

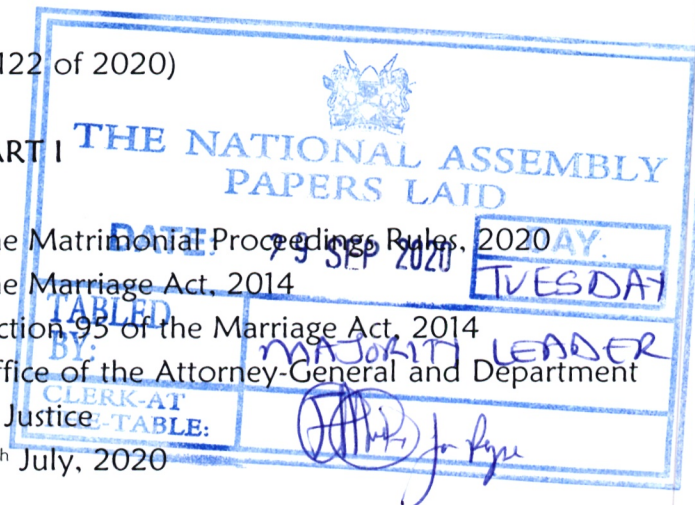
EXPLANATORY MEMORANDUM TO THE COMMITTEE ON DELEGATED
LEGISLATION OF THE NATIONAL ASSEMBLY ON THE MARRIAGE (MATRIMONIAL)
PROCEEDINGS RULES, 2020

(L.N. No. 122 of 2020)

PART I

Name of the Statutory Instrument:
Name of the Principal Act:
Enacted Pursuant to:
Name of the Ministry/Department:

The Matrimonial Proceedings Rules, 2020
The Marriage Act, 2014
Section 95 of the Marriage Act, 2014
Office of the Attorney-General and Department
of Justice
8th July, 2020



Gazetted on:
Tabled on:

PART II

1. The purpose of the Statutory Instrument

- 1.1. The purpose of Marriage (Matrimonial) Proceedings Rules, 2020 is to give effect to Section 95 of the Marriage Act, 2014.
- 1.2. The Marriage (Matrimonial) Proceedings Rules are intended to facilitate the just, expeditious, proportionate and affordable resolution of matrimonial disputes under the Marriage Act.

2. Legislative Context

Section 95 of the Marriage Act, 2014 confers the Chief Justice with power to make Regulating court practice or procedure under the Marriage Act.

3. Policy Background

- 3.1. The enactment of the Marriage Act in 2014 was an important milestone in the consolidation of the then existing marriage laws into a single Act.
- 3.2. The Marriage (Matrimonial) Proceedings Rules will provide clarity on the practice and procedure relating to proceedings under the Marriage Act. These include the

payment of maintenance or custody of children instituted independently of a petition for a declaratory decree or for annulment, separation or divorce.

4. Public Consultations and outcome

4.1. The Rules Committee of the Judiciary embarked on stakeholder engagement and consultations between the year 2017 and 2018. These included stakeholder engagements and fora, correspondence, memoranda, meetings and public forums. Notable stakeholders included the Family Division of the High Court Nairobi, the L.S.K, the Civil Society, and the Office of the Registrar of Marriages.

4.2. The consultations and negotiations resulted in the final draft rules duly forwarded to the Office of the Attorney for finalization and gazettelement.

5. Financial implications

5.1. There shall be no financial implication on the implementing body.

6. Impact

6.1. **Impact on Rights and Fundamental Freedoms:** The Marriage (Matrimonial) Proceedings Rules are necessary to enforce access to justice through and the safeguard of the family as enshrined in the Bill of Rights of the Constitution. The rules will ensure that citizens are able to resolve disputes under the Marriage Act in a speedy, easy and efficient way. This is a necessary basis for social order and stability.

6.2. **Impact on Private Sector:** The rules will impact positively in dispute resolution, access to justice, stability and social order for citizens necessary for a productive citizenry.

6.3. **Impact on Public Sector:** The rules will impact positively in matrimonial dispute resolution.

7. Guidance

7.1. The Rules Committee shall work closely with the Court Family Divisions to ensure that members of the public are aware of the procedure and practice relating to matrimonial proceedings under the Marriage Act.

8. Monitoring and review

8.1. The Rules Committee shall cooperate with implementing courts to ensure that the rules enhance access to justice.

9. Request to the National Assembly

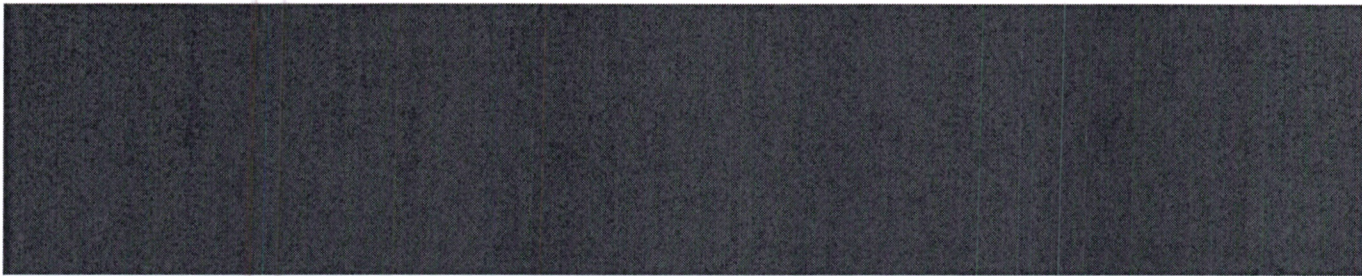
9.1. The National Assembly is invited to:

- (a) Note the contents of this Memorandum
- (b) Adopt the Matrimonial Proceedings Rules, 2020

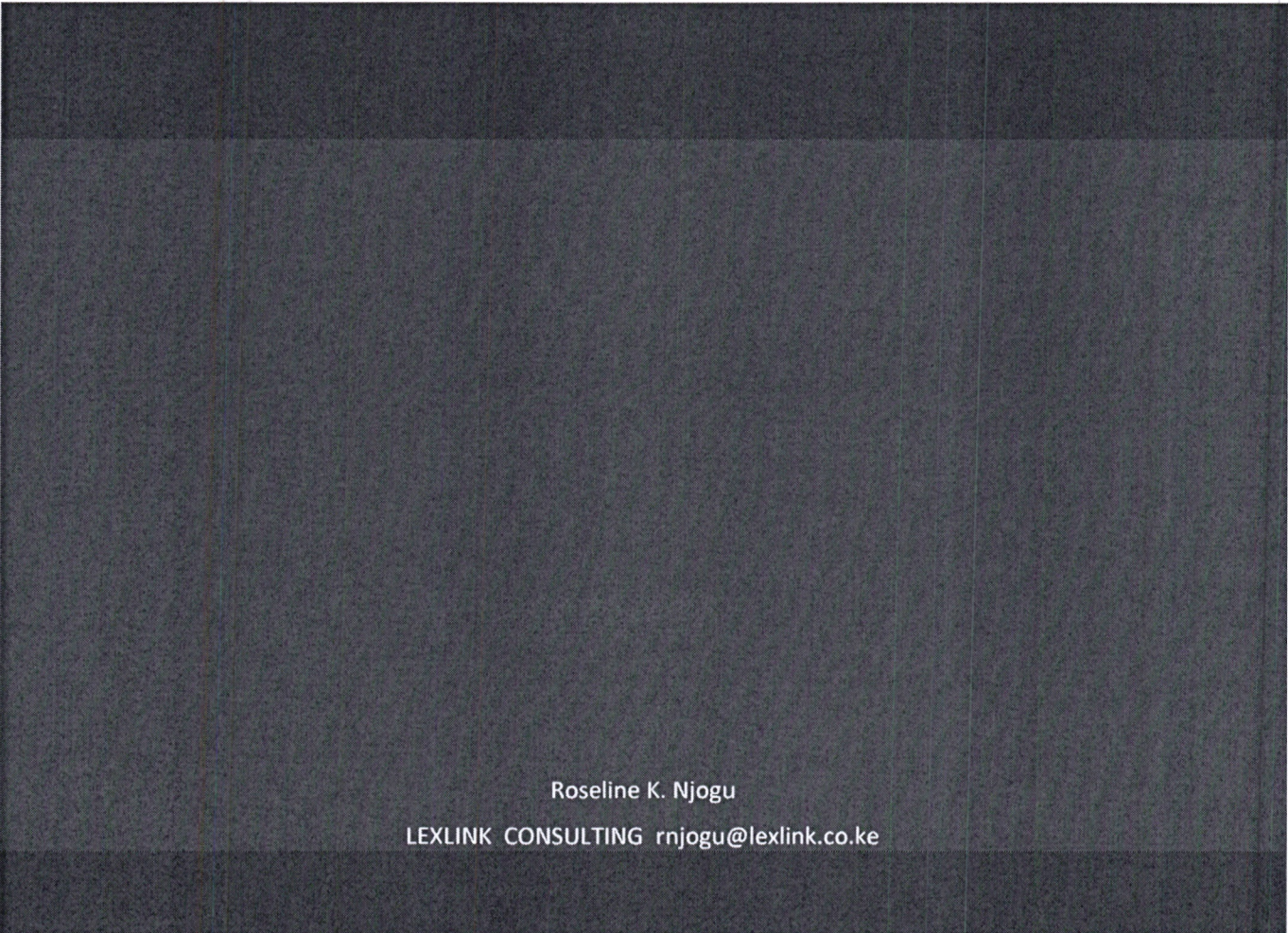


Anne Amadi

CHIEF REGISTRAR OF THE JUDICIARY



DEVELOPMENT OF MATRIMONIAL PROCEEDINGS RULES: FINAL REPORT



Roseline K. Njogu
LEXLINK CONSULTING rnjogu@lexlink.co.ke

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INTRODUCTION

Background

In April of 2017, the Family Division of the High Court (the Family Division), and the Office of the Attorney General (OAG) and the Department of Justice (DOJ) requested the Intergovernmental Development Law Organization (IDLO) for technical and legislative support to develop divorce proceedings rules that would accompany the Marriage Act of 2014.

Following an inception meeting held on 11th May 2017, I was fully mobilized¹ and contracted on 19th May 2017 to carry out this assignment, working closely with the Family Division, the Registrar of Marriages and IDLO.

Primary Objectives:

The primary objectives of this assignment were:

- a) To provide technical and legislative support to the Family Division and OAG & DOJ in the development of divorce proceedings rules bearing in mind the following parameters:
 - a. that the development and codification of rules should not discriminate the existing laws within the different systems of marriage but rather enhance them;
 - b. that the fundamental rights of parties to marriages and divorces are recognized and protected, especially the rights of women; and
- b) To use the process and instrument of divorce rules to better harmonize divorce procedures under the different systems of marriage

Our understanding of the Terms of Reference: The Good, the Bad and the Complicated

The Good: Heralding Hope through the Constitution

Kenya finds itself at an opportune moment to advance gender equality. The 2010 Constitution expands on the Bill of Rights, including guaranteeing extensive protections for economic, social and cultural rights. For family law, the gains are unprecedented. The Constitution is unequivocal about creating an equality framework.

The preamble provides for governance through equality viz. "...RECOGNISING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law..."

Article 10 on National Values provides, inter alia,

¹ The team at Lexlink Consulting was extremely helpful in this process. I am particularly grateful to my associate Njeri Kamande, and my research assistant Maseka Kithinji without whom this process would not have succeeded.

“...The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—...(a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions....

The national values...include...human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;

These provisions will become especially important in this rule making process as we “make or implement public policy decisions...”

Article 20 on the Bill of Rights gives the Constitutions on interpretative framework as far as rights are concerned. Specifically, it states:

“...(4) In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—
(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom...”

Article 27 on equal protection of the law is especially important in private law jurisprudence, and thus I will reproduce it here, in its entirety.

Article 27.

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status... ethnic or social origin, colour... religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified...

(6) To give full effect...of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action...to redress ...past discrimination.

Article 45(1) provides that the family is the natural and fundamental unit of society and the necessary basis of social order; and shall enjoy the recognition and protection of the state. This foregrounding of a private social arrangement is an important signal of an African understanding of family and marriage and mobilizes state machinery to its recognition and protection.

Article 45(2) provides for the controversial right for every adult to marry a person of the opposite sex based on free consent. Sidestepping the heteronormativity of this provision for a second, it is

unclear if this right has a corresponding duty, and what the nature of that duty would be. It is remarkable that marriage then is elevated to a right, alongside, life and health.

Article 45(3) provides the very important “equality in marriage” protection. It is important to capture the language of the Constitution here, as the Marriage Act reproduces this article verbatim in s3(2) thus “...parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage”. This provision is extremely important as it deconstructs the patriarchal framework of the repealed Constitution.

Under the repealed Constitution, sex (and other forms of discrimination) were provided for in law. S82(4)(b) read:

“...82. (1) ... no law shall make any provision that is discriminatory either of itself or in its effect.

(4) Subsection (1) shall not apply to any law so far as that law makes provision –

(b) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; ...”

Thus, the Constitution of 2010 is indeed the decolonizing and emancipatory jurisprudence.

The Bad: History and its Dark Shadow

To best understand the emancipatory/transformational power of the 2010 Constitution, a good understanding of the old legal framework is indicated. Family law has had a long, complicated and tumultuous relationship with the state – perhaps because, more than any other body of law, it represents a vicious power struggle at the intersection of law, religion (or culture) and gender. While the law of marriage has important narratives on the formation of the colonial state through family law² and as illustrated through the iconic cases of *Hyde v Hyde*, *Rex v Amkeyo*, *Cole v Cole* tracing back to the moment of legal transplant through the East Africa Order in Council of 1897, I wish to focus on the difficult moments of the evolution of divorce law.

Understood as the antipodean of marriage (and marriage law), as the colonial and postcolonial state produced itself in a certain form through marriage law, it carried its ideologies of divorce along with it.

Hyde v Hyde was the colonizing ideology of marriages, transported to many of Britain’s colonies. In defining marriage as the “...voluntary union for life of one man and one woman, to the exclusion of all others ...”, the Christian idea that marriage was for life was clear; and animated the Anglican state’s begrudging attitude towards acceptance of divorce law.

For most of the last century therefore, the law and state infrastructure, was deliberately set up to disincentivize divorce in a bid to “protect” the idea of marriage. Of course, the “voluntary union”

² See generally Sylvia Kang’ara, “Beyond Bed and Bread Making The African State Through Marriage Law Reform – Constitutive And Transformational Influences Of Anglo-American Legal Thought

element, that is, the parties' agency, was the casualty in this geometry. Roadblock upon roadblock was erected for those who no longer wanted to voluntarily cohabit.

- i. Jurisdiction: - courts did not automatically have jurisdiction to hear divorce proceedings. Common law gave jurisdiction based on domicile³ while the Divorce Ordinance (1904) based jurisdiction on residence. In *Magean v Magean* for example, a wife seeking divorce on the grounds of desertion was denied, with the court holding quite preposterously, that by leaving the jurisdiction and relocating to Tanganyika, the deserting husband had moved the petitioner's domicile, therefore robbing the court of jurisdiction. This position would eventually be remedied by a 1952 amendment to the Matrimonial Causes Ordinance, enabling a deserted wife to petition for divorce based on her residency in Kenya. Eventually, the Law of Domicile Act (1970) provided that a married woman could acquire her own independent domicile.

Jurisdiction was also based on the system of marriage parties contracted. Suits arising from marriages under the Hindu Marriage and Divorce Act, and civil marriages would be entertained by the High Court. Marriages under the African Christian Marriage and Divorce Act (ACMDA) and customary marriages were entertained by magistrates' courts, and Islamic marriages by kadhis courts. A court⁴ would eventually rule that the provisions of the ACMDA restricting Africans suits to the magistrates' courts were discriminatory and unconstitutional.

- ii. Grounds for Divorce – Fault based divorce

The idea that grounds for divorce arose only upon the commission of a matrimonial offence (aptly termed), meant that the focus was not on the agency or willingness of spouses to continue to cohabit. Indeed, the language of offence evoked the need for “quasi-criminal” litigation. The petitioner had to claim certain grounds, whose elements, similar to criminal law, had thresholds of proof. The grounds were a closed list; adultery, cruelty, desertion, mental instability, presumption of death, or certain sexual offences committed by a husband.

In true penal nature, each ground had to be painstakingly examined. Consider, for example, adultery. Adultery necessarily meant “consensual sexual intercourse between a married person and a person of the opposite sex”. The said intercourse required peno-vaginal penetration,⁵ and consent. The procedure for prosecuting a divorce suit on the grounds of adultery differed for men and women. Desertion required animus deserendi, the absence of justifiable cause⁶ and the factum of separation⁷.

³ *Le Mesurier v Le Mesurier* [1895] AC 517

⁴ *George Wainaina v Rose Wainaina* 2002

⁵ *Dennis v Dennis*

⁶ To negative constructive desertion

⁷ *Le Brocq v Le Brocq*

Further, because of this quasi-criminal nature, the courts insisted on a high standard of proof. In *Mathai v Mathai*⁸, the court applied the same standard as in criminal suit stating “...when considering the question of the standard of proof requisite to establish the commission of a matrimonial offence, the safe and proper direction should be that the Court must be satisfied beyond reasonable doubt or satisfied so as to feel sure, that guilt has been proved...”.

iii. Bars to divorce

Absolute bars to divorce included connivance⁹, condonation and collusion. Under s10 of the Matrimonial Causes Act, a court had the duty to guard the process against the “ills” of connivance, condonation and collusion, and had the discretion to deny divorces where parties were “guilty” of unreasonable delay in presenting or prosecuting the petition, or where their spouse’s matrimonial offence was due to their “conducive conduct”.

Further, divorce proceedings could only be commenced no sooner than three years after the celebration of the marriage.

The Complicated: The Marriage Act of 2014 and Beyond (Challenges and Critical Directions)
Throughout divorce law scholarship, at least two schools of thought compete for the soul of a family law system: the need to protect the “sanctity of marriage” on the one hand, and the fundamental rights of individuals to exercise their agency on the other¹⁰. For the last century, as I have illustrated above, the law leaned heavily towards the first prong, often at the expense of wives. It seemed an unspoken rule that if a marriage did not work, the social cost of that loss would be disproportionately borne by the wife, through a treacherous and byzantine divorce process.

While the Marriage Act does not heavily lean toward the second prong, it has made remarkable steps in protecting the agency of the parties to a marriage. Some jurisdictions consider a full realization of agency, in this geometry, as a no-fault-divorce. The Marriage Act stops just shy of that provision but provides the important ground of “irretrievable breakdown of marriage”.

Some of the critical achievements of the Marriage Act, as far as divorce is concerned are the introduction of the ground of irretrievable breakdown of marriage, the removal of all bars, and the granting of equal rights to parties. There is a clear movement toward access to justice, and the expansion of individuals’ rights and agency.

A number of complications are immediately apparent.

Firstly, the harmonizing challenge: - the Marriage Act attempt to do the (failed) work of the Law of Matrimony Bill (1972), of marrying over five different marriage systems, ideologies and disciplines into one cohesive law. How can systems that are sometimes diametrically opposed co-

⁸ Civil Appeal No 21 of 1979

⁹ *Churchman v Churchman* – the burden of proof on the absence of connivance was on the petitioner

¹⁰ See for example *Blunt v Blunt* [1943] 59 Times Law Reports 315

exist? How do we navigate between the different entitlements granted to different parties of the different marriages while maintaining marriage equality?

Secondly, the Marriage Act raises certain statutory construction issues. For example, if the Act is indeed the general law of marriage in Kenya, then what is the import of s49(3) of the Act which reads "...any provision of this Act which is inconsistent with Islamic law and practices shall not apply to persons who profess the Islamic faith..."? Is this exception to the entire Act, or only to provision of s.49? Are we to understand Islamic Law and practices as superior to the Act? How are we to deal with this Islamic Law exceptionalism?

Thirdly, even where the legislation is clear, it is unclear why the language used in different parts of the text varies. The grounds for divorce under the different systems¹¹, though broadly similar, have important differences. The phraseology here raises fundamental differences in the elements of the matrimonial "offence" and thus ideally inviting different standards or procedures.

See the matrix below:

Divorce Ground	Civil	Christian	Hindu	Customary
Adultery	"adultery by the other spouse"	"one or more acts of adultery by the other party"	"since the ...marriage, the other party has committed, rape, sodomy, bestiality or adultery"	"adultery"
Cruelty	"cruelty by the other spouse"	"cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage"	"the other party has committed cruelty on the other"	"cruelty"
Desertion	"desertion by the other spouse for at least three years"	"desertion by the other spouse for at least three	"the other party has deserted the petitioner for at least three years	"desertion"

¹¹ I have omitted Islamic divorces in this textual comparison of the legislative language as the grounds for divorce have also been omitted by the Act.

		years immediately preceding the date of the presentation of the petition”	before making the petition”	
Exceptional Depravity	“exceptional depravity by either spouse”	“exceptional depravity by either party” ¹²	“the other party has committed exceptional depravity on the other”	“exceptional depravity”
Irretrievable Breakdown of Marriage	“irretrievable break down of marriage” ...as defined by s66(6)	“the irretrievable breakdown of marriage”	“the marriage has irretrievably broken down”	“irretrievable breakdown of marriage”
Special grounds	• Spousal neglect >2 years • Separation of >2 years • Imprisonment > 7 years • Spouse’s mental disability			• Any other ground valid in customary law of the petitioner¹³
Special requirements	3 years waiting period	-		

Salient Issues

This project raised many important and contentious issues that the community of family law scholars and practitioners must resolve. The Marriage Act of 2014, and the Constitution of 2010 reengineered the family law landscape and conceptual framework so substantively that this process required the building of theoretical consensus on a number of issues.

While it is obviously impractical to deal with every provision here, we wish to highlight the following salient issues, and how we dealt with them.

¹² In an interesting twist, this would allow an “offending” party to commence divorce proceedings.

¹³ This raises a possible Constitutional challenge. Some grounds available in customary law include witchcraft, sterility (in men, not women), adultery (by the wife, not husband), and so on. The discriminatory application of these grounds is not expected to stand a Constitutional challenge.

Islamic Divorce Rules:

We set out to give detailed instructions on Islamic matrimonial proceedings rules. Indeed, we felt that we had, for the first time, an opportunity to begin the important work of codifying Islamic Law in this jurisdiction.

We felt that we continue the work Parliament had begun by including Islamic marriages in the Marriage Act, by giving detailed rules to guide both Kadhis courts and Magistrates/High Courts in this area.

We consulted with a number of Kadhis¹⁴, Islamic law scholars¹⁵, and practicing Muslim women¹⁶ to get their input on this approach. Across the board, the feeling was that the time had come for detailed rules. It was felt that the following specific issues should be dealt with, in detail:

1. Extra-judicial divorces: - per the Act, Islamic marriages retain this peculiarity of extra-judicial divorces. How then, were we to address ourselves to this matter, in light of the reality that all divorces must be registered? While section 72 provides for divorces granted by sheikhs, kadhis, *imams*, *mufitis* or other licensed persons being registered, it does not deal with *talaq-as sunnah* as expressed in the husband's right to declare a unilateral divorce, or where a wife has this right under her marriage contract. How then are we to bring this "private" transaction to the Registrar?
2. Schools of thought: - While it is mostly agreed that the governing school of thought in Kenya is predominantly *Shafi*, increasingly, new Kadhis are training in *Hanbali* schools, and this often presents a conflict in judicial determinations. We thought that a guiding note on the interpretation theory should be made in the rules.
3. Specifics on *iddat* and maintenance of a breastfeeding wife – we thought that these specific rules on the maintenance of a breastfeeding mother should be provided for.
4. *Mahr* – that while the payment of the dower to the wife is a right that is to be enforced, how are we to provide for its enforcement alongside divorce/maintenance?

We presented fairly detailed rules to the first validation meeting¹⁷, but the consensus was to have a simple provision that courts would apply Islamic law where parties to an Islamic marriage chose to have their marriage terminated by a kadhi's court. It was also agreed that since the Rules Committee was in the process of proscribing Kadhis Courts Rules, that matrimonial proceedings rules would be adequately captured there.

We would have wished to move the process of harmonization of the different systems further, but perhaps at the next iteration, we shall make more headway.

¹⁴ I would like to thank Hon. Kadhi Tito Kunyuk and Hon. Kadhi Ishaq for their detailed feedback to these rules, and for their constant engagement with the process.

¹⁵ I reference conversations with Badru Jaffar among others.

¹⁶ Sincere thanks to Amina Bahir and Suad Yusuf for their input into this process

¹⁷ See the draft of Rules presented at the first validation meeting

Customary Marriages and Divorces

Customary marriages and divorces represented a challenge. Family law varies across the various communities, with the law of divorce further complicated by cross-cultural marriages. For example; if a Kisii man marries a Pokomo girl, which law of divorce is to be applied? And would the Constitutional requirements of equality be satisfied by whatever answer we returned? We began the process by attempting to map the various marriage and divorce laws of the communities of Kenya¹⁸ and quickly realized that it was a herculean task, once the cross-cultural elements were introduced. This process was important in establishing “any valid ground under the customary law of the petitioner”¹⁹ since we needed to think about the proof of these grounds.

I consulted with practitioners²⁰ and judicial officers to glean from their experience. In the end, we elected to be guided by Section 3 of the Judicature Act (proof of customs before reliance) and the discretion of the court.

Irretrievable Breakdown of Marriage

The new ground of “irretrievable breakdown of marriage” (IBM) represented a progressive shift in divorce and marriage rights. An overwhelming majority of the practitioners, members of the Bench, parties and scholars agreed that it allowed parties to exit marriages in a dignified manner.²¹ The sticky issue here was one of proof. How do we prove IBM? Responses on this issue varied across the spectrum; on one end, some thought that in line with the notion that marriage is based on consent, once consent was withdrawn, there was no need for proof. Practically, that once a petition was lodged and a cross-petition filed in response, IBM was proved, and no further proof should be required. On the other hand, some thought that IBM had to be proved through other means – which sometimes requires the pleading and proof of other grounds such as cruelty.

In conclusion, it was left to the discretion of the court.

Methodology

On methodology, I wish to capture two important things: firstly, the conceptual framework that calibrates my research, and secondly, the nuts and bolts of the process that animate the framework.

Conceptual Framework

Drawing from the TORs, as well as my own research to family law, I proposed to anchor the research and the drafting process on three ideas:

- a. The centrality of African Legal Thought (ALT): - the idea that law making, especially in the post-2010 era, must produce decolonizing jurisprudence.²² Specifically, that it

¹⁸ My research assistant, Maseka Kithinji was extremely helpful in this process, and I am very grateful

¹⁹ Section 69(1)(f) of the Act

²⁰ I am grateful in particular to Josephine Kogweno

²¹ Leah Kiguatha was particularly helpful in the framing of this issue

²² I borrow this phrase from Willy Mutunga’s “Elements of Progressive Jurisprudence” speech given at a Judges dinner in Nairobi on 31 May 2012 and later published at **Socialist Lawyer: Magazine of the Haldane Society of Socialist Lawyers. Number 65. 2013,20**

must de-escalate, demote and deconstruct unjust imposed power structures, especially those of inauthentic and colonial origin. Take the example of customary marriages. Regulating customary marriages under statute is a game changer. While ostensibly “elevating” previously subjugated systems of marriage to equal status with “colonial” marriages, it runs the risk of unintended systemic subordination of the “new-kid-on-the-block”. Codification of custom in a bid to control it was a well-documented colonial strategy. As such, it was imperative that the process of recalibrating customary law under a new legal order, be done cautiously, and within a conceptual framework that is at once authentic and emancipatory.²³ The process of elaborating on the Marriage Act (2014) then gave us an opportunity to unite 1895 with 2010 - by reimagining the identity of the African marriage as it forms and performs African personhood, and thus building and drawing from African Legal Thought.

- b. Feminist legal theory and approaches: - Divorce law, the world over, has an infamous dark history steeped in patriarchy and chauvinism. British Colonial Legal Thought²⁴ transplanted ideas of subjugation and the doctrine of coverture onto the colony, and when merged with analogous African conceptions, the subordination of wives through marriage was complete²⁵. Divorce – understood as a counter to this structural power institution – was thus replete with punitive measures, especially against women. This idea travels across the five systems of marriage with varying degrees, most apparent in Islamic law and custom. As such, any work on divorce law must be aware of and address this dark history and respond to it in the language of fundamental rights and freedoms.²⁶
- c. Participatory rule-making- The idea that citizens have a right to participate in the making the rules that they are bound by, is one of the tenets of administrative law. That the state, and law makers have a duty to consult those likely to be affected by their decisions. Of course, ensuring effective public participation is a problematic concept. Migai Akech in *Administrative Law*²⁷ for example deals with the some of the difficulties of public participation in Kenya’s rule-making such as inadequate legal empowerment, lack of information, and opacity in government procedures. These difficulties notwithstanding, Article 10 of the Constitution mandates public

²³ See for example generally Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, Zed Books Ltd and University of Otago

²⁴ I borrow this idea of distinguishing British Legal Thought and its colonial counterpart from the work of Dr Nkatha Kabira found in her seminal work on the Law of Commissions captured in her doctoral thesis at Harvard Law School (2014)

²⁵ For an in-depth analysis on this, see Roseline K. Njogu, “Decolonizing Sex: Fifty Shades of Rape” Southern African Journal of Policy and Development Vol 3 No. 1 (2016)

²⁶ Article 27, Constitution of Kenya 2010

²⁷ Strathmore University Press (2016) p.38-40

participation, and it is my contention that this third prong will buttress the foregoing conceptual ideas.

On nuts and bolts:

Desk research

The literature review will review materials along four main prongs, to create an appropriate theoretical framework for this project:

1. Review of the Constitution of Kenya, 2010, statutes (current; aborted²⁸ and repealed²⁹), subsidiary legislation and case law on divorce law in Kenya;
2. Review of international law, and laws and relevant literature from other similarly placed jurisdictions for comparative perspectives
3. Review of scholarly articles to scope and locate the discourse on divorce law and divorce rights, and glean critical directions;
4. Review of historical reports³⁰ and other materials; and
5. Review materials specifically on divorce proceedings within Muslim and various African communities

Interviews

I conducted key informant interviews with various key partners and stakeholders. Some of the sources of information were:

The Registrar of Marriages

I interviewed several registrars of marriages and sought to understand the permits, notices currently being issued by the registrar and the process of registration of marriages. Registration of marriages is one of the key things that the Marriage Act introduced by requiring all marriages to be registered. Among the issue discussed and highlighted for possible adoption in the rules include;

The consequence of not registering a marriage in the time frame stipulated by the registrar – it was noted that the registrar's office had published a notice in the papers announcing the commencement of registration of marriages from August 01st 2017. All the registrars interviewed clarified that it would be impossible to penalize non-registration of marriage and it was agreed that the carrot would be more apt than the stick in this situation in that registration of marriages would be encouraged through public awareness.

The form of the divorce register – The contents to be captured in the registry other than the required minimums by the law. The idea of co-ordinating the marriage and divorce register with the

²⁸ See for example the Law of Matrimony Bill (1971) that in many ways animated the Marriage Act (2014).

²⁹ Beyond the list of statutes repealed by the Marriage Act of 2014, I considered much older statutes and ordinances that set the stage for divorce rights, such as the Married Women's Property Act (1882), the East African Marriage and Divorce Ordinance (1902), the Kenya Divorce Validity Act, Law of Domicile Act, and so on.

³⁰ Such as the Report of the Commission on the Law of Marriage and Divorce (1968), available at <http://kenyalaw.org/kl/fileadmin/CommissionReports/Report-of-the-Commission-on-the-Law-of-Marriage-and-Divorce-1968.pdf>; or the report on Native Tribunals by Arthur Phillips.

Integrated Population Registry System (IPRS) was discussed and the registrar's agreed that such a collaboration of systems within the government would be encouraged moving forward.

The time frame within which decrees of dissolution of marriages should be deposited with the registrar for registration – it was agreed that 30 days would be a reasonable time within which decrees should be sent to the registrar. The matter was highlighted to be discussed further with the deputy registrar of the high court.

The possibility of a central registry to co-ordinate the functions of the registrar of marriages and the registrar of the family division – a central registry would enhance effective co-operation between the two offices and make documents sharing easier. It was agreed that, though necessary, this could not be introduced in subsidiary law but would be suggested for amendment of the substantive law.

The need for a search database where the public can search the marital status of individuals and the registration status of their marriages – This idea followed the discussion of integrating the IPRS with the registrar of marriages systems. It was agreed to be discussed in future for inclusion as an amendment in the substantive law.

Issuance of decree nisi – The registrars introduced the idea of the decree nisi being issued by the registrar of marriages as opposed to the court as this would aid in the effective registration of divorces and annulments. After some discussion, it was agreed that such a provision in the subsidiary law would be in contravention with the substantive act which gives the power to issue decrees to the court.

Secondly, the registrars suggested that the rules should prescribe a standard form of decree for purposes of uniformity across the different stations. This was discussed, and a form of decree was agreed upon. It was agreed that the form would be discussed further with the magistrates and deputy registrar of the high court.

Finally, on the decree nisi, it was suggested and agreed that the decree should include an order for to the registrar of marriages to register the divorce or annulment. This would do away with the need to have another application for registration at the registrar of marriage.

The Family Division –

I interviewed the deputy registrar³¹, the presiding judge of the family division and other judges of the Family Division³². The discussions involved the current process of divorce in court, the challenges faced by the judges in deciding divorce matters, the procedural issues parties in divorce matters tend to face challenges with and the experience of the judges and the registrar in Islamic divorces. The issues suggested to be addressed or adopted in the new rules included;

³¹ Hon Caroline Kendagor guaranteed the success of this project, with her expert opinion, as well as logistical support.

³² I am especially grateful for the insights of Hon Aggrey Muchelule, Hon Farah Amin, Hon. Rose Ougo, and Hon William Musyoka.

- ❖ Simpler forms for instituting divorce proceedings that parties could understand and fill in themselves. This would be in line with the constitutional obligation to make justice accessible to every person;
- ❖ Having forms for divorce proceedings available at the registry;
- ❖ Maintaining petitions as the pleadings for divorce proceedings given their simplicity;
- ❖ The judges did not feel the need for a summary procedure for divorces given that uncontested divorces tend to be determined quickly in a quasi-summary procedure. The judges felt it was important to maintain the discretion judges and magistrate currently held in determining uncontested and undefended divorces given the alternative would leave room for mischief.
- ❖ The judges were confident that they could effectively handle Islamic divorces should they be brought within the jurisdiction of their courts. They felt that the challenge of not having Islamic law codified into one book would not prevent them from applying it since this was the same situation they faced with customary law, yet Kenyan courts have done a stellar job of applying customary laws and rules with respect to marriages and divorces.
- ❖ It was suggested that the rules could introduce uniform forms to be used in the lower courts and the Kadhi's courts to make appeals to the High Court simpler.
- ❖ The ongoing debate then on the jurisdiction of the High Court in Islamic divorces was discussed and both judges were clear that if a party to an Islamic marriage submitted to the jurisdiction of the High Court, then the court would have jurisdiction.
- ❖ The possibility of doing away with the current obligation of parties to testify in court was discussed and the judges felt it was important to maintain this provision. They advised that from their experience, they have been able to glean information in court that the parties left out in their pleadings. Additionally, they strongly felt that this process was also cathartic to the divorcing parties given that for some parties, court was the only forum that they could express their feelings freely.
- ❖ The incorporation of alternative dispute resolution in divorce proceedings in keeping up with the requirement of the Constitution. It was felt that this would be easy to adopt given that family division was already practicing court annexed mediation for other family law matters.
- ❖ The deputy registrar of marriages strongly advised maintain the need for a registrar's certificate given that it assisted her in making sure parties to divorces are compliant procedurally. She advised that allowing the registrar or the magistrate to handle this compliance issues prevented the delaying of matters in court in the instances where a party had failed to file necessary documents and ensured that once trial began, it would not need to be unnecessarily adjourned to deal with these technical issues.

Magistrates in some court stations

The Marriage Act, 2014 gave exclusive jurisdiction to Magistrate's Courts on divorce matters. This was a former departure from the old law which had exclusive jurisdiction of such matters in

the High Court. I interviewed magistrates³³ in Nairobi to have an understanding in their new responsibilities and the challenges they had faced so far. Among the issues discussed and suggested for adoption in the new rules included;

- ❖ The jurisdiction of magistrates in dissolving foreign marriages. The magistrates felt that since foreign marriages are recognized in Kenya and are required to be registered with the registrar of marriages in Kenya, there was no reason why they shouldn't also come under Kenyan law and under their jurisdiction at the time of dissolution. This was left for further discussion at the focus group sessions.
- ❖ The need to simplify the process for the layperson by making the forms and the requirements to institute divorce proceedings as understandable as possible. It was felt that if a party to a divorce could download the forms or pick them from the registry and correctly fill in the required details without needing to pay a lawyer to do the same then we would have accomplished this purpose.
- ❖ The need to rethink the registrar's certificate since Magistrate's courts did not have a registrar. It was agreed that the magistrates could perform this function and consequently the form needed to be renamed. It was further suggested that the rules could move away from making the certificate mandatory in that, if a party is unrepresented the court may have discretion to dispense this formality.
- ❖ The use of ADR in divorces – the magistrates' advised on the need to think further about the mediator's role in a divorce matter and to ensure that we provided for the training of mediators. This was agreed for adoption into the rules.
- ❖ The magistrates expressed the sentiment that the rules should not work to prop up marriages that are not working. For instance, where cohabitation has ceased between parties, they should be allowed to be free from each other. They advised that they preferred that the rules gave more agency to parties.

Divorce lawyers

I interviewed practicing family lawyers at various stages in their professions to understand their needs and the current application of the rules from their standpoint. Among the issues highlighted in these interviews include;

- ❖ The need for a summary process for uncontested divorces – The suggested process was similar to the current practice in civil litigation where a party could obtain orders summarily in the presence of certain conditions. It was agreed that this should be discussed further at the focus group sessions.
- ❖ The possibility of having grounds for divorce automatically proven – the lawyers felt that the ground of irretrievable breakdown of marriage did not need to go through a trial process for proof and that once it is alleged and not contested by the defendant, it should

³³ I am particularly grateful to Hon Mmasi for her very instructive interview

automatically stand proven. It was agreed more discussions needed to be had with the judges and magistrates on this particular point.

- ❖ Dissolution of marriage by operation of law – It was suggested that where parties separate for extended periods, the marriages should stand dissolved by operation of law. The rationale for this was that the law already allowed such an arrangement in the creation of common law marriages by cohabitation and that the reverse should also be allowed. (reverse of cohabitation)
- ❖ Doing away with the registrar's certificate or rethinking its purpose to the divorce process
- ❖ Clarification on the jurisdiction of Kenyan courts to dissolve foreign marriages – this was in light of recent decisions in lower courts which ruled that magistrates' courts did not have jurisdiction to dissolve foreign marriages. It was agreed that the rules would clarify this.
- ❖ The introduction of a pre-trial conference, similar but simpler to the one in use in civil litigation, where parties and their advocates could establish the issues for determination before trial. It was further suggested that the issues of dissolution of the marriage, division of property, custody and maintenance should all be handled at the pre-trial conference in the first instance for harmony in the different proceedings.
- ❖ There was general agreement in the need to not complicate the divorce process by adopting too many civil procedure rules.
- ❖ The clarification that a petition was the instituting part's witness statement and therefore they would be no need for the petitioner to additionally file a witness statement with his/her pleadings unless they intended to call additional witnesses, other than themselves.
- ❖ The requirement that all supporting document be filed together with each part's pleadings to facilitate expeditious proceedings.
- ❖ Out-of-Court divorces- this issue was discussed at length with a section of the lawyer preferring an option for parties to get into arrangements for divorce out of court. It was agreed that this would only be made possible if the law also allowed 'no fault divorces'. Given that the substantive law did not provide for divorces out of court, this was agreed as a suggestion for further discussion and amendment of the act.

Kadhis' courts and Islamic law scholars

The outcome of my interview with Kadhis and Islamic Law scholars is substantively covered in the "Islamic Divorces" section above.

Focus Group Discussions

FGDs with technical and special interest groups and internal stakeholders (Family Division, Registrar of Marriages and IDLO). This was held once I had completed the first draft of the rules and the same had been circulated to all the parties. This draft of the rules consisted of most of the suggestions and issues raised in the various interviews. Those present for these discussions included judges from the family division of the High Court, the deputy registrar of the High Court, magistrates, practicing family advocates, representatives of the Law Society of Kenya committee on Family law, registrars of marriages and representatives from IDLO.

The table below contains a summary of the issues that came up for discussions and the resolutions on the same, if any.

ISSUE	INPUT	DECISIONS IF ANY
Registrar's role	The need for an electronic system, local arrangement, a physical registrar, a system where what the judiciary has given to the AG office that is accessible to all and public, digitizing the system. A data management system to capture the marriage history The cost of the register: fee for filing, cost for 1000 to file. A principle registrar. A regional central point to collect all the information to be disseminated.	The court should have a centralized collecting point, a principle registry. Bench mark from systems that are working outside the jurisdiction and adopt rules that benefit the consumer.
Standardization and "decree nisi"	Standardization, a standard form that all the systems will use, a "decree nisi" becomes absolute in 30 days, discretion upon the judge maximum period of 6 months, time between the nisi and the absolute then left for the discretion of the judge. 15 – 60 days it's a complete and absolute decree. A decree nisi is a matter pending in court and not a final decision according to some views, it is proposed that the process and time letters of administration are issued should be the same as the issuance of a "decree nisi"	Once an absolute decree has been issued then it should be issued automatically once the time stipulated by the judge/magistrate expires. Discretion on the time limit should be left with the court
Summary proceedings	Undefended causes, one school of thought is to do away with it completely.	There is no need to legislate summary proceedings because it already exists in practice, one

	Summary proceedings should only be issued during a divorce proceeding, summary procedure should only be through hearing and not through application. What is an undefended cause? It is not an undefended cause when one party does not dispute a ground for example two parties agree that the marriage has irretrievably broken down. One should go through the registrar of marriages and get the registrars certificate, once it is filed then one party does not enter appearance it applies as an undefended cause, therefore then it can go through summary proceedings.	should leave it to the discretion of the court.
Unregistered marriages	A strong point of view, the absence of registration of customary marriages should not nullify a marriage an example of being born today but lacking a birth certificate does not take away the fact that one is born. The certification of marriage does not constitute a marriage but rather, the process does. There should be exceptions to the rules of non-registration based on exceptional circumstances to the rule. A provision for the application to have registration outside the timeline. One must take note of consequences of non-registration of customary marriages.	It is impossible to punish non-registration of marriages. All the processes must be simple & accessible while leaving the registration of marriages to the registrar.
Islamic marriages	Extra – judicial divorces, Talak at the option of the man.	We should go through what other jurisdictions have done in regard

	The central registry should verify and register all forms of Islamic divorces issued.	to Islamic divorces in order to strike a balance between judicial and extra-judicial divorces. Have further consultations with the Kadhis and gather their opinions on this. We may need to talk to more women in Islamic marriages to understand their standpoint on this issue.
Unregistered marriages	The place of common law wives was purposefully left out in the Marriage Act.	Once an order of presumption of marriage has been given by the court and declared one should use that order in its natural legal state and no need for registration.

Validation Meetings

We held two validation meetings, to allow for detailed interaction with the proposed Rules. Before the first meeting, a second draft of the rules was circulated incorporating the comments captured in the focus group discussion. Unlike the focus group discussion, the format taken to discuss these rules at the validation meeting was to go through each provision of the draft rules one by one and capture any discussions on them.

Among the issues highlighted for amendment or further discussions include;

Clause	Heading	Input/Recommendations	Resolution
3	Interpretation	Have a separate definition for Kadhi's courts since it does not fit into the description given for magistrates' courts. Clarify in the descriptions that the registrar is the deputy registrar of the high court and not the registrar of marriages	Agreed
4	Application for leave to present a petition	Make this an ex-parte process	Agreed

5	Commencement of Proceedings	Allow for interlocutory applications to be made by way of summons at any point in the proceedings	Agreed
6	Form of petition	Signing of petitions for minors or people of unsound mind should be guided by the Mental Health Act and the Children Act. Maybe this should be handled as a different process. Borrow from the Civil Procedure Rules. Expressly provide that the Petitioner's petition is his/her witness statement and therefore no need to file a petitioner's witness statement.	Agreed
9	Service	Apply Order 5 of the Civil Procedure Rules with minimal to no changes since it is the accepted standard across the board.	Agreed
13	Entry of Appearance	Stipulate time within which appearance should be entered. Leave this discretion to the court Take out the need for the form of appearance to be signed by an advocate to allow for future forms of entry of appearance such as by emailing a copy of the notice to the court.	Agreed to require appearance before expiry but to leave the specific time to the court. Maintain the need for signature and require all pleadings to include an email address.
13	Answer	Provide a provision for cross- petitions. Reply to an answer by the petitioner should be as of right. Do away with the need for leave of the court	Agreed Agreed

17	Registrar's Certificate	Rename this to the magistrates' certificate since there are no registrars in the lower courts	Agreed
21	Staying proceedings for restitution	This provision is unconstitutional and unenforceable. Though it has been maintained in the Act let us not provide for it in the rules	Agreed
27	Jurisdiction of marriages contracted abroad	Leave this out of the rules given that it is a matter for judicial interpretation	Agreed
28 & 29	Maintenance	Do not limit the type of orders that an applicant may seek	Agreed
31	Islamic Divorces	How does this provision harmonize with the Kadhis court rules? Research on this. Should we just leave this entire provision out and leave it to the Kadhi's courts rules? Maybe just have one provision that clarifies jurisdiction once a party submits to such and that provides for Islamic law to apply.	This needs further discussion especially since the Kadhi's courts rules are in development as well. Exclude this clause for now and include a provision that say we are waiting for the Kadhi's courts rules to be completed first.
34, 35 & 36	Taxation	These clauses are not necessary since the Advocates Remuneration Order, 2014 already provides for this.	Agreed

At the end of the meeting, stakeholders called for another opportunity to give detailed feedback on the Rules. The second meeting was scheduled for 31st January 2018, and was attended by various stakeholders from the Bench, the Bar, the Registrar of Marriages and civil society. This second meeting afforded us the opportunity to finally dispense with contentious issues.

We held discussions in plenary, and constituted small working groups led by Judy Thongori and Ann Mbugua, which delved into great detail on the issues of the court's certificate (originally known as the Registrar's certificate) and Service.

I will now highlight a few salient issues dealt with at this meeting:

- Citation – we retained the title “Matrimonial Proceedings Rules”
- Theory of interpretation – we anchored the rules within the spirit and principles of the Constitution
- Service – we modeled our rules on service against the civil procedure rules
- Court's certificate and case management – we clarified the place and function of the court's certificate, taking care to balance efficiency and due process
- Co-respondents: - There was substantial discussion on the place of co-respondents where the ground for divorce is adultery. On the one hand, it was reasoned that within the new paradigm of grounds (as opposed to matrimonial offences), there was no need to enjoin the co-adulterer and name them as a respondent on the other hand, it was felt that a person named as an adulterer was to be afforded an opportunity to be heard in the interest of fair trial. Finally, it was decided that we would neither provide special processes for the recognition of co-respondents, nor expressly restrict them. We choose to allow the practice to evolve within those parameters
- Pauper suits – in keeping with sensitive language, we chose to call these suits “suits by indigent persons”. While this is still somewhat disempowering, we settled on it, in the hope that someday our language will evolve enough to describe persons without taking away their agency

Stakeholders

The following were important stakeholders in these rules drafting process:

Stakeholder	Brief Description	Role
Family Division of the High Court	High Court division responsible for adjudicating Family law disputes; exercises supervisory jurisdiction over subordinate courts; entertains Islamic family law disputes instead of/in addition to Kadhis' courts, judicial review function over (marriage/divorce) administrative action; original jurisdiction in matrimonial property suits; court of record; precedent maker; and has	• Offer Judicial technical expertise; • Critical partner in drafting; • User of divorce rules/implementation partner; • Repository of family law jurisprudence

		unlimited original jurisdiction in all criminal and civil matters. De facto guardian of the Constitution	
IDLO		As the only intergovernmental organization exclusively devoted to rule of law work, IDLO has critical experience and expertise in working with governments and government bodies to strengthen institutions to promote justice; deep experience working with the Government of Kenya; in-depth understanding of Kenyan (and comparative) Constitutions; dedicated gender-sensitive approaches to law reform	• Technical and legal expertise on the promotion of the rule of law • Project management • Financial support
Registrar of Marriages		A department in the State Law office that is responsible for the registration of marriages in Kenya	Technical and legal expertise on civil marriages and the registration of marriages and divorces in Kenya
LSK		Bar association of Kenya's lawyers	Legal and procedural expertise
National Gender & Equality Commission		A constitutionally created body responsible for promoting gender equality and freedom from discrimination in Kenya	Legal expertise
Family Law Academics		Teachers and scholars of family law	Technical expertise on family law jurisprudence
Kadhis Courts		Judicial body responsible for adjudicating Muslim personal laws	Judicial and procedural expertise on Muslim divorces
National Council of Churches in Kenya (NCK)		A fellowship of Christian organizations involved in public service and advocacy on welfare issues	Technical expertise on Christian marriages

Council of Imams and Muslim Preachers in Kenya	A collaborative body of Imams and Muslim pastors in Kenya that will offer insights on extrajudicial divorces	Judicial and procedural expertise on Muslim divorces- especially extrajudicial divorces
FIDA	Federation of Women Lawyers Women's rights champions	Technical and legal expertise on women's rights, matrimonial property and children intersections
Kenya National Commission on Human Rights	An organization dedicated to the entrenchment of human rights and democratic culture in Kenya	Legal expertise on the human rights considerations in marriage and divorce laws and procedures
Kenya Muslim Women Alliance	A non-governmental institution that addresses the issues facing Muslim women and advocates for effective advocacy to achieve gender parity	Technical policy reform expertise on the rights of Muslim women
Kenya Cultural Center	A national center for cultural engagement, discourse, performance and research	Technical expertise on Kenyan cultural practices
CEDAW	Body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women	Technical expertise on the rights of women
ICJ	An organization that works to promote human rights, justice and democracy in Kenya	Legal expertise on international best practices
CREAW	A non-profit NGO that confronts the low awareness of women's real needs and rights in Kenya through advocacy and research	Technical expertise on reform policy on the rights of women

Timelines

There were four main stages to this project:

- Contracting and preparation
- Literature review
- Field work

- Compilations and validation of findings

The report writing accompanied all these processes. This assignment was output based and required flexibility of scheduling based on partners and stakeholders' availability.

Conclusion

The rules have been commended to IDLO and to the Rules Committee, and we look forward to their operationalization.

Appendices

1. Final Draft of the Rules
2. First Draft
3. Second Draft
4. Third Draft
5. Fourth Draft
6. Fifth Draft

REGISTRAR GENERAL'S DEPARTMENT

MARRIAGES SECTION

THE MATRIMONIAL PROCEEDINGS RULES – OUR COMMENTS

The Office of the Registrar of Marriages wishes to express comments on the above mentioned rules as follows:

a) Arrangement to live apart (S.14 of the Marriage Act, 2014)

S. 14 of the Act provides for arrangement to live apart for parties to a civil marriage. The law requires such agreements to be filed in court. Further, any party can apply to the court for a determination of their status after one year.

For S. 14 of the Act to be realized, rules are to be developed hence the need to expand the Matrimonial Proceedings Rules to cover all court processes under the Marriage Act, 2014

b) Objections to notices to marry (S. 19 – 31 of the Marriage Act, 2014)

The Marriage Act, 2014 provides for appeals to objections. This is to be filed court. Considering that this is the first time Registrar's decisions on objections are being challenged in court, rules and relevant forms need to be devised.

c) Requirement as to domicile on the part of the Petitioner

There is a need to limit on who can file for a divorce within Kenya. Consequently, the rules should provide for two requirements:

- i) The marriage was either contracted in Kenya or
- ii) The petitioner is domiciled in the Republic of Kenya

The above recommendation will limit abuse of the court process and systems.

d) Adulterer being a co – respondent

Rule 2 of the Matrimonial Proceedings Rules defines a co – respondent to mean a person cited in the matrimonial proceedings for divorce who is alleged to have committed adultery with the respondent to the proceedings.

However, the rules do not provide for how to include a co – respondent in the proceedings. Consequently, we propose that the rules be amended to expressly provide for how a co – respondent will be included, what to be pleaded and whether any reliefs can be sought by the Petitioner from the Respondent.

e) Registration of foreign annulments and divorces

R. 22(1) of the MPR provides that where a marriage celebrated in Kenya or elsewhere is annulled or dissolved by a decree of a foreign court, any party may apply for its registration.

However, S. 61 of the Marriage Act, 2014 only limits registration to marriages that were celebrated in Kenya. It provides:

“Where a marriage celebrated in Kenya is annulled or dissolved by a decree of a foreign court, any party to the annulled or dissolved marriage may apply to the Registrar to register the decree.”

Rules to be amended to limit registration to marriages celebrated in Kenya only.

R. 22(4) provides for submission of an objection to court by the Registrar. This may mean that the process is commenced in the Registrar of marriages office and finalized in court. Borrowing from how we handle objections to notices to marry, objections to foreign divorces can be determined by the Registrar with a right of appeal to court.

R. 22(5) states that on registering a foreign annulment or dissolution of marriage, the Registrar shall endorse on the foreign annulment or dissolution of marriage under the seal of the High court a certificate

confirming that the foreign annulment or divorce has been registered for use within Kenya.

Lastly, it appears that the party applying for registration should appear in person. The forms require the applicant to sign a petition accompanied by an affidavit.

We advise that the seal should be that of the Registrar of Marriages.

f) Format for decree nisi and absolute

Form MA20 and MA 21 in our view is shallow. Considering that a decree nisi and absolute is a court order, we believe that it should be conclusive. Consequently, we propose that they should be amended to include:

- i) Date and place of marriage
- ii) Kind of marriage dissolved
- iii) Duration between which a nisi should be made absolute
- iv) Date issued

g) Transmission of copies of decrees of annulment and divorce to the Registrar

S. 60 of the Marriage Act, 2014 reads:

“Where a court grants a decree of the annulment of a marriage or the dissolution of a marriage, it shall deliver a certified copy of the decree to the Registrar and the Registrar shall register the annulment or dissolution in a register maintained for the purpose”

The drafting of Matrimonial Proceedings Rules presents an opportunity to outline how the transmission of divorce decrees should be done. The way forward should be agreed upon by both the Judiciary and the Office of the Registrar of Marriages.

MARY MUTAARU
REGISTRAR OF MARRIAGES



THE JUDICIARY
FAMILY DIVISION, MILIMANI
VALIDATION OF DIVORCE PROCEEDINGS RULES
MEETING HELD ON 23RD NOVEMBER 2017
AT SHERATON HOTEL, NAIROBI



ATTENDANCE LIST

NO.	NAME	INSTITUTION	MOBILE NUMBER	EMAIL ADDRESS	SIGNATURE
1.	CHARITY OLUOCH	JUDICIARY	0722809874	charitycheb@gmail.com	
2.	MASEKA KITHINJI	LEXLINK	0786510760	mkithinji@lexlink.co.ke	
3.	Roseline K. Njogu	Lexlink	0722932231	rnjogu@lexlink.co.ke	
4.	Njeri Kamau	Lexlink	0717260094	nkamau@lexlink.co.ke	
5.	FATUMA RASHID	JUDICIARY	0718071565	mwanzarashid123@gmail.com	
6.	Isabella N Boroo	Judiciary	0723613060	isabellaboroo@gmail.com	
7.	PAULA N. NJUGUNA	LSK NBI BRANCH	0722812694	nygshp@gmail.com	
8.	Akwani Opanade	Judiciary	0703963456	soopande2@gmail.com	
9.	Andrayi Francis	Judiciary	0723016149	andrayi.f@yohoo.co	



THE JUDICIARY
FAMILY DIVISION, MILIMANI
VALIDATION OF DIVORCE PROCEEDINGS RULES
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ATTENDANCE LIST

	NAME	INSTITUTION	MOBILE NO	EMAIL ADDRESS	SIGNATURE
10	Mukabi Kimani	Judiciary	0727805995	mkimukabi@gmail.com	
11	JOY B. MDIVU	EACLS and LSK - NBI	0722327979	jmdivu@eacj.org	
12	Ishi Kalsi	Khi Kalsi and Co. Adv.	0137709678	kalsi.ishi@gmail.com	
13	KUNYUK JOHN TITO	Judiciary	0724687598	kunyak.bench@gmail.com	
14	Angela Munga-Mwambi	Mwambi & Co Advocates	0721584293	mwambiadvocates@gmail.com	
15	Helen Muthoni	Department of Nursing	072199364	helenmuthoni@gmail.com	
16	Stella Kanyin	Judiciary	0135810530	stella.kanyin@gmail.com	
17					
18	Lydia Mbacho	Judiciary	0727721507	mbacholydia@yahoo.com	



THE JUDICIARY
FAMILY DIVISION, MILIMANI
VALIDATION OF DIVORCE PROCEEDINGS RULES
MEETING HELD ON 23RD NOVEMBER 2017
AT SHERATON HOTEL, NAIROBI



ATTENDANCE LIST

NO	NAME	DIVISION/COURT	MOBILE NUMBER	EMAIL ADDRESS	SIGNATURE
19.	Sandra Ogof	Kimani Ct	0722813941	ogofsa@gmail.com	
20.	Milka Wawu	JKuAT	0724244244	milkawawu@yahoo.com	
21.	Lindah Olwoch	LSK NAIROBI	0717587508	olwochlindah@gmail.com	
22.	Njambi Kamau	Chigiti Adv.	0733555996	njambicamau@gmail.com	
23.	Caroline Kendagar	Judiciary	0722454219	kendagorcano@yahoo.com	
24.	Christine N. Ukeno	IDLO	0720621012	christineukeno@gmail.com	
25.	WILSON RADING	FAMILY	0721528272	wilsonrading@yahoo.com	
26.	Faith K. Muguongo	Criminal-HC	0737154736	kmfaith@gmail.com	
27.	Shay E. Hesse	Kachin-HC	0726966824	abchryfater-besch@gmail.com	



THE JUDICIARY
FAMILY DIVISION, MILIMANI
VALIDATION OF DIVORCE PROCEEDINGS RULES
MEETING HELD ON 23RD NOVEMBER 2017
AT SHERATON HOTEL, NAIROBI



ATTENDANCE LIST

NO	NAME	DIVISION/COURT	MOBILE NUMBER	EMAIL ADDRESS	SIGNATURE
19.					
20.	Joel Amiri	Family Div NB	0706223629	joelamiri@gmail.com	[Signature]
21.	Rose Ougo	Family Division Nairobi	0722522828	reougo@gmail.com	[Signature]
22.	Lydia Achode	Family Div NB	0715538614	lydiaachode@yahoo.com	[Signature]
23.	ROSELINE A. OGANYO	City Court	0733929866	roslynabiny@yahoo.com	[Signature]
24.	A.D. Muchelie	Family Div	0723157753	greymuchie@gmail.com	[Signature]
25.					
26.					
27.					



THE JUDICIARY
FAMILY DIVISION, MILIMANI
VALIDATION OF DIVORCE PROCEEDINGS RULES
MEETING HELD ON 23RD NOVEMBER 2017
AT SHERATON HOTEL, NAIROBI

ATTENDANCE LIST

	NAME	INSTITUTION	MOBILE NO	EMAIL ADDRESS	SIGNATURE
10	Beverlyne Lelei	Public Trustee	0729063130	beverlyne.lelei@ag.co.ke	
11	Elizabeth Mwalizi	Public Trustee	0720142389	emwalizi@yahoo.com	
12	Rose Mwangi	Advocate	0722 573697	rmwangi@gmail.com	
13	John Chigiti	Advocate	0714574444	chigiti1@gmail.com	
14	Mote Mungai	CLEAR NAIROBI	0716455387	mote.mungai@gmail.com	
15					
16					
17					
18					



THE JUDICIARY

Justice be our Shield and Defender



HIGH COURT OF KENYA

FAMILY DIVISION BAR-BENCH COMMITTEE

2ND VALIDATION MEETING OF THE DIVORCE AND MATRIMONIAL PROCEEDINGS RULES (2018)

HELD ON 31ST JANUARY 2018 AT SAROVA STANLEY HOTEL

ATTENDANCE SHEET

S/NO	NAME	EMAIL ADDRESS	SIGNATURE
1.	LYNNET ACHIENG ONYANGO	chachaonyango@gmail.com	
2.	TERESA WAGUTHI GACHAGUA	terzahterry@gmail.com	
3.	HELEN WAGWU MUTHONI	koimuthoni@gmail.com	
4.	BEATRICE DEPKOECH KOSGEI	beatricekosgei14@gmail.com	
5.	FRANCIS KIRIMI MARU	francismaru@gmail.com	
6.			
7.			
8.			
9.			
10.			



THE JUDICIARY

Justice be our Shield and Defender



HIGH COURT OF KENYA

FAMILY DIVISION BAR-BENCH COMMITTEE

2ND VALIDATION MEETING OF THE DIVORCE AND MATRIMONIAL PROCEEDINGS RULES (2018)

HELD ON 31ST JANUARY 2018 AT SAROVA STANLEY HOTEL

ATTENDANCE SHEET

S/NO	NAME	ORGANIZATION	EMAIL ADDRESS	SIGNATURE
1.	NOTE MUNGAI	CLERK	note.mungai@gmail.com	N. M.
2.	LYDIAH WAKAHU	Judiciary	wambuiLydia13@gmail.com	
3.	CYNTHIA LIAVULE	IDLO/RCT	aliavule@gmail.com	
4.	BRIAN AMBUWA	IDLO	bambulwa@idlo.or.ke	
5.	LYNN NG'ANG'A	LSK	wanyiro01lynn@gmail.com	
6.	FRANCIS K. MARIN	JUDICIARY	—	
7.	BARBARA M. MALOWA	LSK	malowakw2012@gmail.com	
8.	PAUNA NJUGUNA	LSK	nyasahp@gmail.com	
9.				
10.				



THE JUDICIARY

Justice be our Shield and Defender



HIGH COURT OF KENYA

FAMILY DIVISION BAR-BENCH COMMITTEE

2ND VALIDATION MEETING OF THE DIVORCE AND MATRIMONIAL PROCEEDINGS RULES (2018)

HELD ON 31ST JANUARY 2018 AT SAROVA STANLEY HOTEL

ATTENDANCE SHEET

S/NO	NAME	ORGANIZATION	EMAIL ADDRESS	SIGNATURE
1.	CATHERINE MBURU	JTI	katemburu@gmail.com	
2.	Janet Wangu	CLEAR	wangujanet@gmail.com	
3.	MARY M. KITONGA	LSK	mmkitonga@gmail.com	
4.	Caroline Kendagor	Judiciary	kendagorcaroline@gmail.com	
5.	MOSES WANJALA	Judiciary - Rule Committee	moseswanjala2000@gmail	
6.	CHRISTINE A. OKENO	IDLO	cakeno@idlo.int	
7.	FORAH AMIN	Judiciary	forahsamin@gmail.com	
8.	W. MUSYOKA	Judiciary	williammusyoka@gmail.com	
9.	Mukali Kiamani	Judiciary	mkukali@gmail.com	
10.				

