

## Western Influences on Family Law in Africa

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**AFRICA'S DEFINITION OF THE TERM FAMILY** has for long been limited to a household made up of a man, a woman, and children. Most constitutions in Africa define the family as the fundamental natural unit in society, which should be defended and protected by all. The African family has long celebrated this definition—until recently.

Today, there is discord in defining marriage in Africa. We have witnessed great judicial activism, especially in South Africa, Kenya, and Uganda. The change in the definition of marriage has been influenced by the introduction of same-sex unions: civil unions, domestic partnerships, courts beginning to rule in favor of same-sex unions, and legislation reflecting current Western trends.

Essentially, family laws today are influenced by just a few issues, which are geared towards conferring the benefits of marriage on same-sex unions. This is being accomplished under legal systems which are largely pluralistic, and considerations are also made to religious law (common where Islam is the dominant religion) and received law (civil or common law).

### **A Brief Overview**

The first stage in the evolution of family law in Africa is at the level of colonial law (adopted from the colonizing state), while the second stage is post-independence law (developed by national parliaments). Marriage and family law in Africa are characterized by similar phases, which

include the pre-colonial (defined by cultural law), colonial legislation (infusion of Christian and Western beliefs), and post-independence legislation. These phases created multiple variations in marriage law, which later developed to accommodate specific country needs—for example, religious and customary laws that allowed for both polygamous marriages and traditional, monogamous marriages

Africa has also been subject to generic legislation, which includes the African Charter on Human and Peoples' Rights (also known as the Banjul Charter, which includes the Protocol on the Rights of Women in Africa or the Maputo Protocol) and the African Charter on the Rights and Welfare of the Child (Children's Charter). Both of these are anti-natural family.

In spite of such pressures, many African countries have similar and very traditional definitions of marriage:

- **Kenya**—defines marriage as the “voluntary union of a man and woman,” whether monogamous or polygamous, and registered as the law stipulates.<sup>1</sup>
- **Malawi**—“marriage is two people of the opposite sex who are in or want to enter into a marriage.”<sup>2</sup>
- **South Africa**—provides for same-sex “marriage” through civil unions, customary marriage, or civil marriage.<sup>3</sup> It is the only African country allowing same-sex unions.
- **Ghana**—recognizes three types of marriage: customary marriage, which allows polygamy; marriage under the marriage ordinance, which is monogamous; and Islamic marriages under the Mohammedans Ordinance.<sup>4</sup>

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1. “Highlights of the Marriage Act, 2014,” Kenya Law, May 20, 2014, available at <http://kenyalaw.org/kenyalawblog/highlights-of-the-marriage-act-2014/>.

2. Thom Chiumia, “Malawi marriage bill spurns same-sex liaisons [sic],” *Nyasa Times*, February 17, 2015, available at <http://www.nyasatimes.com/malawi-marriage-bill-spurn-same-sex-liasons/>.

3. Mary Alexander, “SA legalises gay marriage,” *SouthAfrica.info*, December 1, 2006, available at <http://www.southafrica.info/services/rights/same-sex-marriage.htm#.WAje3KIrKc0>.

4. George AgboKlu, “3 Ways to Marry in Ghana—Legally!” *Labone Express*, August 3, 2013,

- **Nigeria**—marriage is the union of one man and one woman to the exclusion of all others. This is set out in the marriage ordinance. The law recognizes customary marriage (largely polygamous), statutory marriage (under the marriage ordinance), and Islamic marriage.<sup>5</sup>
- **Rwanda**—provides for the constitutional protection of marriage. The monogamous civil marriage is the only legally recognized form. Recognition stems both from the Civil Code and from the Constitution.<sup>6</sup>
- **Egypt**—by law, a marriage is considered “a contract concluded by mutually consenting parties of marriageable age. . . . The civil code, however, limits a woman’s ability to enter freely into marriage by requiring that she have the permission of a male guardian.”<sup>7</sup> Signing of the marriage contract is significant in Islamic law. It represents the juncture at which “parties can consensually define, enhance, or limit their rights in marriage.”
- **Tunisia**—marriage is governed by the 1956 Code of Personal Status. Consent of both spouses is required, and polygamy is forbidden.<sup>8</sup>
- **Morocco**—marriage between Muslims is governed by the Personal Status Code or *Moudawana*, while “Christian and Jewish communities in Moroccan society have separate family

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available at <http://laboneexpress.com/2013/08/3-ways-to-marry-in-ghana-legally/>.

5. Mandyen Brenda Anzaki, “Types of Marriages Under Nigerian Law,” *The Lawyers Chronicle*, accessed October 20, 2016, available at <http://www.thelawyerschronicle.com/types-of-marriages-under-nigerian-law/>.
6. The Constitution of the Republic of Rwanda, accessed October 20, 2016, available at <http://www.rwandahope.com/constitution.pdf>.
7. “Overview of Marriage and Divorce Laws in Egypt,” *Divorced from Justice: Women’s Unequal Access to Divorce in Egypt*, Human Rights Watch, November 30, 2004, available at <https://www.hrw.org/reports/2004/egypt1204/3.htm>.
8. “Imperialism in North Africa, Primary Sources: Law, Code of Personal Status,” George Mason University, Women in World History Modules, accessed October 20, 2016, available at <http://chnm.gmu.edu/wwh/modules/lesson9/lesson9.php?s=11>.

laws . . . . Thus, there is no unified personal status law that applies to all Moroccans.”<sup>9</sup>

To summarize, in Africa, only South Africa has legalized same-sex unions. In contrast, 35 African countries have laws against homosexual unions or homosexual behavior, with varying degrees of punishment.<sup>10</sup>

### **External Pressure to Redefine Families**

External pressure has been the greatest threat to the family in Africa. In July of 2015, President Obama visited Kenya, his first visit to his ancestral land as President. Two weeks before his visit, defenders of the natural family organized a pro-family march around the streets of Nairobi. President Obama is known to export his “legalize gay unions” gospel to Africa in each of his visits. During his presidency, the United States government has done great damage to the African family. Obama’s visit to Kenya came almost immediately after a gay “pride” parade at the White House following the legalization of same-sex “marriage” by the United States Supreme Court. According to a December 2015 *New York Times* article, the United States government alone has given over \$41M to Africa since 2012 to promote same-sex unions.<sup>11</sup> This is a very large amount directed to destroy the African natural family and serves to expose the United States’ agenda in exporting unwelcome culture to Africa.

Fortunately, Obama’s attempts to push homosexuality in Africa have received a lot of resistance, especially from African heads of states, and most Africans oppose same-sex unions. A foreign-funded pro-homosexual NGO was last year registered in Kenya, and has since launched

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9. *Morocco: MENA Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa*, UNICEF (October 2011), 2, available at <http://www.unicef.org/gender/files/Morocco-Gender-Equality-Profile-2011.pdf>.

10. “Laws on Homosexuality in African Nations,” The Law Library of Congress, Global Research Center, February 2014, available at <https://www.loc.gov/law/help/criminal-laws-on-homosexuality/homosexuality-laws-in-african-nations.pdf>.

11. Norimitsu Onishi, “U.S. Support of Gay Rights in Africa May Have Done More Harm Than Good,” *New York Times*, December 20, 2015, available at [http://www.nytimes.com/2015/12/21/world/africa/us-support-of-gay-rights-in-africa-may-have-done-more-harm-than-good.html?\\_r=0/](http://www.nytimes.com/2015/12/21/world/africa/us-support-of-gay-rights-in-africa-may-have-done-more-harm-than-good.html?_r=0/).

a court case to repeal laws criminalizing homosexuality in that nation.<sup>12</sup> This decision will be determined by the time this journal prints, and serves as a litmus test for Kenya's pro-family fraternity. A recent study in Kenya by Ipsos Kenya has demonstrated Kenyans' traditional leanings: 80% of Kenyans do not support abortion, while 96% of Kenyans oppose homosexuality.<sup>13</sup>

Evidently, Obama's priorities differ from those of Africans. What Africa needs now is not abortion, homosexuality, or destructive comprehensive sex education. Africa needs better education services, healthcare, infrastructure, food, and of course preservation of our own cultural heritage. But most of the foreign aid that Africa receives has ties that are directed at the exportation of the more destructive aspects of Western "civilization."

Uganda is one of the African nations that has been very firm on matters of family, having passed a law protecting the natural family in 2014. This action angered many in the West, and has since brought about unruly activism and "pride" parades attended by mere handfuls of people, most of them likely paid to be there. Just recently the "gays" attempted (unsuccessfully) to host an illegal parade at Kampala. Most Western media houses ran headlines pressuring the Ugandan government by describing it as homophobic. The Associated Press on September 24 of this year ran a headline reading, "Police in Uganda stop a gay parade deemed illegal,"<sup>14</sup> while the BBC announced, "Ugandan police block a gay pride parade."<sup>15</sup> The foreign media has used this tactic for far too long.

Legalizing homosexual unions is one target of Western governments and NGOs; another is abortion rights. Various pro-abortion bills

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12. Moses Wasamu, "Gay rights group secures legal victory in Kenya," *New Internationalist Blog*, May 28, 2015, available at <https://newint.org/blog/majority/2015/05/28/gay-rights-kenya/>.

13. "Overwhelming 'NO' for Abortion and Homosexual Practice in Kenya," Ipsos, July 2, 2014, available at [http://www.ipsos.co.ke/spr/downloads/downloads.php?dir=lifestyle\\_issues&file=Majority%20of%20Kenyans%20Say%20No%20to%20Abortion%20and%20Homosexuality\\_July%202014.pdf](http://www.ipsos.co.ke/spr/downloads/downloads.php?dir=lifestyle_issues&file=Majority%20of%20Kenyans%20Say%20No%20to%20Abortion%20and%20Homosexuality_July%202014.pdf).

14. Rodney Muhumuza, "Uganda: Police stop gay pride parade deemed illegal," *Associated Press*, September 24, 2016, available at <http://bigstory.ap.org/article/73e4bd35947c452ca6b9a9a1f96aed89/uganda-police-stop-gay-pride-parade-deemed-illegal>.

15. "Ugandan police block gay pride parade," *BBC*, September 24, 2016, available at <http://www.bbc.com/news/world-africa-37462627>.

sponsored by Western NGOs have found their way to African parliaments. In Malawi, a “Termination of Pregnancy Bill” sponsored by Ipas, a U.S.-based NGO, was tabled in parliament last year.<sup>16</sup> Ipas has funded members of parliament to make sure the bill passes to law. In Kenya, at the time of this writing, there are three anti-family bills tabled in the Senate and House: The In-vitro Fertilization Bill, Reproductive Healthcare Bill, and the Health Bill. These all have abortion, comprehensive sexuality education, gender rights, and the diminishing of parental roles as their main agendas. In Sierra Leone, an abortion bill—called, imaginatively, “Abortion Bill”—was unanimously passed by the parliament and was presented to the president, who refused to sign after pressure from pro-family champions.<sup>17</sup> The fact that only 3 out of 54 African countries have legalized abortion is giving the West a severe headache, and Western activists are determined to make abortion legal in all African countries through international bodies such as the United Nations Population Fund (UNFPA), the United States Agency for International Development (USAID), the U.K. Department for International Development (UKAID), Ipas, Planned Parenthood, Marie Stopes, and the Guttmacher Institute.

### **Future Needs**

There are still plenty of legal issues surrounding the family that need attention. These include personal partnerships, implied and express contractual agreements, distribution of wealth in case of divorce/separation, parentage, and responsibilities upon termination of marriage. Other challenges facing African families include:

**Tribal Practices:** African legislation is still heavily influenced by cultural and tribal practices that include female genital mutilation, chauvinistic laws, and biased succession laws.

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16. “Malawi political parties unite to reform abortion law,” Ipas, September 10, 2015, available at <http://www.ipas.org/en/News/2015/September/Malawi-political-parties-unite-to-reform-abortion-law.aspx>.

17. “Sierra Leone abortion bill blocked by President Bai Koroma again,” *BBC*, March 12, 2016, available at <http://www.bbc.com/news/world-africa-35793186>.

**Polygamy:** Parliamentarians have been known to reject marriage laws that do not accommodate polygamy or pass laws that specifically provide for polygamy, *e.g.* the Kenyan Marriage act of 2014.

**Gender Roles:** Both in marriage and upon the termination of marriage or the death of a spouse, the rigidity of gender roles has long been a problem. A woman is not allowed to carry out many roles within a family unit, some duties being reserved specifically to men. Often, a man is selected from elsewhere to manage family matters in case a husband dies.

**Inheritance:** More specifically, inheritance complications are often caused by extended families and the rights of illegitimate children.

**Harmful Practices:** These include child marriages, female genital mutilation, forced marriages, and commercialized dowry.

**Division of Matrimonial Property:** Women get little or none of the matrimonial property, even where they contributed to its acquisition.

The traditional concept of marriage is also facing threats from other emerging trends. Should adoptions be opened to same-sex couples? Should assisted conception through IVF and surrogacy be available to married people only? Should surrogacy for pay be allowed, and what are the rights of the surrogate versus those of the biological parents? Should contraception be accessible to teenage girls? Within marriage, there are inadequate structures for dispute resolutions, which would allow a couple to resolve their marital disagreements instead of continuing to a divorce. Kenya's new Marriage Act is one exception: it allows for reconciliation and mediation before divorce proceedings begin.

In short, there is much work to be done in Africa, but not the work that liberal, pro-homosexual, pro-abortion Western agencies seem to believe necessary.

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