



NATIONAL ASSEMBLY

02nd JULY 2024

CONTRIBUTION TO THE DIVORCE BILL BY HON ELMA JANE DIENDA

Honourable Speaker

Honourable Members

Members of the Public

Divorce is an emotional and difficult process. I don't think any couple thinks about divorce when getting married. Marriage is entered into with hopes and dreams of a lifetime partnership filled with love, mutual support, and shared goals. However, the reality is that many marriages do face insurmountable challenges, leading to the difficult decision to divorce.

Honourable Minister, in your motivation, you mentioned consultations that took place in 2012, which is about 12 years ago. Considering that we are now in 2024, don't you think that societal dynamics and perspectives have significantly advanced since then? Is this Bill an accurate representation of our current society's wishes and needs? Have you conducted comprehensive and inclusive consultations with all relevant groups, including previously disadvantaged communities such as the Himba, San, and persons with disabilities? Moreover,

have you sought input from diverse religious communities, including the Islamic community and Charismatic Churches? It appears that the consultations may not have been as extensive and representative as they should have been to truly reflect the diverse fabric of our society.

I strongly recommend that this Bill refers to the Marriage Bill in terms of terminology. The clear and precise language of the Marriage Bill should be the standard for all related legislation to ensure consistency and avoid any ambiguity in legal proceedings.

Under *Section 1* of definitions, *Subsection 2 (b)*, the Bill stipulates that: For the purposes of the definition of child of marriage in subsection 1, the reference to child –

b) includes a child born from a marriage which is the subject of annulment of marriage proceedings.

I submit that subsection b above must be changed to include a child conceived or born from a marriage which is the subject of annulment of marriage proceedings. This is to ensure that children born outside the marriage but conceived during the marriage are accommodated.

Further, I submit that we add Subsection C that includes children legally adopted into the marriage being considered as children of the marriage. This addition would ensure that adopted children are also accommodated and recognized as integral parts of the family unit.

Honourable Speaker

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Under *Section 4* of instituting divorce proceedings by either party to the marriage, *Subsection 3* states that if either of the parties to the marriage institutes divorce proceedings on the ground of irretrievable breakdown of marriage and the other party denies the irretrievable breakdown of the marriage, the court may:

(b) if it appears to the court that there are reasonable prospects of reconciliation between the parties to the marriage, postpone the divorce proceedings for three months. In making such a decision, the court must be guided by the circumstances of the case before it and factors such as domestic violence, the welfare of the parties, and that of the children of the marriage.

Honourable Minister, noting that divorces can now occur at the magistrate level, is three months enough time for determining the prospects of reconciliation, especially considering the lack of experience and capacity of magistrates' courts in handling divorce matters amidst their many existing caseloads? Given the complexities and sensitivities involved in divorce cases, would an extended period be more appropriate to allow for a thorough and fair assessment?

Honourable Speaker

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I address the Bill currently under consideration with a profound sense of duty as a representative of the Roman Catholic Church. Within the Marriage Bill under *section 3* gives the Minister power to designate a member of a religious denomination as a marriage officer. I submit that the Divorce Bill must have a section on the marriage officer that solemnized the marriage that provides that if

a marriage is solemnized by a member of a religious denomination the rules of the religious denomination that solemnized the marriage must be taken into account at the divorce stage so that the Marriage and Divorce Bills are aligned. While the Bill's intends to address societal challenges, Hon. Minister, it falls short in upholding the foundational principles of marriage as subscribed by marriage officers from religious denominations such as the Catholic faith.

Within the context of my contribution to this Bill, I do not mean that people must stay in abusive, adulterous, or unbearable marriages, not at all. However, I am saying that we should all have God at the center of marriage to reduce divorces. If your marriage is solemnized by a Catholic Marriage Officer within the Roman Catholic Church, you should be bound by the rules of the Church. Therefore, it is my humble submission that if you get married in the Catholic Church by a Roman Catholic Marriage Officer, Church approved canonical grounds for marriage annulment must be followed, ensuring that any process of annulment is based on well-defined and understood criteria.

Though the Government and the Church differ, in Namibian society the government gives the church authority to officiate wedding ceremonies. This Bill undermines the authority of the Church, which is granted powers by the government. Why is the opinion of the Church not incorporated, Honourable Minister? Before marriage, there is compulsory pre-marriage counseling within the Roman Catholic Church. The spouses are counseled together rigorously, and the intention to marry is announced on three consecutive Sundays, giving any Namibian citizen and the spouses adequate time to provide input on the validity of the marriage. Thus, the intention to marry in the Church is not a quick one. Why should the divorce be quick?

Honourable Speaker

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The introduction of a no-fault divorce regime is particularly concerning. It implies that marriages can be dissolved without a thorough examination of the circumstances and without attributing responsibility to either party. By facilitating easier divorces, the Bill undermines the essence of this commitment and may inadvertently promote a culture of disposability in relationships.

My question to you, Minister, don't you think the phrase "till death do us part" has lost its significance since this Bill reiterates the significance of divorce? Should this sacred vow, made in a sacred church, continue to be professed if we are not following through on its profound commitment?

Will "*till death do us part*" still remain a cornerstone at wedding ceremonies in Church, even as its significance is diminished by the ease of civil divorce? These are critical considerations, as the sacred vow represents not just a legal contract but a covenant blessed by God, intended to be lifelong and unbreakable. It is not about dissolving a valid marriage but about recognizing situations where the marriage lacked the necessary elements from its inception.

Honourable Speaker

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The Bill's focus on simplifying divorce procedures also overlooks the need for comprehensive Pastoral support and guidance for couples in crisis. The Church advocates for marriage counseling, spiritual direction, and other forms of support to help couples navigate their difficulties. Such interventions are crucial in

fostering forgiveness, understanding, and ultimately, the healing of relationships. The Bill should incorporate mechanisms that promote and prioritize these supportive measures rather than defaulting to divorce as the primary solution.

Moreover, the Bill's provisions on spousal and child maintenance, while important, should be complemented by a stronger emphasis on the responsibilities and commitments inherent in marriage. Financial and custodial arrangements, though necessary, should not eclipse the moral and spiritual dimensions of marital obligations. The Church teaches that spouses have a duty to love and support each other and to provide a stable and nurturing environment for their children, which is best achieved within the context of a united family.

The proposed legislative changes also appear to sideline the role of the Church and other religious institutions in matters of marriage and divorce. Given the profound spiritual implications of marriage, it is essential that the perspectives of religious communities are adequately represented and respected in the formulation of such laws. The Catholic Church, along with other faith communities, has a wealth of wisdom and experience in guiding and supporting marriages, which should be leveraged to enhance the effectiveness and humanity of the legal framework.

Additionally, the Bill does not address the potential long-term societal impact of facilitating easier divorces. Marriage is a cornerstone of social stability and cohesion. When marriages break down, the ripple effects are felt throughout the community, affecting children, extended families, and social networks. The Church believes that preserving the integrity of marriage is essential for the well-being of society as a whole. Therefore, any legal reforms should prioritize the preservation of marriages and the promotion of family unity.

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Let me address *Section 8* on the division of assets, specifically *Subsection 6*, which stipulates that any order for the division of assets must, where relevant and practicable, include provisions for the disposition of the following assets and liabilities:

(d) credit agreements as defined in the Credit Agreements Act, 1980 (Act No. 75 of 1980), where either party to the marriage is a credit receiver.

Honourable Minister, is there no provision within the substance of this Bill for spouses to agree to keep their credit separate? We have seen numerous cases where one spouse's poor credit management can adversely affect the other's financial standing. It is crucial to find a solution that allows for the separation of credit agreements to prevent one spouse's credit from ruining the other's financial stability. Credit can have a significant impact on someone's life, and it is essential that this Bill considers mechanisms to protect individuals from the potential financial ruin caused by their spouse's credit issues.

Moving on, I would like to address *Section 10* on spousal maintenance, particularly *Subsection 5*, which states that a spousal maintenance order may be granted by a court definitely or indefinitely or until the happening of an event. The court may impose such other conditions as it considers appropriate and just. Honourable Minister, what is meant by "the happening of an event"? What specific events are being referred to, and why isn't this clearly articulated within the Bill?

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Let me address *Section 19* on the privacy of certain proceedings. *Section 19* stipulates that at the initiative of the court or on application made by either party to the marriage, by both parties jointly, or by any person who can show interest, the court may make an order regarding the privacy of proceedings. However, the term "show interest" is ambiguous and needs clarification to ensure a complete understanding of what qualifies someone to request private proceedings. This should be clearly defined to avoid any misinterpretation and to ensure transparency in the application of this provision.

Furthermore, *Section 20* of the Bill, which deals with the restriction of publication of certain court proceedings, should align with the interest requirements stipulated in *section 19*. Consistent guidelines are necessary to provide clarity and ensure uniform application of privacy and publication restrictions across all relevant proceedings. This will help maintain the integrity of the legal process and protect the privacy of the parties involved.

The lack of clarity on this point raises concerns about the potential for subjective and inconsistent interpretations, which could result in unfair outcomes. Explicitly defining what constitutes "*the happening of an event*" would provide greater transparency and fairness in the application of spousal maintenance orders.

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Let me address *Section 21* on Donations and Gifts, which stipulates that, subject to the provisions of the *Insolvency Act, 1936 (Act No. 24 of 1936)*, a gift given in anticipation of marriage becomes part of the assets of the person who received it.

I have two questions regarding this provision. Firstly, what happens to the gifts if the marriage does not materialize for some reason? Is there a mechanism for the giver to reclaim the gifts, or are they retained by the recipient regardless of the marriage outcome?

Secondly, according to our cultural traditions, gifts given to a spouse are considered to belong to both spouses, reflecting the union of marriage. This section appears inconsistent with our traditional values of gifting newlyweds or individuals intending to marry, as it designates the gifts solely to the recipient rather than recognizing them as shared assets within the marriage. How does this section reconcile with our cultural practices, and is there room for adjustment to honor these traditions?

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Let me move on to the aspect of lobola. Lobola is a bride price traditionally paid with cattle but money and other items of value may be utilized. This practice holds significant cultural importance and symbolizes the union between two families. The value of lobola can fluctuate, either increasing or decreasing over

time. In the context of divorce proceedings, what happens to the lobola that was paid?

Given its cultural and financial significance, should the lobola be returned if the marriage ends in divorce? This question is crucial because lobola is not merely a transaction but a deep-rooted tradition that represents respect, commitment, and the bond between families. When a marriage dissolves, there is a need for clarity on whether the bride price should be refunded, especially if the marriage is considered to have failed. Addressing this issue within the Divorce Bill is essential to respect cultural practices and provide a clear legal framework that acknowledges the traditional and financial implications of lobola. How does the Bill propose to handle this aspect, ensuring that it aligns with both legal and cultural expectations?

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Finally, I urge this esteemed House to consider the profound words of Pope Francis, who has consistently emphasized the importance of accompanying and supporting families, especially those in crisis. In his apostolic exhortation **Amoris Laetitia**, he writes, *The welfare of the family is decisive for the future of the world and that of the Church*. The Bill, in its current form, does not adequately reflect this vital concern for the future of our families and communities.

In conclusion, while the Divorce Bill aims to address practical challenges within our society, it must be grounded in a deeper understanding of marriage that respects its spiritual, moral, and social dimensions. The Churches and other faith based organizations stand ready to engage in constructive dialogue to ensure that

any legal reforms uphold the sanctity of marriage and provide the necessary support for couples to fulfill their commitments and find paths to reconciliation and healing.

I request that by virtue of Rule 37 of the Standing Committee, this Bill which is currently at second reading be referred to the relevant standing or Select Committee for enquiry and report under Rule 40.