaration of Human Rights in so far as it does not restrict the right to marry between men and women per se, but rather to be exercised and enjoyed by both men and women of full age<sup>125</sup>.

#### 4.1. a. The nexus of same sex marriages and heterosexual marriages;

As noted above<sup>126</sup>, under international codification, the right to marry is a conclusive one to all persons of full age<sup>127</sup>, implying that for as long as two people are of age<sup>128</sup>; they are not only capable of consenting to marriage between the both of them, but also of entering into marriage

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<sup>123</sup> - The Good news Bible, Genesis 2: 15 – 16.

<sup>124</sup> - *Elden v. Sheldon*, California Supreme Court (1988); Marriage is at once the most socially productive and individually fulfilling relationship that one can enjoy in the course of a lifetime.". Also see Michael S. Wald, et al, *Same sex couples; marriage, families and children. An analysis of proposition 22 the Knight initiative*,p.13; also available at [http://papers.ssrn.com/paper.taf?abstract\\_id=203649](http://papers.ssrn.com/paper.taf?abstract_id=203649)

<sup>125</sup> - see n.67 above.

<sup>126</sup> - see n.67 above.

<sup>127</sup> - see n.n. 67 and 72 above.

<sup>128</sup> - being 18 years of age and above in the case of Uganda, as prescribed under A. 31 of the 1995 Constitution of the Republic of Uganda.

and founding a family<sup>129</sup>. Simply said the right to marry is a creation of international codification and will usually vary from one jurisdiction to another as to the dynamics of who can exercise it. Suffice it to say that the only condition to the enjoyment of this right is the age of the intending parties<sup>130</sup>. Thus far, it can aptly be said that same sex marriages and heterosexual marriages carry more the same requirements in this context as can be noted.

Given the position in the jurisdictions where same sex marriages have been recognized, it can well be noted that there arise some obligations inter parte. The position in South Africa does create the least expected situation in same sex marriages where partners have much the same obligations as their counterparts in heterosexual marriages<sup>131</sup>. The unselfish investment in the wellbeing of another that is usually expected in heterosexual marriages in much present in same sex partnerships<sup>132</sup>. Indeed, like much other legislation acknowledge, an existence of a partnership would more often than not create a complimentary nature of decision taking, requiring that any such property, especially tangible to be dealt with only with the full consent of the parties involved<sup>133</sup>.

Like any subsisting marriage (heterosexual), same sex marriages would at their initiation be intended a binding union to the parties engaging, for life. Whilst it may be thought and indeed feared that same sex marriages are more vulnerable and likely to last a short while, and in fact should be considered in light of this presumption, there is no tangible evidence to prove that couples under a partnership are less devoted to their relationship than their heterosexual counterparts. While in the past there may have been a laxity in voluntary admission of one's sexual orientation<sup>134</sup>; the trend in today's marriage pattern has overwhelmingly proved that people living in same sex partnerships or relationships are willing to confess their sexual

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<sup>129</sup> - Art. 16 Universal Declaration of Human Rights; and Art. 31 Constitution of the Republic of Uganda, 1995.

<sup>130</sup> - this is reiterated under different codifications, from the International Covenant on Civil and Political Rights Art. 23, to Art. 12 of the European Convention on Human Rights, Art. 17 of the American Convention on Human Rights, to mention but a few.

<sup>131</sup> - see n. 89 above.

<sup>132</sup> - Michael S. Wald, et al, *Same sex couples; marriage, families and children. An analysis of proposition 22 the Knight initiative*, p.7; also available at [http://papers.ssrn.com/paper.taf?abstract\\_id=203649](http://papers.ssrn.com/paper.taf?abstract_id=203649)

<sup>133</sup> - the Land Act, s. 34A Laws of Uganda, 2000 Edition.

<sup>134</sup> - see Edward O. Laumann, John Gagnon, Robert T. Michael and Stuart Michaels, *The Social Organization of Sexuality Sexual Practices in the United States* (Chicago: U. of Chicago Press, 1994) in n.122 above.

orientation voluntarily<sup>135</sup>. This in essence, goes to prove how committed one would be to a civil partnership. Nonetheless, if the position were still otherwise today, should the basis of the recognition of same sex marriages be based on which marriages were most likely to survive divorce? Thus far, it can be said that both marriages are initially meant to connote a long lasting commitment relationship.

It is a presumption that upon marriage, one automatically becomes the next of kin to the other spouse and more often than not would this provoke the understanding that upon a civil partnership, one would most ordinarily be elected the most suitable attorney to the other. Consequently, a heterosexual marriage would give rise to much the same responsibility as a same sex partnership or marriage in terms of agency in the marriage context.

#### **4.1. b. Is the state justified in regulating marriage?**

It could suffice as a question of utter irrelevance at this point, up until it is juxtaposed alongside other factors that may rank in relevance in so far as certain aspects that require state action in the case of Uganda are concerned. These will include aspects such as corruption, poverty, health care, affordable education, employment, democracy and good governance, nepotism, to mention but a few. These are only but a few of the many areas that the government in Uganda would be expected to have its priorities. Not only are these areas critical for government attention, but also that they lie within the moral scope, much the same as the opponents to same sex marriages often front as the main concern.

First and foremost, under international codification, a family is considered as the basic unit of society<sup>136</sup>, which can be obtained upon marriage by persons of the required age<sup>137</sup>. Thus far, it can be said that the state may be justified in regulating marriage for the long term good of its nationals and the sustainability of the economic growth. It goes without say that the only possible way that same sex couples would conceive of a child would be through artificial insemination (where the partners are lesbians), or some other artificial mechanism. Given the economic situation in Uganda and the priorities that require the state's attention, as named above; artificial

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<sup>135</sup> - see n. 132 above.

<sup>136</sup> - see n. 130 above.

<sup>137</sup> - in Uganda Article 31 prescribes the age of marriage as 18 years and above, although different legislation do leave a lee way for persons below the age of 18, to obtain the consent of their parents or guardian.

insemination, along with any other artificial mechanism aimed towards the achievement of this objective would only prove to widen the poverty gap in the economy in light of the current Gross Domestic Product, a trend that is least desirable for the Ugandan economy.

Further, as has been often advanced by certain schools of thought, it is believed that the institution of marriage plays a critical role in making an open democratic society work. It is advanced that in marriage, people learn to define themselves in a number of different ways, for instance as caring instead of egoistic; or even connected to rather than alienated from the concerns and wellbeing of the others; and thus, are more likely to give to society<sup>138</sup>. The excerpt from the passage of Bruce Hafen that appears below highlights what has been considered as the presumption of legislation tendencies today to make marriage more inclusive and available to as many people;

The commitments of close kinship and marriage represent the last modern vestiges of status as a source of duty. Much of what family members—especially marital partners—“owe” one another cannot be enforced in a court of law; yet the sense of family duty has an uncanny power to produce obedience to the unenforceable.... A sense of voluntary duty is the lifeblood of a free society.... The family in a democratic society not only provides emotional companionship, but is also a principal source of moral and civic duty....

For this to happen, the state would be required to undertake a robust approach in regulating marriage.

#### **4. 2. Pros and cons**

##### *4.2. i. what would be the risk in recognizing single sex marriages?*

Whilst trying to understand the subject at hand, it has been suggested above that an attempt to compare the different marriages be made. That way, it will enable one to consider the odds of one against the evens of the other which will ultimately facilitate the discussion on whether or not to

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<sup>138</sup> - see Bruce Hafen, President of Brigham Young University, in n. 123 above, p. 6.

accord legal consideration to single sex marriages in Uganda. This comparison is adapted on a pros vs. cons basis as hereunder;

More often than not has it been argued by proponents<sup>139</sup> that through same sex couples, multiple functions of marriage are met. This can be found in the nexus made above of both forms of marriage. The reasons for marriage in either marriage do evolve around the desire to share economic and emotional integration and to raise children together<sup>140</sup>, more like the establishment of a family.

The possibility of same sex couples to acquire children has also been advanced. Through processes such as artificial insemination this can be made possible. Nonetheless, even without talking about the natural conception of children and procreation, the Knight Initiative<sup>141</sup> in California was countered by this particular factor when it was advanced that there was evidence to show that children raised by well gay parents are as well off as those raised by heterosexual parents<sup>142</sup>. The sheer endorsement of the initiative<sup>143</sup> would have seen such children stand to lose or miss out on a wide variety of ways if the parents were never allowed to marry.

Be that as it may, the general concept of marriage ought to be considered when it comes to considering whether or not to recognize same sex marriages. It has been argued for same sex marriages that marriage is not necessarily a project to have children<sup>144</sup> but rather companionship, among others; that is why it is not restricted to the most prospective of having children. Thus far, it can be said that if same sex marriages were allowed, it would strengthen the marriage institution, by broadening the brackets of marriage to reiterate and reaffirm the concept of companionship in marriage as a purpose of it. Suffice it to say that the denial of marriage rights

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<sup>139</sup> - see William N. Eskridge, Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: Free Press, 1996); E. J. Graff, *What is Marriage For?* (Boston: Beacon Press, 1999); Robert M. Baird & Stuart Rosenbaum, eds., *Same-Sex Marriage: The Moral and Legal Debate*, (Amherst, N.Y.: Prometheus Books, 1997); Andrew Sullivan & Joseph Landau, eds., *Same-Sex Marriage: Pros and Con*, (New York: Vintage Books, 1997).

<sup>140</sup> - see n. 132 above, p. 3.

<sup>141</sup> - In March 2000, a ballot initiative (Proposition 22 on the March 7<sup>th</sup> 2000 ballot) was sponsored by state Senator Pete Knight. The voters were meant to decide on whether to add the provision, "only a marriage between a man and a woman shall be valid or recognized." To the California family code. The initiative however was defeated.

<sup>142</sup> - see n. 132 above, p.3.

<sup>143</sup> - see n. 138 above.

<sup>144</sup> - see n. 132 above, pp. 3 – 4.

to same sex couples would greatly inhibit the right of not only the couples but also the children therein of the many benefits and privileges to which marriage is the gateway.

It is perhaps one thing to maintain that Uganda as any other state does have a sovereign status that should prevail at all times. However, from a legislative comparison, Uganda being a former colony of the British empire and having adopted some of its legislation directly from the British legal system, could find a hard time bringing its legislation in tandem with its entire system, especially if some of the already adopted legislation does provide for same sex marriages. The sheer failure to recognize same sex marriages in Uganda may create a lacuna in the system which may give rise to discrimination according to sexual orientation. A clear example of such legislation that may pose a challenge to legislators is the Succession Act<sup>145</sup>. While in its definition section the Act does define parent to include adoptive parents<sup>146</sup>, and child to include an adopted child<sup>147</sup>; much of its provisions, given a strict interpretation would seem to suggest that not only can a gay person adopt a child in Uganda, but also that where such a person is married under English law and does have their marriage [for all intents and purposes] recognized under the same law, such person's testamentary disposition may be affected in Uganda, if they are domiciled in Uganda simply because under Ugandan law their marriage is not recognized.

#### **4.2. b. Cons;**

The same sex opponents' views are equally compelling in so far as they have been advanced to try and bring an end to the now controversial subject in so far as Uganda is concerned in the sphere of human rights and civil liberties. Like in the Knight initiative, the fight against same sex marriages in Uganda has had the church at the forefront arguing that it is not only biblically wrong, but also morally and scientifically inconceivable to legalize marriages between persons of the same sex. Much to the analogy that has been added to the church's voice has more often than not been based on the biblical teachings that show that the human race was initiated between a man (Adam) and a woman (Eve)<sup>148</sup>, as opposed to a man and another man (Adam and 'Steve').

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<sup>145</sup> - Succession Act, cap 162, Laws of Uganda, 2000 edition.

<sup>146</sup> - Succession Act, section 2 (q)

<sup>147</sup> - Succession Act, section 2 (d)

<sup>148</sup> - Genesis Chapter 1

The Church of Uganda portrayed its dissatisfaction at the Church of England's tolerance of gay activists within the church<sup>149</sup>; when it opted out on attendance to the Convention early 2008<sup>150</sup>.

That said, it is worth noting that it is also been advanced that because upon instruction to Adam and Eve in the garden of Eden, the Lord particularly instructed the both of them to fill the world and subdue it<sup>151</sup>, marriage could be said, in this context to simply serve a more cardinal purpose of procreation, among others. The fact that this end cannot be achieved, nor served through same sex marriages without additional costs and complications, such as insemination and the respective costs; renders the recognition of same sex marriages as being to no good and not worth consideration.

It has further been argued that homosexual individuals are not capable of strong emotional feelings for another person, necessary to make marriage work<sup>152</sup>. Thus far, it may be concluded that it is harmful to children or even less optimal for them to be raised by single sex parents<sup>153</sup>.

Alternatively, the recognition of same sex marriages has been more focused on faith. It has been feared that because tradition [like the case is in Uganda] has been more inculcated in the notion that marriage is a preserve of a lasting relationship between a man and a woman<sup>154</sup>, the recognition of same sex marriages is therefore feared that this will strongly undermine the marriage institution as has long been understood, since this will trigger a disrespect for the marriage institution. Because of this trend in the decline of morality and societal values, it is also feared that the legal recognition of same sex marriages will pave the way for further moral degeneration in society, as it will seem to have endorsed polygamous, incestuous and other forms of sexual perversion acts in society as well as allowing people in such unions to marry.

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<sup>149</sup> - referring to the appointment of the Bishops of Leeds and of the Episcopal Church in the United States of America.

<sup>150</sup> - this is an international forum for all Bishops and heads of the Anglican Churches around the globe that takes place once every decade. The last one having taken place at Canterbury, England from late January to early February, 2008.

<sup>151</sup> - Genesis 1: 28.

<sup>152</sup> - see n. 134 above at p. 3.

<sup>153</sup> - see n. 139 above. However, it is worth noting that not much evidence has been brought forth to substantiate this position.

<sup>154</sup> - see n.132 above.

As can be noted above, the question of whether or not to recognize same sex marriages in Uganda is still far from resolved, seeing as it does trigger questions of morality, to divinity, political, and economic importance. Nonetheless, to get to a workable solution, three questions have had to be adopted at this point, one already discussed above, and the later two discussed hereunder;

4.2. ii). *what possible threat would the recognition of single sex marriages pose on the conventional marriage institution as has long been known?*

Perhaps one of the most feared effects of recognizing same sex marriages is that by according these types of marriages, not only would this threaten the integrity of the marriage institution as has long been perceived; but also compromise the moral fabric of society<sup>155</sup>. Infact, most schools of thought that have advanced this argument have often based it on two substantive arguments, *viz*; that because marriage is predominantly a relation for the establishment for procreation, it should be respected yet also restricted to those relations that are calculated and intended for this purpose<sup>156</sup>. The other basis for the argument is as has already been highlighted above, that because marriage is restricted and meant for the purpose of procreation, it is morally wrong to endorse sexual relations that would not lead to fulfilling this objective; or even sexual relations that would not fulfill this objective<sup>157</sup>.

In dealing with this question, it is necessary to consider the history on changes that have been advanced with in the family or domestic sphere. In Uganda, a recap of the domestic relations can prove some resistance especially when the land amendment Act was proposed. To many, the consultation of the husband with all members of the household before the sale of matrimonial property was thought to be a stretch and rather unnecessary. It is no doubt that the Domestic relations Bill has received such great defeat seeing as some clauses of the bill suggested the outlawing of widow inheritance<sup>158</sup>; or the demand of bride price upon the dissolution of a

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<sup>155</sup> - see Robert H. Knight, "How Domestic Partnerships and 'Gay Marriage' Threaten the Family," in *Same-Sex Marriage: The Moral and Legal Debate*, Robert M. Baird & Stuart Rosenbaum, eds., (Amherst, N.Y.: Prometheus Books, 1997), pp. 118-119. in n. 122 above, p. 20.

<sup>156</sup> - John M. Finnis, "Law, Morality, and 'Sexual Orientation,'" Vol. 69, *Notre Dame Law Rev.* (1994), 1049-76, at 1064; also see n.152 above.

<sup>157</sup> - see n.n. 152 and 153 above.

<sup>158</sup> - The Domestic Relations Bill, 2003, Part III, cl. 16 (3).

marriage<sup>159</sup>. The position in other jurisdictions does portray a similar trend in attitude towards any changes in the status of domestic relations, for instance; in the 1800s the U.S and the United Kingdom of Great Britain started enacting laws that sought to make marriage an equal partnership of legally equal partners. Criticisms were soon to be experienced in both jurisdictions as each considered the position. In the United Kingdom, *the Times* was quoted to have reported that doing so would;

‘...abolish families in the old sense...break up society into men and women...creating discomfort, ill feeling and distrust where hitherto harmony and concord prevailed.’<sup>160</sup>

In the U.S, while the position was being considered in New York, a state legislator urged his colleagues to remember,

‘The flexibility and fragility of marriage as a social institution...if anything was to remain untouched by the hand of the reformer...it was the sacred institution of marriage...about to be destroyed in one thoughtless blow that might produce change in all phases of domestic life’.<sup>161</sup>

The trend in human attitudes towards any domestic changes reveals that it is not only changes in terms of which of the spouses has greater control or more stake in the family institution, but also who can marry. In California, whilst considering the viability of inter racial marriages, state officials opposed to this arrangement were noted as stating that;

‘Negroes are socially inferior and have so been judicially recognized...marriage between Caucasians and non Caucasians is socially undesirable because of the physical disabilities of the other.’<sup>162</sup>

With all the above, it certainly becomes a lot more apparent that the trend in human attitude towards changes in the domestic or social sphere has been negative and geared towards maintaining tradition. In this realm, it then cannot be thought that the introduction and subsequent acceptance of same sex couples’ marriage in the marriage realm can a smooth ride.

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<sup>159</sup> - see n. 158 above, cl. 20 (2).

<sup>160</sup> - see E. J. Graff, *What is Marriage For?* (Boston: Beacon Press, 1999), at p. 31; in n.123 above, p. 20.

<sup>161</sup> - see n. 160 above.

<sup>162</sup> - *Perez v. Sharp*, 32 Cal. 2d 711 (1948)

Despite the experiences above, significant observations are rather compelling, such as the fact that opponents of these changes have notoriously lacked evidence to back up their claims and will more often than not simply advance ‘blanket phrases’ such as it being morally wrong, or that there is a great threat that is posed by the change on the ordinary enjoyment of life; such would have been the position with same sex marriages. However, unlike all the other examples advanced above, today marriage is thought to be a blessing, usually celebrated according to faith and denominations or customs and cultures. It then becomes rather apparent that the cardinal principles of these attributes be called into scope. Uganda, being a faith based state does pride in the sole aspiration of divine providence and intervention<sup>163</sup>, this then calls in the attributes of the Christian faith.

Unlike the earlier objections to changes in the domestic and marriage spheres, the case with same sex couples’ marriages is one that seems to have been looming long before questions of equality and justice sufficed. The bible does report the fate of the cities of Sodom and Gomorrah when they notoriously disobeyed God<sup>164</sup>; the Lord’s willingness to spare the cities only if He had found a handful of believers<sup>165</sup> is an indication of the gravity with which homosexuality was comprehended in the bible. It was intense to the extent of the Lord’s anger that He destroyed the cities with the inhabitants in perhaps the harshest of ways that have been known to mankind<sup>166</sup> to date, making no room for survivors. The objections to changes in the marriage and domestic institutions referred to herein above may be said to have been baseless, however; the situation with same sex marriages being admitted within the marriage realm should not be treated in the same context, seeing as this has had history proving the wrath that society would be prone to suffer if such marriages were legalized.

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<sup>163</sup> - this can be noted from the state motto, *for God and My Country*’. Suffice it to say that the largest faith denomination is Christianity, with Islam as the minority.

<sup>164</sup> - Genesis Chapter 19.

<sup>165</sup> - Genesis Chapter 18: 22 – 33.

<sup>166</sup> - Genesis Chapter 19: 24 – 25, ‘...the Lord rained down sulfur and fire on Sodom and Gomorrah. It was sent down from the sky by the Lord. So he overthrew those cities and all that region, including all the inhabitants of the cities and the vegetation that grew from the ground.’ There can perhaps be one logical explanation as to why a God conventionally known to be kind and forgiving would have reached such a harsh decision, the magnitude of the sin, that could have provoked the anger that caused not only the inhabitants of the land, but also the crops that grew thereon. That may [suffice it to say] not be the important aspect of this, as an object lesson, but rather that whether after Sodom and Gomorrah, mankind should take on the voluntary legalization of an act expressly forbidden according to Canonic Law.

Considering the question as to whether the recognition of same sex marriages would pose a threat to the marriage institution as has long been known, it is the author's humble opinion that this would not only threaten the marriage institution, as has conventionally been understood, but rather that it will, perhaps; mark the start of the destruction of the moral fabric of society. Thus far, it is important to note that it is one thing to criticize the act, yet another to castigate the practitioners of the act. Whilst the former is what the bible instructs mankind to do, the latter is taught as reconciliation without judgement lesson. Marriage ought to be understood to be the union of man and woman, as it is a Devine establishment<sup>167</sup>.

*4.2. iii). is there a possible alternative to single sex marriages that would eliminate the possibility of breach of the proponents' rights and liberties?*

In what could be thought to be an attempt to draw a nexus between the respect of human rights and liberties on the one hand; and regulating the marriage institution as well as the rights, freedoms and liberties enshrined under international codification and already discussed above, the state ought to consider the best alternative remedy to the situation without necessarily breaching the rights and freedoms of those concerned. Some schools of thought that have sought to justify the full legal recognition of same sex marriages<sup>168</sup> have tended to push for much more than sheer alternatives to the recognition of marriage option in this context.

Much of what has usually been considered insufficient has been the position of civil cohabitation<sup>169</sup>. More often than not has it been premised on the need to moralize the cohabitation of people, and thus making provision for people to live in a blessed union, which is celebrated through marriage<sup>170</sup>. Whilst this is the position with heterosexual marriages, so has it been argued that if same sex marriages were simply granted cohabitation rights, they would not be in any less a position than heterosexual couples that were simply cohabiting out of wedlock, and would

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<sup>167</sup> - Genesis 1: 27 – 28, 'God created humankind in his own image, in the image of God he created them, male and female...God blessed them and said to them, "Be fruitful and multiply! Fill the earth and subdue it..." this instruction can be found to have the actual basis for man's relations, in that the union of man and woman was ever the sole purpose for marriage, leading to procreation (primarily), and not necessarily companionship.

<sup>168</sup> - see n. 132 above

<sup>169</sup> - see n. 132 above, at p.15.

<sup>170</sup> - Elden v. Sheldon, 46 Cal.3d 267, 274-75 (1988).

certainly have an immoral gesture attached to them<sup>171</sup>. Worth noting is the need to draw a line between respecting a person's right to same sex relationships on the one hand; and endorsing same sex marriages on the other. Whilst the state [Uganda] may not restrict or regulate the former<sup>172</sup>, it is duty bound to regulate institutions such as the latter and would most certainly be justified in cautiously considering the accommodation of persons in a same sex relationship so as no to breach any of their rights under international codification.

Professor Michael S. Wald<sup>173</sup> argues that like the position with heterosexual marriages in the context of cohabitation, the same should be the concern regarding same sex marriages in that simply granting them cohabitation status, that would still maintain the immorality attitude that the authorities in the state of California have often endeavored to avoid thus the favorable policy in regard to marriage as opposed to cohabitation in California<sup>174</sup>.

Whilst this may be a valid argument, there ought to be a distinction between making right what would otherwise have been wrong [encouraging marriage as opposed to cohabitation among heterosexual couples], and maintaining or sustaining what is wrong and evil [sanctioning same sex marriages]. As earlier mentioned, it is important that the state deals with the problem as opposed to castigating the perpetrators thereof. A recognition of same sex marriages in Uganda would simply connote the state's sanction of homosexuality, which although may not affect the marriage institution as such, would send a gesture that what the bible has to say about certain acts as immoral does not really count to believers, which the author does believe to be a misconception. Same sex marriages would be wrong *ab initio* and therefore encouraging their marriage would not be helping the resolution of the problem, but rather sustaining it. In this context, it could be said that the sheer grant of cohabitation rights to same sex couples would be the best option that the state could invoke in so far as their recognition, yet not prejudicing their fundamental freedoms or rights and liberties. The basic import here is that the right to marriage,

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<sup>171</sup> - see n. 160 above.

<sup>172</sup> - if persons are entitled to the right and freedom to freely associate with one another as provided under international codification, a right that clearly extends to persons of the same sex or sexual orientation, as well as affiliation, the right to marry cannot be considered to be a conclusive one to extend to all natures of relationships, since it has prerequisites to be fulfilled as has already been discussed; thus calling in for the state's regulatory machinery and mechanism.

<sup>173</sup> - Jackson Eli Reynolds Professor of Law, the Stanford institute for research on Women and gender, Stanford University.

<sup>174</sup> - see n. 160 above.

in light of the provisions under international codification was never intended to extend to same sex couples nor was it ever meant to apply conclusively, but rather selectively. If an equal status to marriage should be granted to same sex couples, perhaps the wording ought to be different from the conventional marriage term.

## **Chapter V.**

Like many other areas of the economy in Uganda, marriage and its future in Uganda would very much depend on the good facilitation of the legal regimes for the institution, among others; as well as the willingness of the authorities to implement the provisions of the legal regimes as well. Suffice it to say that legal regimes in isolation cannot be 'an only' solution to any problem, but that their smooth implementation and support by the authorities and the locals would go a long way to not only ensure a hormonal environment as well as full respect for each others rights, freedoms and liberties. The utter and full respect of all persons' rights, freedoms and liberties should be the overriding factor in regulation of any economic sector to which marriage is one, thus same sex couples should at no time be castigated nor persecuted by state machinery or anybody for that matter because of their sexual orientation, neither should their sympathizers. Uganda, like any other state; ought to focus more on the cordial relations and respect of rights, freedoms and liberties of all persons, through which approach, it could facilitate a much easier way of dissuading people from engaging in same sex relationships.

### **5. 0. Introduction;**

Marriage in the Ugandan context has more often than not been held in great regard that [perhaps like many other societies] there can only be two forums or contexts in which it can be celebrated and solemnized, i.e. religion and culture or customs. The nature of the marriage or forum in which it has been celebrated would usually determine the significance, although suffice it to say that regardless the forum, marriage in the African context [as well as the Ugandan one] is regarded to be a transition through which one is transformed into a responsible member of society. Traditionally, one would not be respected unless they were married and upon their marriage, they founded a family. The significance of a same sex marriage in not only a Ugandan context, but also an African one, would be left to be imagined. This and more of the findings of this paper and recommendations to legal reforms follow in discussion hereunder;

### **5. 1. Conclusions;**

In Uganda, same sex couples are thought and regarded to be misfits in society, whose mental state is close to being in dire need for psychiatric help and assistance. The practice of homosexuality in Uganda is outlawed and would see one imprisoned if found in the practice.

Because of the above situation, Uganda is left in a state of confusion as to the application of its legislative regimes especially providing for marriage, seeing as it is a signatory to the Universal Declaration of Human Rights and other codifications that provide for the respect of all persons' rights, freedoms and liberties.

There is a great and dire need for sensitization of not only the policy formulators, but the leaders and the people alike on the need for respect of all people regardless of sex or sexual orientation, creed, cultural or other background, to mention but a few. It goes without say that in persecuting same sex couples, there are rights and freedoms that are being breached by the state for which a penalty could suffice.

In instances such as this, institutions like the church ought to give [perhaps] the more most help to the situation, trying to accommodate all people alike, and joining forces with them as well as the state to try and deal with a common problem amongst its nationals, as opposed to judging anybody. It is imperative to note that there is a monumental difference between fighting or stopping the act and fighting the perpetrators of the act. In this context, it is the author's humble opinion that the former should be given utmost priority and attention as opposed to the latter.

The domestic persecution of same sex couples could lead to an influx in the number of citizens that end up in same sex marriages or relationships, since they could take out asylum in any other country that legalizes and recognizes same sex marriages. The ultimate implication would, needless to say; see the state lose its manpower and economic resources to other jurisdictions that are more accommodating in this context.

Because marriage in the same sex context cannot be a feasible idea, for reasons already highlighted above, the state ought to consider granting same sex couples a cohabitation recognition that would have the same efficacy as respecting their personal right and freedom of association. It is postulated that the granting of civil cohabitation rights would go a long way to ensure that same sex couples are not castigated not persecuted and that their rights freedoms and liberties do remain unthreatened because of their sexual orientation.

## **5. 2. Law reform;**

With the amendment to the Constitution prohibiting and forbidding same sex relationships, this endorsed the persecution of same sex couples, the implication being that through their persecution, the state does risk breaching the fundamental rights and freedoms of the couples<sup>175</sup>. The actions of the state machinery in persecuting the same couples cannot be imputed on them either as persons or individual; but rather as the state as would the sanctions that would later be imposed. Thus far, it is imperative that the recent amendment to the Constitution be rescinded to maintain the former position of the law.

Further, it ought to be noted that a restoration of the previous position of the law would not be sufficient to achieve the desired protection of same sex couples from persecution, but rather that other reconciliations of the law in other legislations be considered, such as under the legislations governing distribution of deceased persons' estates.

But because same sex couples and relationships would, in principle denote a relationship [for all intents and purposes] meant to last for a long while, and have a binding effect inter parte, it would be in the best interests of not only the parties involved but also the regulators and policy formulators as well, that a legislation and regime governing such relationships be formulated and enacted. That way, it is possible that same sex couples would have been accommodated under their right and freedom to freely associate and that while the act of homosexuality will continue to be condemned, it will maintain harmony amongst persons regardless of sex, creed, sexual orientation or other form of discrimination; yet being left to the forces of contract inter parte.

## **5. 3. Recommendations;**

Because same sex couples have an urge and desire to relate as their emotions may dictate, the presumption is that there is a free exercise of the mind and will, the honest and intimate relationship that exists between the parties should in no way be considered to be adverse to the interests of the parties, since they [and nobody else] know what they desire, therefore the

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<sup>175</sup> - a subsequent imprisonment of anybody under the provisions of the Constitution (amendment) Act, No.2 suspected to be gay or a lesbian can well be considered to be an abuse of one's civic rights as well as fundamental freedom.

regulation of their relationship should not be a duty of the state, as the same should not be for mutual friendship amongst people.

Policy formulators ought to be sensitized on the duty of the state in respect to individual rights, freedoms and liberties. It is a presumption that through this programme, policy formulators would realize that the power to formulate decisions does lie solely on their electorate and there is great need to make consultation with them, as the stakeholders in any intended policy of the state.

It is important that the state involves the Church in its decision making process such that ideas are considered from all walks of life, seeing as the policies ultimately passed would mostly affect the citizens part of whom form the church. In turn, the church ought to review its position in the state, and realize that it is not to act judgmental but rather to clear steer its congregation from swaying away from the Christian teachings, perhaps it is because of neglect of this duty by the church that the level of perversion in Uganda is on the rise.

From an institutional perspective, it is important that the church in Uganda works towards the restoration of its reputation and credibility<sup>176</sup>. For as long as there loom doubts about the church institutions in Uganda, the preaching of the Christian faith will always hold little or nothing in terms of credibility, but a whole lot of hypocrisy.

Whilst it can be admitted that the recognition of same sex marriages in Uganda would create more problems than it has solved, it has never been more imperative to have an equal and balanced respect of human rights, freedoms and liberties of all persons regardless of sex, creed, occupation, sexual, political or other orientation or affiliation. The grant of civil cohabitation

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<sup>176</sup> - There is a great case of mushrooming churches in Uganda, all claiming great Divine and miraculous healing with different denominations. It is no doubt that there are cases of clergy and pastoral officers often charged with cases of defilement, and some sexual molestation of some members of their congregation. A good number of pastors has also in the recent past been charged and prosecuted for obtaining huge sums of money by false pretence, after acquiring and amassing huge sums of money in the guise of miraculously healing members of their congregation. A recent case in point was the infernal in 2000 in the western part of the country in which over 1000 followers of the restoration of the ten commandments church, founded by Sr. Caledonia Mwerinde and Fr. Festus Kibwetere, in which members of the church were locked up in the church building and burnt to death under the misconception of sending them to heaven, after they had voluntarily surrendered their property to the pair of the founder members of the church.

rights as opposed to the full recognition of same sex marriages in Uganda; would be the most appropriate measure to contain the situation.

## Bibliography

### International/ regional Codification:

American Convention on Human Rights

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231, *entered into force* Dec 9, 1964.

European Convention on Human Rights,

International Bill of Human Rights

International Convention on Civil and Political rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3.

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16),

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810.

### Domestic Legislation:

#### Belgium:

Belgium Civil Code, Title V-bis, 1999

#### Canada:

Civil Marriage Act, enacted on the 19<sup>th</sup> July 2005

#### Uganda:

Marriage of Africans Act cap 253

Marriage of Africans (registration) Act, cap.

Marriage Act, cap 251, Laws of Uganda, 2000 Edition

Children Act, Cap. 59, Laws of Uganda, 2000 Edition

Constitutional (Amendment) Act, 2005

The Domestic Relations Bill, 2003.

Divorce Act, Cap. 249, Laws of Uganda, 2000 Edition.

Land Act, cap. 227, Laws of Uganda, 2000 Edition.

Succession Act, Cap. 162, Laws of Uganda, 2000 Edition.

South Africa:

Civil Unions Act, enacted on the 30<sup>th</sup> of November, 2006 (Act 17 of 2006).

Customary Marriages Act (Act 120 of 1998)

Marriage Act (Act 25 of 1961),

United Kingdom:

United Kingdom Civil Partnership Act, 2004

United Kingdom Domestic Proceedings and Magistrates' Court Act 1978

United Kingdom Family Law Act 1996.

United Kingdom Fatal Accidents Act 1976

United Kingdom Gender Recognition Act, 2004.

United Kingdom Inheritance Tax Act 1984

United Kingdom Married Women's Property Act 1882

United Kingdom Matrimonial Causes Act 1973 (MCA)

**Textbooks:**

Longman Dictionary of contemporary English

The Columbia Encyclopedia, 6<sup>th</sup> Edition. Columbia University Press (2001-05).

The Good news Bible

**Journals and academic texts:**

Adrian Hastings, *The Church in Africa: 1450-1950.* Oxford: Clarendon Press, 1994.

Andrew Bainham, et al., *What Is a Parent: A Socio-Legal Analysis.* Hart Publishing, ISBN 1841130583, 1999.

A. Sullivan & J. Landau, eds., *Same-Sex Marriage: Pros and Con.* (New York: Vintage Books, 1997).

Charles Miller, *The Lunatic Express: The Building of an Impossible 600 mile Railroad across East Africa.* London: MacMillan, 1971.

- E. J. Graff, *What is Marriage For?* (Boston: Beacon Press, 1999).
- E. O. Laumann, et al, *The Social Organization of Sexuality: Sexual Practices in the United States* (Chicago: U. of Chicago Press, 1994).
- Elizabeth Isichei, *A History of Christianity in Africa from Antiquity to the Present*. London: SPCK, 1995.
- John Bauer, *2000 Years of Christianity in Africa* (Nairobi: Paulines, 1994).
- John M. Finnis, "*Law, Morality, and 'Sexual Orientation,'*" Vol. 69, *Notre Dame Law Rev.* (1994), 1049-76, at 1064.
- Kaduuli, Stephen C., *Kwandhula, Cultural Engagement and Marriage in Busoga and Buganda*, (October 2006). Available at SSRN: <http://ssrn.com/abstract=985246>
- Michael S. Wald, et al, *Same sex couples; marriage, families and children. An analysis of proposition 22 the Knight initiative*; also available at [http://papers.ssrn.com/paper.taf?abstract\\_id=203649](http://papers.ssrn.com/paper.taf?abstract_id=203649).
- R. M. Baird & S. Rosenbaum, eds., *Same-Sex Marriage: The Moral and Legal Debate*, (Amherst, N.Y.: Prometheus Books, 1997).
- Robert H. Knight, *How Domestic Partnerships and 'Gay Marriage' Threaten the Family*, in *Same-Sex Marriage: The Moral and Legal Debate*, Robert M. Baird & Stuart Rosenbaum, eds., (Amherst, N.Y.: Prometheus Books, 1997).
- S. Tamale, *when Hens begin to crow: Gender and Parliamentary politics in Uganda*, 1999, Westview press. ISBN 0813338964
- William N. Eskridge, Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: Free Press, 1996).

**Press reports and articles:**

- Advocate.com, *Spanish lawmakers approve bill to let transsexuals change gender without surgery*, 09<sup>th</sup> November, 2006 available at, [http://www.advocate.com/news\\_detail\\_ektid39287](http://www.advocate.com/news_detail_ektid39287). As at, 17<sup>th</sup> February 2008.
- Monitor Newspaper, *Gay row: Ugandan bishops boycott UK conference*, Wednesday 15<sup>th</sup> February, 2008. Kampala.
- The New Vision Newspaper, *Makerere Don Regards Homosexuality a Human Right*, 25<sup>th</sup> February,

2003.

**Electronic/ Cyber resources:**

- Amnesty International, *Uganda: Gay and lesbian rights activists intimidated, and same sex marriage criminalised*, 03 August 2005, available at;  
[http://www.amnesty.org.uk/news\\_details.asp?NewsID=16329](http://www.amnesty.org.uk/news_details.asp?NewsID=16329) as at 17<sup>th</sup> February 2008.
- Ben Townley, *Spain Senate rejects same-sex marriage bill*, June 23, 2005, available at,  
<http://www.gay.com/news/election/article.html?2005/06/23/2>, as at 17<sup>th</sup> February, 2008.
- B. B. C. website, *lent talks: Jeffrey John* on 04<sup>th</sup>. 04. 2007, also available at  
[http://www.bbc.co.uk/religion/programmes/lent\\_talks/scripts/jeffreyjohn.html](http://www.bbc.co.uk/religion/programmes/lent_talks/scripts/jeffreyjohn.html)
- CBC News, *Liberals to introduce same-sex marriage bill in January*, 10 December 2004.
- CBC news, *Manitoba recognizes same sex marriages*, Thursday, September 16, 2004;  
available at,  
<http://www.cbc.ca/story/canada/national/2004/09/16/manitobasamesex040916.html>, as at 17<sup>th</sup> February 2008.
- CBC news, *Sask. Court approves same sex marriages*, Friday, November 5, 2004,  
available at, [http://www.cbc.ca/story/canada/national/2004/11/05/same-sex\\_marriage\\_041105.html](http://www.cbc.ca/story/canada/national/2004/11/05/same-sex_marriage_041105.html) as at 17<sup>th</sup> February 2008.
- PCN, *The United Pentecostal Churches in the Netherlands and Homosexuality*,  
November, 2004. Available at,  
<http://www.protestantchurch.nl/default.asp?rIntNavMotherNavId=938&inc=info&rIntNavId=938&rIntId=1649> as at 17<sup>th</sup> February, 2008
- The International Lesbian and Gay Association, *Equality for lesbians and gay men; a relevant issue in the civil and social dialogue*, available at, [www.steff.suite.dk/report.htm](http://www.steff.suite.dk/report.htm), as at 17<sup>th</sup> February, 2008.
- Wikipedia, *Same sex marriages*, available at,  
[http://en.wikipedia.org/wiki/same\\_sex\\_marriages](http://en.wikipedia.org/wiki/same_sex_marriages), as at 17<sup>th</sup> February, 2008.
- , *Same sex marriages in Belgium*, available at,

[http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Belgium#Legislative\\_history\\_of\\_the\\_same-sex\\_marriage\\_bill](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Belgium#Legislative_history_of_the_same-sex_marriage_bill) as at 17<sup>th</sup> February, 2008.

-- , *Same sex marriages in Netherlands*, available at [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_the\\_Netherlands](http://en.wikipedia.org/wiki/Same-sex_marriage_in_the_Netherlands), as at 17<sup>th</sup> February, 2008.

-- , *Same-sex marriage in Newfoundland and Labrador*, available at, [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Newfoundland\\_and\\_Labrador](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Newfoundland_and_Labrador) as at 17<sup>th</sup> February 2008.

-- , *Same-sex marriage in Ontario*; available at; [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Canada](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Canada) as at 17<sup>th</sup> February 2008.

-- , *Same sex Marriage in South Africa*, available at, [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_South\\_Africa#2004\\_Supreme\\_Court\\_of\\_Appeal\\_decision](http://en.wikipedia.org/wiki/Same-sex_marriage_in_South_Africa#2004_Supreme_Court_of_Appeal_decision) as at 17<sup>th</sup> February, 2008.

-- , *Same sex marriages in Spain*, available at, [http://en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Spain](http://en.wikipedia.org/wiki/Same-sex_marriage_in_Spain) as at, 17<sup>th</sup> February 2008.

#### **Official statements/ Publications:**

(Netherlands) Ministry of Justice website, available at, [http://www.justitie.nl/english/publications/factsheets/same-sex\\_marriages.asp](http://www.justitie.nl/english/publications/factsheets/same-sex_marriages.asp) as at, 17<sup>th</sup> February 2008.

#### **Blogs:**

<http://gayuganda.blogspot.com/2007/08/un-reported-facts.html>, a pro gay site; as at 26<sup>th</sup> February 2008.

#### **Case law:**

##### British Columbia:

*Barbeau v. British Columbia* 2003 BCCA 251 (Court of Appeal for BC, May 1, 2003)

Canada;

*Boutilier et al. v. Canada (A.G) and Nova Scotia (A.G)* 2003 F.C.J. No. 1238, 26

*Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)* 2004 YKSC 54

*Halpern et. al. v. Canada* (Ontario Superior Court, July 12, 2002);

*M. v. H.* - [1999] 2 S.C.R. available @ ; [www.canlii.org/en/ca/scc/doc/1999/1999canlii686/1999canlii686.html](http://www.canlii.org/en/ca/scc/doc/1999/1999canlii686/1999canlii686.html)

Quebec;

*Hendricks v. Quebec* (Quebec Superior Court, September 6, 2002);

United Kingdom;

*Hyde -Vs- Hyde* (1866) LR 1 PD 130

*Re B (a minor) (Wardship: Sterilization)* [1988] A.C. 199

*Re K.R. (a minor)* 1999 [2] FLR 542

United States of America;

*Elden v. Sheldon*, 46 Cal.3d 267, 274-75 (1988)

*Perez v. Sharp*, 32 Cal. 2d 711 (1948)