

**STATUTE LAW (MISCELLANEOUS AMENDMENTS)**

**(No. 2) BILL 1996**

**Matters for further consideration**

**Section 17A WILLS AND INHERITANCE ACT (CAP.10:02)**

- . Is 3 years imprisonment sufficient or should it be enhanced
- . Should there be an option of a fine? If yes, what level of fines?
- . Is the property distribution formula fair?  
If not should amendments be proposed now?

**Section 9 MALAWI CITIZENSHIP ACT (CAP.15:01)**

- . Should the procedure still be in place?

**Section 5 DIVORCE ACT (CAP.25:04)**

"No fault divorce" - should this only be on agreement of parties? Does this not defeat the purpose of the provision?

**Section 8 provisal**

- . Is the extension of the provisal to include "any other exceptional circumstances affecting the health, well being or other aspects of the life of the petitioner or respondent" enough to counter-act the 3 year period required before divorce can be sought?

**Section 5 AFFILIATION ACT**

- . Is K500 adequate as maximum award?  
If not what amount would suffice?
- . Alternatively, should the section not prescribe a minimum and have a provisal for the court to order a lower amount where the means of the dependent is lower than the provided minimum?

**Section 8**

- . Is K1,000 adequate for an Employer who defaults

## **PARTICIPANTS**

### **Resource Persons**

Ms. Mirriam Maluwa, Chief Parliamentary Drafter  
Ministry of Justice  
Private bag 338  
Lilongwe

Mr. Elton Singini, Law Commissioner  
Private Bag 373  
Lilongwe

### **Members of Parliament - Caucus Members**

Hon. Mrs. Edda Chitalo, MP  
Minister of Physical Planning and Surveys  
Private Bag  
Lilongwe 3

Hon. Mrs. Lilian Patel, MP  
Minister of Women and Children's Affairs, Community Development and Social Welfare  
Private Bag 330  
Lilongwe 3

Hon. Lizzy Lossa, MP  
Deputy Minister of Finance  
P.O. Box 30049  
Blantyre

Hon. Catherine Chipembere, MP  
Deputy Minister of Health  
P.O. Box 30377  
Blantyre 3

Hon. Mrs. Kate Kainja, MP  
Box 51776      Box 26  
Limbe              Dedza

Hon. Mrs. A. Sumani, MP  
P.O. Box 123  
Ntaja  
Machinga

Hon. Mrs. L.M. Chagwanjira, MP  
Box 430  
Ntunthama

## **Members of Parliament - Other**

Hon. A.J. Makhalira, MP  
Second Deputy Speaker

## **High Court**

Justice A. S. Msosa  
Box 30244  
Blantyre 3

## **Ministry of Women and Children's Affairs**

Mrs. Linley Kamtengini  
Private Bag 330  
Lilongwe 3

Mrs. C. Sinoya  
Private Bag 330  
Lilongwe 3

S.J. Mkandawire  
Private bag 330  
Lilongwe

A. Naphiyo  
P.O. Box 30714  
Lilongwe

Mrs. L.V. Magreta  
Private Bag 330  
Lilongwe 3

C.V. Kang'ombe  
Private Bag 330  
Lilongwe 3

## **Political Party Representatives**

Mercy Kanyuka, UDF Central Region

## **Malawi Law Society – Committee on Women and Children**

Rosemary Kanyuka  
P.O. Box 5248  
Limbe

Maureen Kachingwe  
Box  
376  
Blantyre

Mbuto Michonawe  
Chizumila and Company  
P.O. Box 30056  
Lilongwe 3

Mrs. Esme J. Chomo  
Box 30238  
Lilongwe 3

### **Non-Governmental Organization Representatives**

Irene Dawe  
C/O Mr. Steven Dawe  
Royal Insurance  
Private Bag 88  
Blantyre

Widow's Club

Joyce Banda  
Private Bag 56  
Blantyre

National Association of Business Women (NABW)

Emmy Chanika  
P.O. Box 2553  
Blantyre

Civil Liberties Committee (CILIC)

Mrs. Thandi Mbvundula  
P.O. Box 31318  
Lilongwe 3

Malawi Professional Women's Association (MPOWA)

Mrs. F. Chirwa  
Private Bag 162  
Blantyre

Association for the Upliftment of Women (AFUWO)

Mrs. Abigael Kamesa  
Private Bag 162  
Blantyre

Association for the Upliftment of Women (AFUWO)

Mrs. Catherine Munthali  
Box 1207  
Lilongwe

Society for the Advancement of Women (SAW)

R. Kachere  
P.O. Box 30559  
Blantyre

Association of Progressive Women

**Chiefs**

Chief Chamba, Machinga District  
P.O. Box 1  
Machinga

Chief Kalolo, Lilongwe District  
P.O. Box  
Lilongwe

Chief Chitela, Chiradzulu istrict  
P.O. Box 42  
Chiradzulu

Chief Kiongoni, Lilongwe District  
P.O. Box  
Lilongwe

Chief Chikumbu (Mrs. E. Katunga)  
P.O. Box 217  
Mulanje

**Other**

Ulnike Bertolshum  
A 43/136  
Lilongwe

GTZ

## SUMMARY OF RECOMMENDATIONS

### WIDOWS AND INHERITANCE

- Length of imprisonment should be increased from 3 years to 7 years so that the offense is classified as a felony rather than a misdemeanor.
- The option of a fine should be retained but the current amount should be increased to MK 20,000.
- Definition of “*hardship*” under section 84 (a) should not be restricted to the definition under section 17 (2)b. This should be left to interpretation.
- Formula should be revised in light of fairness.
- Define “*contribution of the woman.*” The court should interpret the matter in favour of the woman in determining what amounts to “*contribution.*”
- Under Section 84 (a), include a provision for the appointment of a special prosecutor to enforce the Act. Possibly confer powers on the chiefs to be such prosecutors and give them the authority to appoint others to represent them.
- There is need to sensitize people on inheritance laws. Adopt the strategy as per the Corrupt Practices Bill.
- The Women’s Caucus should ensure that once the new proposed amendments are passed, the Act is distributed to all chiefs and all chiefs are sensitized to the law.

### CITIZENSHIP

- Proposed recommendations have been agreed to but it was observed by the group that the provision must be applied strictly and there is need for civic education to avoid abuse of the provisions.

### MARRIAGE

- Lower the prescribed age of a minor from 21 to 18.
- The exception for widows and widowers should be retained and should be expanded to include divorcees.
- A minimum age of 15 should be required for marriage.

- Section 19 should be amended so that consent is obtained from “parents” and not from the mother only in the case that the father is “*dead, of unsound mind or out of the country.*”

## **DIVORCE**

- Section 4 of the Divorce Act should be amended so that jurisdiction under the Act is extended to “*such subordinate courts of magistrates presided over by legally qualified persons as the Chief Justice may designate by order published in the Gazette.*” As recommended by the draft.
- The Divorce Act should be amended so as to extend the grounds of divorce under section 5 to include the ground of “*where the marriage has irretrievably broken down.*”
- Section 5 (a) (e) of the Divorce Act should be amended to read “*Where her husband has, since the celebration of the marriage, been guilty of a sexual offense.*”
- The 3 year restriction before a divorce can be sought under the Divorce Act must be retained and the exceptions relating thereto under section 8 must be extended to include “*any other exceptional circumstances affecting the health, well being or other aspects of the petitioner or respondent.*”
- The recommendation for a “*no-fault divorce*” should not be included in the bill.

## **AFFILIATION**

- Section 5 of the Affiliation Act should provide a minimum of MK500 and have a provision for the court to order a lower amount where the means of the defendant is lower than the provided minimum.
- The lump sum under section 5 (1) should be increased to MK 50,000 as a minimum with a provision for the court to order a higher amount where appropriate.
- All other recommendations relating to increase of fines were agreed to.





NATIONAL  
DEMOCRATIC  
INSTITUTE  
FOR  
INTERNATIONAL  
AFFAIRS

*1717 Massachusetts Avenue, NW  
Fifth Floor  
Washington, DC  
20036*

202.328.3136

FAX 202.939.3166

E-MAIL [5979039@MCMAIL.COM](mailto:5979039@MCMAIL.COM)

