The Malawi Gazette Supplement, dated 30th January, 2015, containing a Bill

NOTICE

The following Bill, for introduction in Parliament, is published for general information.

LILONGWE, 30th January, 2015.

R. L. GONDWE
Acting Clerk of Parliament

MARRIAGE, DIVORCE AND FAMILY RELATIONS BILL, 2015

MEMORANDUM

This Bill seeks to implement the recommendations of a special Law Commission contained in the report of the Law Commission on the Review of the Laws on Marriage and Divorce (Law Commission Report No. 16) published on 26th June, 2006.

Background

In September, 2001, the Government, in response to the new and emerging socio-political dispensation in Malawi, and also, in recognition of the commitment to international and regional instruments on gender equality Government's and women's empowerment, through the Law Commission, constituted a special Law Commission (the "Commission") to undertake a review of the laws of Malawi in accordance with Government's policy to promote gender equality and the empowerment of women in all spheres of life in Malawi.

In November, 2002, the Commission conducted two workshops with stakeholders; one with gender stakeholders and the other with the Parliamentary Women Caucus, for the purpose of setting priority for the law reform process. The Commission identified three areas of law in urgent need of reform or development, namely, the law on succession, especially the issue of property grabbing; the laws on marriage and divorce; and the development of a gender equality statute. This Bill relates to reforms on the laws relating to marriage and divorce;

Law on Marriage and Divorce

The core statutes on marriage and divorce were enacted in pre-independence Malawi. With the advent of coming into force of the Republican Constitution of 1994, a number of critical constitutional developments have taken place in Malawi. The country has since evolved from a legal system based on parliamen-

tary supremacy to one based on constitutional supremacy with an entrenched bill of rights. The paradigm shift has consequences on the rights and obligations of persons, including parties in a marriage contract, and it is critical, therefore, that these constitutional developments are properly articulated in the scheme of the laws on marriage and divorce. Further, Malawi has an obligation to meet international legal standards in its laws, and the laws on marriage and divorce are no exception from that perspective.

Establishment of a Unified Regime on the Law on Marriage

The Commission, among other things, noted that the current status of the law on marriage is unsatisfactory as it is determined by three types of marriages, and each regime of marriage has a different set of rights and obligations. This creates various problems in terms of equality. These problems are further compounded by the fact that the laws governing the three regimes of marriage are derived from different sources, making them inaccessible and confusing for the majority of the population. The Commission, therefore, recommended that there must be one law in Malawi that consolidates statutory and customary laws on marriage and divorce.

The Bill, in effect, proposes to consolidate statutory and customary laws on marriage and divorce. This entails the repeal of the statutory laws on marriage and divorce, namely, the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act, and the Maintenance Orders (Enforcement) Act, and those aspects of customary laws on marriage and divorce governing the rights and obligations of the parties, maintenance, custody of children and divorce.

The Bill also proposes the retention of the current marriage regimes, in so far as the preliminary formalities for entering into marriage are concerned. However, under the new scheme, the rights and obligations of parties to any marriage, regardless of the applicable formalities under which the marriage was contracted, shall remain the same.

The Bill identifies and stipulates the types of formalities that may be validly followed by parties under a marriage contract, namely, the capacity of parties to enter into a marriage contract; matters of formality under a marriage contract; the rights and obligations of parties under a marriage contract during the subsistence of, and at the dissolution of, the marriage; and maintenance of parties during the subsistence and dissolution of marriage.

The title of the Bill—"Marriage, Divorce and Family Relations Bill"-and the long title which reads as follows—

"An Act to make provision for marriage, divorce and family relations between spouses and between unmarried persons, their welfare and maintenance and that of their children; and for connected matters",

reflects the fact that it goes beyond the regulation of the relationship of a

husband and wife or two persons living together in a conjugal relationship, but regulates other aspects of a family relationship.

Status and Effect of Current Marriage Regimes under the Proposed New Legislation

The Commission observed that the present state of the law of marriage perpetuates inequalities due to the differences between the rights and obligations available to spouses under each of the regimes of marriage. The lack of certainty as to the extent, if any, of rights and obligations available to spouses married by repute or permanent cohabitation further exacerbates this inequality. The Commission noted that the State and society have a duty to protect all the parties to a marriage contract in order to realise their rights under a marriage.

Consequently, the Bill proposes that all the types of marriage will be recognized under the proposed new legislation, namely, a civil marriage; a customary marriage; a religious marriage; or marriage by repute or permanent cohabitation.

The Commission noted that since the proposed new legislation introduces equal rights and obligations to all married couples, regardless of the formalities that they went through, it would be unfair for couples who celebrated their marriages before the new Act comes into operation not to benefit from it. The Commission considered that in fostering the right of equality before the law granted under section 20 of the Constitution, all parties who celebrated their marriages before the new law comes into operation should also benefit from equal treatment in terms of rights and obligations of parties to a marriage under the proposed new law. The Commission, therefore, recommended that the new legislation applies retroactively to the marriages celebrated prior to its coming into force. This will allow those Parts of the new law governing the rights and obligations of parties to a marriage, divorce, maintenance and custody of children to apply to all marriages regardless of the date those marriages were celebrated.

The Bill, therefore, proposes that the new proposed legislation shall apply to marriages contracted on or after the day the legislation comes into operation; but Part IX will apply to all marriages regardless of the date they were celebrated.

Issues for Reform

In addition to the need for a unified and comprehensive law on marriage, divorce and family relations, the Commission noted that each of the different marriage regimes is replete with its own gender-related problems that must be addressed in the proposed new law, and in this regard, the Bill proposes several substantive reforms.

Polygamy

The Bill retains the status quo in terms of polygamy. As such, polygamy is

prohibited only with respect to statutory marriages (civil marriages).

Marriage by repute or permanent cohabitation

The Commission also noted that the difference between marriages by repute or permanent cohabitation, on the one hand, and marriages under statute or custom, on the other, is that the former is only recognized after two people have lived together or have been reputed to have conducted themselves in a manner similar to spouses. There is no requirement of formality and there is no guarantee that the courts will decide that any such relationship was in fact a marriage. The current scenario, therefore, causes hardship to parties in such marriages, especially women, who may find themselves with no right to succession or inheritance; distribution of property, maintenance or even to custody of children at the dissolution of the marriage. The Commission, therefore, recommended that the proposed new law should regulate marriages by repute or permanent cohabitation by setting clear guidelines on the requisite extent of repute or length of cohabitation necessary to constitute such a marriage.

Capacity to Marry

Age

The Commission considered the lack of consistency as to the age of marriage within the various regimes of marriage unsatisfactory; only statutory marriages set the age of 18 years as the minimum age for marriage. Both customary marriages and religious marriages have no fixed age requirement and the attainment of puberty tends to be a critical determinant of capacity to marry.

The Commission noted that under subsection (6) of section 22 of the Constitution a person of eighteen years of age may enter into a marriage without first seeking the consent of his or her parents; and under subsection (7) of section 22 of the Constitution, persons aged between fifteen and eighteen years must obtain parental consent before they can validly enter into a marriage contract.

The Commission noted that in the case of the girl child, marriage under the age of eighteen years is a health hazard; early marriage also has negative development implications, and unless early marriages involving girls are discouraged, the attainment of the Millenium Development Goals; especially Goal 3, which emphasizes the need for girl child education, or the goal on Human Capital Development under the Poverty Reduction Strategy Paper, may be elusive.

In light of the foregoing, the Commission recommended, and the Bill proposes, the following provision on capacity to enter a valid marriage—

> "Subject to section 22 of the Constitution, two persons of the opposite sex who are both not below the age of eighteen years, and are of sound mind, may enter into marriage with each other.".

B. No. 5

Sex

The Commission observed that the scheme of the law on the various types of marriages in Malawi presupposes a heterosexual union. The Commission was aware of instances where persons have undergone "sex change" operations and the legal debates that ensue in those cases when it comes to capacity to marry.

The Commission maintained the position at common law as regards the sex of a person; that sex is determined at birth, hence sex, for purposes of marriage, will continue to be regarded as one's sex at birth. Such a determination of sex at birth avoids any potential problems caused by transsexuals or persons who have undergone sex-changing surgery later in life from marrying a person who, prior to that sex-changing surgery, was of the same sex as them.

MARRIAGE, DIVORCE AND FAMILY RELATIONS BILL, 2015

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A BILL

entitled

An Act to make provision for marriage, divorce and family relations between spouses and between unmarried couples, their welfare and maintenance, and that of their children; and for connected matters

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Marriage, Divorce and Family Relations Act, 2015, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

"adultery" means voluntary sexual intercourse by a married person with a person other than his or her spouse;

"certified copy", in relation to an order of a court, means a copy of the order certified by a proper officer of the court to be a true copy of the order;

'child" means a person who is below the age of eighteen years;

"civil marriage" means a marriage celebrated by a registrar in accordance with Part IV and Part VII, respectively;

"cleric" means a recognized cleric or minister of a religion, religious body, denomination or sect, belonging to a place of worship licensed as a place for the celebration of marriage under section 11;

"cohabitation" means the fact of a man and a woman, not married to each other in accordance with this Act, living together as, or as if they were, husband and wife;

"consortium" means the fact of a husband and wife living together, and includes a right to consummation, companionship, care, maintenance and rights and obligations commensurate with the status of marriage;

"country" includes any protected State and any trust territory administered by the Government of any country;

"court" means the High Court or other court having jurisdiction as specified under this Act and, in relation to any claim within its jurisdiction, includes a traditional or local court;

"customary marriage" means a marriage celebrated in accordance with rites under the customary law of one or both of the parties to the marriage;

"dependant", in relation to another person against whom there is a maintenance order by a court or tribunal of a foreign country, means such person as that other person is, according to the law in force in that foreign country, liable to maintain;

"habitual drunkard" includes a person whose excessive drinking of liquor or taking of habit forming substances prevents or otherwise makes him or her unable to provide reasonable maintenance for a spouse or any child of the marriage dependent on such person;

"irretrievable breakdown of marriage" means a situation where one or both of the spouses prove to the court that they can no longer live together in consortium as husband and wife;

"judicial separation" means the separation of a husband and wife by court decree;

"maintenance order" means an order for the payment in cash or of a specified cash value towards the maintenance of a spouse, a single pregnant woman, a child, a dependant, or a person entitled to maintenance under this Act;

"marriage notice" means the prescribed notice of marriage required under this Act;

"Marriage Register Book" means a book of register issued to every registrar for the registration of marriages under this Act;

"matrimonial property" includes—

(*a*) the matrimonial home or homes;

(*b*) household property in the matrimonial home or homes;

(*c*) any other property whether movable or immovable acquired during the subsistence of a marriage which by express or implied agreement between the spouses or by their conduct is used, treated or otherwise regarded as matrimonial property;

"non-monetary contribution" means the contribution made by a spouse for the maintenance, welfare or advancement of the family other than by way of money, and includes—

(*a*) domestic work and management of the home;

(*b*) childcare;

(*c*) companionship;

(*d*) the endurance of the marriage; or

(*e*) any other manner or form of contribution as the court may consider appropriate;

"permit"means a certificate issued by the Registrar under section 24 or section 28, as the case may be, after the preliminary formalities of marriage have been completed permitting the parties to celebrate their marriage;

"registrar" means the Registrar of Marriages or other public officer or other person acting under his or her authority as specified under section 4 (3);

'Registrar of Marriages" means the public officer designated as such under section 4;

"religious marriage" means a marriage celebrated by a cleric in accordance with the recognized rites of a religion, religious body, denomination or sect to which one or both parties to the marriage belong;

'sex', in relation to the gender of a person, means the sex of that person at birth;

3. This Act shall apply to marriages entered into on or after the day it comes into operation; but Part IX shall apply to all marriages regardless of the date they were celebrated.

PART II—GENERAL

Registrar of Marriages

4.—(1) There shall be the office of the Registrar of Marriages which shall be a public office.

(2) The officer for the time being holding or acting in the office of Registrar General shall be the Registrar of Marriages.

(3) The following offices shall perform the functions of the Registrar of Marriages subject to the general or special direction of the Registrar of Marriages (and are, in this Act, hereinafter referred to as "registrars")—

(*a*) the District Commissioner in respect of the district of his or her jurisdiction;

(*b*) a traditional authority with powers to register a marriage under the Act; and

(*c*) a cleric.

Publication of list of registrars

5. The Minister shall, by order published in the *Gazette*, publish a list of registrars of marriages under this Act.

Registrars to be provided with books of marriage certificates
First Schedule

6.—(1) The Registrar of Marriages shall deliver to the several registrars marriage register books in duplicate and with counterfoil in Form A in the *First Schedule.*

(2) The several registrars shall have custody of the books of marriage certificates delivered to them.

Registration of marriages

7. Every marriage celebrated in accordance with this Act shall be registered by a registrar.

Marriage Register Book
First Schedule

8.—(1) A registrar shall enter into the Marriage Register Book all particulars of certificates of marriage which have been filed in his or her office, place of worship or work in Form A in the *First Schedule.*

(2) An entry under subsection (1) shall be—

(*a*) made in its chronological order;

(*b*) signed by a registrar; and

(*c*) indexed in a manner that is best suited for easy reference.

(3) A registrar shall make the Marriage Register Book available for inspection during office hours and shall on application make certified copies from it upon payment of a fee prescribed in the *Second Schedule.*

Second Schedule

(4) Within ten days after the last day of each month, every registrar shall send to the Registrar of marriages a certified copy of all entries made by him or her in the Marriage Register Book during the preceding month, and the Registrar of marriages shall file the certified copy in his or her office.

Correction of clerical errors in marriage certificates

9.—(1) A registrar may correct a clerical error in any certificate of marriage filed in his or her office upon the production of the certificate delivered by any party to the marriage.

(2) A registrar shall authenticate any correction in a certificate of marriage by his or her signature, official stamp and the date of the correction.

Evidence of marriage

10. The following shall be admissible as evidence of a marriage to which it relates—

(*a*) a certificate of marriage filed in the office of a registrar;

(*b*) a copy of a certificate of marriage, signed and certified as a true copy by a registrar;

(*c*) an entry in a Marriage Register Book; or

(*d*) a signed and certified copy of an entry in a Marriage Register Book.

Minister to license places of worship to celebrate marriages

11.—(1) The Minister may, upon application, license any place of worship to be a place for the celebration of marriages under this Act.

(2) Notwithstanding subsection (1), a place of worship shall not be licensed unless the applicant or the person in charge of the place of worship has legal personality under the Trustees Incorporation Act or any other written law to operate the place of worship.

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(3) The Minister may, at any time, revoke the licence under subsection (1) if he or she satisfied upon reasonable grounds that a place is not fit for the celebration of marriages under this Act.

(4) The Minister shall give notice of the licensing of a place of worship or the revocation of the licence—

(*a*) in the *Gazette*; and

(*b*) to the person in charge of the place of worship.

Marriages recognized under the Act

12.—(1) A marriage recognized under this Act shall be either—

(*a*) a civil marriage;

(*b*) a customary marriage;

(*c*) a religious marriage; or

(*d*) a marriage by repute or permanent cohabitation.

(2) A marriage conducted in accordance with the laws of another country, where one or both of the parties is subject to the laws of that country, shall be recognized in Malawi as a valid marriage.

(3) All marriages recognized under this Act shall have the same legal status.

(4) Without prejudice to any procedures prescribed for marriage under this Act, any institution or procedure that traditionally facilitates the celebration of a customary marriage shall continue to be recognized as such under this Act.

Marriage by repute or permanent cohabitation

13. A marriage by repute or permanent cohabitation shall only be recognized under this Act upon a finding of a court of competent jurisdiction where that court considers—

(*a*) the length of the relationship, which, in any event, shall not be less than five (5) years;

(*b*) the fact of cohabitation;

(*c*) the existence of a conjugal relationship;

(*d*) the degree of financial dependence or interdependence and any agreement for financial support between the parties;

(*e*) ownership, use and acquisition of property;

(*f*) the degree of mutual commitment to a shared life;

(*g*) whether the parties mutually have, care for, or support, children;

(*h*) the reputation of the parties in the community as being married and the public display of aspects of their shared relation; and

(i) any other factors that the court considers fit.

PART III—ESSENTIAL ELEMENTS OF MARRIAGE

Capacity to enter into a valid marriage

14. Subject to section 22 of the Constitution, two persons of the opposite sex who are both not below the age of eighteen years, and are of sound mind, may enter into marriage with each other.

Marriages within prohibited degrees of kindred and affinity
Third Schedule

15. A marriage celebrated between—

(*a*) a man and any of the persons mentioned in the First Column of Parts I, II, and III of the *Third Schedule*;

(*b*) a woman and any of the persons mentioned in the Second Column of Parts I, II, and III of the *Third Schedule*,

shall not be valid on the ground of kindred or affinity.

Explanations to be given by a registrar

16. A registrar shall explain to the parties intending to marry the prohibited degrees of kindred or affinity, the prohibition on

polygamy and the penalties which may be suffered for offences under this Act, and shall cause the parties to sign a prescribed form of acknowledgement of such explanation in Form K in the *First Schedule.*

PART IV—PRELIMINARIES TO A CIVIL MARRIAGE

Declaration of marital status prior to marriage

17. A person entering into a marriage under this Part shall first prove, by way of declaration before a registrar, that he or she is single.

Prohibition of polygamy in a civil marriage

18. A person who contracts a civil marriage shall be married to one spouse only.

Notice in a civil marriage *First Schedule*

19.—(1) A party to an intended marriage shall sign and give to the registrar a notice in Form B in the *First Schedule.*

(2) Where the party to the intended marriage giving the notice desires the marriage to be celebrated in a district other than that in which he or she resides, that party shall so inform the registrar accordingly.

(3) If a marriage is intended to be celebrated in another district, the registrar of the original district shall forward a copy of the notice to the registrar of the other district, and immediately upon receiving the notice, the other registrar shall affix the notice onto the outer door of his or her office or place of worship or work.

Signature of notice by person unable to write or understand the English language

First Schedule

20.—(1) If the person giving notice under section 19 is unable to or understand the English language, it shall be sufficient if he or she places a mark or a cross as appropriate in the presence of a person literate in the English language and that person shall attest the marking or crossing.

(2) An attestation made under subsection (1) shall be in Form C in the *First Schedule.*

Registrars to supply forms of notice

21. Every registrar shall supply forms of the notice under section 19 without charge to any person applying for them.

Notice to be entered in Marriage Notice Book and published

22. A registrar shall enter the notice under section 19 in the Marriage Notice Book.

Publication of a marriage notice

23. After entering a notice of marriage in the Marriage Notice Book, the registrar shall publish the notice by affixing a copy of it onto the outer door to his or her office or place of worship or work,

there to be kept exposed until he or she grants a permit, or until three months have elapsed, whichever is the sooner.

Issue of a registrar's permit in a civil marriage
First Schedule

24. A registrar who receives the notice under section 19 shall at any time after the expiry of twenty-one days and before the expiry of three months from the date of the notice, issue a permit in Form D in the *First Schedule* if he or she is satisfied that—

(*a*) the parties have complied with sections 14, 15, 17 and 18;

(*b*) one or both of the parties has or have been resident within the district at least fifteen days preceding the granting of the permit;

(*c*) there is no caveat under section 30 lodged against the marriage or if a caveat has been lodged, it has been removed in accordance with the procedure set out in Part VI;

(*d*) the parties are not within the prohibited degrees of kindred or affinity; or

(*e*) neither of the parties to the intended marriage is married to another person.

Power of Minister to grant special licence

25. The Minister, upon proof being made to him or her by affidavit that there is no lawful impediment to a proposed marriage, may, in his or her discretion, dispense with the giving of notice, and with the issue of the permit of registrar, and may grant a special licence, in Form E in the *First Schedule*, authorizing the celebration of a marriage between the parties named in the licence by a registrar.

PART V—PRELIMINARIES TO RELIGIOUS AND CUSTOMARY MARRIAGES

Marriages under this Part to accord with customs and rites of religious body, sect, denomination or ethnic groups

26. Subject to sections 14 and 15, the procedures preceding the celebration of a religious or customary marriage shall be governed by the customs or rites which are usual among the ethnic group, religion or sect under which the marriage is celebrated.

Notice of intention to marry

First Schedule

27.—(1) A person intending to marry under this Part shall, in addition to the customs or rites referred to in section 26, give notice of intention to marry in writing to a registrar in Form B in the *First Schedule.*

(2) he registrar shall enter the notice in the Marriage Notice Book.

(3) The notice shall be displayed for twenty-one days in a conspicuous place on the premises of the office of the registrar.

Issue of a registrar's permit in a customary or religious marriage *First Schedule*

28.—(1) At the expiry of the twenty-one days referred to in section 27, the registrar shall issue a marriage permit in Form D in the *First Schedule*.

(*2*) A marriage permit under subsection (1) shall be issued if—

(*a*) the parties have complied with sections 14 and 15; and

(*b*) there is no caveat under section 30 lodged against the marriage or if a caveat was lodged, it has been removed in accordance with the procedure set out in Part VI.

PART VI—OBJECTIONS TO ALL MARRIAGES RECOGNIZED UNDER THE ACT

Marriage to take place within three months after date of notice

29.—(1) Except as provided in section 31 (5), a marriage shall take place within three months after the date of the notice.

(2) Failure to comply with subsection (1) shall render the notice and all the proceedings consequent upon it void, and a fresh notice shall be given before the parties can lawfully marry.

Caveat

30.—(1) A person who knows of any just cause why a marriage should not take place may enter a caveat against the issue of a permit, by—

(*a*) writing at any time before its issue the word "Forbidden", opposite to the entry of the notice in the Marriage Notice Book; and

(*b*) appending his or her name and address and the grounds upon which the claim to forbid the issue of the permit is made.

(2) A registrar shall not issue a permit until the caveat is removed as provided in sections 31 and 32.

Caveat to be referred to court

31.—(1) Where a caveat is lodged in accordance with section 30, a registrar shall refer the matter to a court of competent jurisdiction.

(2) The court to which a caveat is referred shall summon and hear the parties to the intended marriage and the person who made the objection to show cause why a permit should not be issued.

(3) The court shall determine the matter by summary procedure.

(4) If the court decides that the permit should be issued, it shall remove the caveat—

(*a*) by cancelling the word "Forbidden" in the Marriage Notice Book;

(*b*) by writing below the cancellation, the words "cancelled by order of the court";

(*c*) by appending the signature of the judicial officer and the court seal to the entry.

(5) The registrar shall proceed to issue a permit and the marriage shall proceed as if the caveat had not been entered, but the time that has elapsed between the entering and the removal of the caveat shall not be computed in the period of three months under section 29.

Compensation and costs for wrongful caveat

32. A court may, upon application, award compensation and costs to an injured party if it appears that a caveat was entered based on insufficient caveat grounds.

PART VII—CELEBRATION OF CIVIL MARRIAGE

Marriage in a registrar's office

33. After the issue of a permit under section 24, or of a licence under section 25, the parties may contract a marriage before a registrar—

(*a*) with open doors, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, and in the manner prescribed in section 34; and

(*b*) in the presence of two or more witnesses.

Oath to be administered in civil marriages
First Schedule

34. A registrar, after production to him or her of the permit or licence, shall administer the oath of marriage in Form F in the *First Schedule.*

Marriage certificate to be signed

First Schedule

35. Immediately after the celebration of a civil marriage, the Registrar shall—

(*a*) complete in duplicate a marriage certificate in Form G in the *First Schedule*;

(*b*) state and enter in the counterfoil, the number of the certificate, the date of the marriage, the names of the parties, and the names of the witnesses; and

(*c*) deliver one copy of the certificate to the parties and file the other in his office.

Marriage under special licence

36. Where a special licence authorises the celebration of marriage at a place other than the office of a registrar, the registrar shall, upon the production of the licence, deliver to the person producing it a blank certificate of marriage in duplicate and shall comply with section 35.

PART VIII—CELEBRATION OF CUSTOMARY AND RELIGIOUS MARRIAGES

Application of Part V to marriages under this Part

37. A customary or religious marriage shall be celebrated in accordance with the procedures and formalities under Part V.

Traditional Authority to register marriages

38. The Minister shall deliver to every Traditional Authority Marriage Register Books in which each Traditional Authority shall record particulars of all customary marriages celebrated in his or her area of authority.

Marriage in a licensed place of worship

39.—(1) A religious marriage may be celebrated in a place of worship which has been duly licensed by the Minister under section 11 or in any place that the Minister may by special licence direct in accordance with the rites of a religion or religious body, denomination or sect to which one or both of the parties belong.

(2) A marriage celebrated under subsection (1) shall be celebrated—

(*a*) with open doors between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon; and

(*b*) in the presence of two or more witnesses, who shall include the marriage advocates of the parties to the marriage recognized as such at custom, besides the registrar.

(3) A witness to a marriage shall be a person who is above eighteen years of age and of sound mind.

Oath to be administered in customary and religious marriages

40. A registrar celebrating a customary or religious marriage shall administer an oath, if any, as prescribed either by the religion or custom of one or both of the parties to the marriage.

Registrar not to celebrate marriage where there is impediment nor without permit

41. A registrar shall not celebrate any marriage if he or she knows of any just impediment to such marriage, nor until the parties deliver to him or her a permit under section 28.

Customary or religious marriages under special licence

First Schedule

42. Where a special licence authorizes the celebration of a customary or religious marriage other than at the office, place of worship or work of a registrar, the registrar shall, upon receipt of the licence, proceed to celebrate the marriage and complete the certificate of marriage in Form G in the *First Schedule* in duplicate after strictly observing all the formalities for customary and religious marriages prescribed under this Act.

Register of customary or religious marriages

First Schedule

43.—(1) A registrar who celebrates a customary or religious marriage under this Act shall keep a register of the celebration in Form H in the *First Schedule*, and shall make and sign in the

Marriage Register Book an entry of every marriage celebrated by him or her.

(2) A registrar shall as soon as possible after the 31st December in each year, send to the Registrar of marriages a copy of the Register of all marriages celebrated during the past year by any person delegated by him or her to celebrate marriages.

Entries to be made in marriage certificate *First Schedule*

44. Immediately after the celebration of a customary or religious marriage, a registrar shall complete in duplicate a marriage certificate in Form F in the *First Schedule*, and also state and enter in the counterfoil the number of the certificate, the date of the marriage, names of the parties, and the names of the witnesses.

Signature to marriage certificate

45. A registrar, the parties to a marriage, and two or more witnesses to the marriage shall sign the certificate of marriage in duplicate.

Duplicate certificate to be sent to the Registrar

46. In addition to signing the certificate as required by section 45, a registrar celebrating a customary or religious marriage shall deliver the duplicate copy of the marriage certificate to the Registrar of Marriages.

Marriage certificate to be registered

47. The Registrar of Marriages shall file the duplicate copy of the marriage certificate in the Marriage Register Book kept in his or her office.

PART IX—RIGHTS AND OBLIGATIONS OF PARTIES TO A MARRIAGE

Right to consortium

48.—(1) A party to a marriage is entitled to equal rights as the other in their right to consortium.

(2) A wife is entitled to retain her maiden name or to use the surname of her husband, or both, during the subsistence of the marriage.

(3) A wife is entitled to the continued use of the surname of her husband at the dissolution of the marriage, unless it is proved before a court that she used the name for an improper purpose or a fraudulent motive.

(4) Notwithstanding any other written law to the contrary in force at the commencement of this Act, a spouse has the right to retain his or her nationality or citizenship during the subsistence of the marriage.

(5) A spouse may severally, or jointly with the other, exercise responsibility towards the upbringing, nurturing and maintenance of the children of the marriage.

(6) Both spouses shall have the right to mutual custody of the children of the marriage during the subsistence of the marriage.

(7) Notwithstanding subsection (1), a spouse may deny the other spouse the right to consummation on reasonable grounds which may include—

(*a*) poor health;

(*b*) post-natal recuperation;

(*c*) post surgical convalescence;

(*d*) reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm to either spouse; or

(*e*) reasonable respect for custom.

Right to mutual marital confidences

49.—(1) A spouse is entitled to mutual trust and confidences during the subsistence of a marriage and, in the event of the dissolution of the marriage, after its dissolution.

(2) Notwithstanding subsection (1), a spouse may disclose information if the disclosure is in the interests of justice as required—

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(*a*) under the Criminal Procedure and Evidence Code or other written law; or

(*b*) in divorce proceedings.

Duty to maintain family

50.—(1) Subject to subsections (2) and (3), both spouses have a duty to maintain each other and any children of the marriage.

(2) The monetary contribution of each spouse shall be proportionate to his or her income.

(3) The non-monetary contribution of each spouse shall also be taken into account when determining the contribution of a spouse to the maintenance of the other spouse or children of the marriage.

PART X—OFFENCES AND PENALTIES RELATING TO MARRIAGE

Polygamy and bigamy in a civil marriage

51. A person who contracts a civil marriage under Part VII and who subsequently is married or purports to be married, to more than one spouse, commits an offence, and is liable on conviction to a fine of K100,000 and imprisonment for five years.

Marriage ceremony with a married person

52. An unmarried person who goes through the ceremony of a civil marriage with a person whom he or she knows to be married to another person, commits an offence and is liable on conviction to a fine of K100,000 and imprisonment for twelve months.

Making false declarations in relation to marriage

53. A person who makes or issues a false declaration, certificate, permit, licence, document or statement by law for the purpose of marriage commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for twelve months.

Registrar unlawfully performing ceremony

54. A registrar who performs the ceremony of marriage knowing that any of the matters required by law for the validity of a marriage have not been fulfilled, so that the marriage is void on any of those matters, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Unlawful performance of ceremony by person not legally competent

55. A person who knowingly and willfully celebrates or purports to celebrate a marriage when he or she is not competent under this Act to do so commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Willful neglect of duty to fill up or transmit certificate of marriage

56. A person who is charged with the duty to complete the marriage certificate of a marriage celebrated by him or her, or its duplicate, or to deliver the certificate to the Registrar of Marriages, and who willfully fails to perform his or her duty, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Personation in marriage

57. A person who—

(*a*) impersonates another person in entering into marriage; or

(*b*) marries under a false name or description with the intention to deceive the other party to the marriage,

commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Fictitious marriage

58. A person who goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground, and that the other person believes it to be valid, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

PART XI—DIVORCE, JUDICIAL SEPARATION AND NULLITY OF MARRIAGE

General principles

59.—(1) In exercising a function under this Part, a court shall have regard to the following general principles that—

(*a*) the institution of marriage is to be protected;

(*b*) the parties to a marriage which may have broken down are to take all practical steps, whether by counseling or otherwise, to save the marriage;

(*c*) a marriage which has broken down and is being dissolved should be brought to an end—

(i) with minimum distress to the parties and to any affected children;

(ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as far as is possible in the circumstances;

(iii) without costs being unreasonably incurred in connection with the procedure to be followed in bringing the marriage to an end; or

(*d*) any risk of violence to one of the parties and to any children shall, as far as is reasonably practicable, be removed and diminished.

Limitations of this Act

60.—(1) Nothing in this Act shall authorize—

(*a*) the making of any decree of dissolution of marriage unless the petitioner is domiciled in Malawi at the time when the petition is presented; or

(*b*) the making of any decree of nullity of marriage unless—

(i) the petitioner is domiciled in Malawi at the time when the petition is presented; or

(ii) the marriage was celebrated in Malawi.

Divorce and judicial separation

61.—(1) The court may, upon satisfying itself that a marriage has irretrievably broken down—

(*a*) grant a decree of judicial separation to provide for the separation of parties to a marriage; or

(*b*) grant a decree of divorce to dissolve the marriage.

(2) A decree of judicial separation shall come into force upon being made.

(3) A decree of judicial separation shall remain in force—

(*a*) while the marriage continues;

(*b*) until cancelled by the courts on the joint application of the parties; or

(*c*) a decree *nisi* of divorce is granted by a court.

(4) Where the court grants a decree of judicial separation, it shall no longer be obligatory for a spouse to exercise rights to consortium with the other spouse and a court shall have power to make ancillary orders to enforce the separation of the parties.

Rape during judicial separation

62. A husband commits the offence of rape during the subsistence of a decree for judicial separation if he has sexual intercourse with his wife without her consent.

Irretrievable breakdown of marriage

63.—(1) A petition for divorce may be brought by either party to a marriage on the sole ground that the marriage has irretrievably broken down.

(2) In deciding whether or not a marriage has irretrievably broken down, the court shall have regard to all the relevant facts regarding the conduct and circumstances of the parties and, in particular, shall refuse to grant a decree where a petition is founded exclusively on the petitioner's own wrongdoing.

Evidence of breakdown of marriage

64. In deciding whether or not a marriage has irretrievably broken down, the court may accept any one or more of the following facts as evidence that the marriage has irretrievably broken down—

(*a*) the respondent has committed adultery and the petitioner finds it intolerable to live with him or her;

(*b*) the respondent has been convicted of the offence of rape or of an offence under section 153 of the Penal Code;

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(*c*) the respondent has deserted the petitioner without cause for a continuous period of at least one year immediately preceding the presentation of the petition for divorce;

(*d*) the respondent has since the celebration of the marriage treated the petitioner with cruelty;

(*e*) the respondent is of incurable unsound mind and has been under care and treatment for a continuous period of at least two years immediately preceding the presentation of the petition; or

(*f*) any other factors that the court considers relevant.

Circumstances in which decrees may be made

65. A court may upon application grant a decree *nisi* of divorce or a decree of judicial separation if—

(*a*) the court is satisfied that the marriage has irretrievably broken down;

(*b*) the parties have undergone marriage counseling; and

(*c*) the requirements of section 66 are satisfied.

Arrangements for the future in case of divorce or separation

66. The court, in granting an order for decree nisi of divorce or an order for judicial separation, shall first be satisfied that the parties to the marriage have made arrangements for the future by producing one of the following—

(*a*) a court order, made by consent or otherwise, dealing with their financial arrangements;

(*b*) a negotiated settlement as to their financial arrangements;

(*c*) declaration by both parties that they have made their financial arrangements; or

(*d*) a declaration by the party, to which no objection has been notified to the court by the other party, that—

(i) he or she has no significant asset and does not intend to make an application for maintenance;

(ii) he or she believes that the other party has no significant assets and that the other party does not intend to apply for maintenance;

(iii) there are no financial provisions to be made; and

(iv) the parties do not desire to make any financial arrangement.

Rebuttable presumption of condemnation of adultery

67. There is a rebuttable presumption that adultery has not been condoned unless consummation has been continued or subsequently resumed of the parties' free will.

Co-respodent

68. Where the petition is presented on the ground that the respondent has since the celebration of the marriage committed adultery, the petitioner shall make the person with whom the respondent committed the alleged adultery a co-respondent to the petition unless the petitioner is excused by the court from so doing on one of the following grounds—

(*a*) that he or she does not know the name of the alleged adulterer although he has made due efforts to discover the name; or

(*b*) that the alleged adulterer is dead.

Duty of court on presentation of a petition for divorce

69.—(1) On the presentation of a petition for divorce, the court shall inquire into the facts alleged to establish—

(*a*) whether there has been connivance or condonation by the petitioner;

(*b*) whether any collusion exists between the parties; or

(*c*) whether there is substance in any counter-charge made against the petitioner.

(2) If the court is satisfied on the evidence that—

(*a*) the case for the petitioner has been proved; and

(*b*) the petition is not presented or prosecuted in collusion with the respondent or either of the respondents,

it shall pronounce a decree *nisi* of divorce.

(3) Where the court is not satisfied of the alleged matters, it shall dismiss the petition.

(4) The court shall not be bound to pronounce a decree *nisi* of divorce and may dismiss the petition if it finds that the petitioner has during the marriage, been guilty of—

(*a*) adultery;

(*b*) unreasonable delay in presenting or prosecuting the petition;

(*c*) cruelty towards the other party to the marriage;

(*d*) having without cause deserted or willfully separated himself or herself from the other party before the adultery or cruelty complained of;

(*e*) such willful neglect or misconduct as has contributed to the adultery or unsoundness of mind or desertion; or

(*f*) any other act or omission causing the marriage to irretrievably breakdown.

Proceedings for decree of presumption of death and dissolution of marriage

70.—(1) A married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that that other party is dead and to have the marriage dissolved.

(2) Where the court is satisfied that reasonable grounds exist, it may make a decree of presumption of death and of dissolution of the marriage.

(3) In proceedings for the decree of presumption of death, the fact that one party to the marriage has been continually absent from the petitioner for a period of seven or more years and the petitioner has no reason to believe that the other party is still alive, is evidence that he or she is dead until the contrary is proved.

Distribution of property during judicial separation

71.—(1) Where a judicial separation has been decreed under this Act, the spouses shall, from the date of the decree, and whilst the separation continues, be considered unmarried with respect to any property which each spouse may acquire individually during the period of separation and such property may be disposed of by each spouse individually in all respects as if he or she was not married to the other.

(2) Where one of the parties dies intestate during the subsistence of a decree of judicial separation, the property owned individually by the deceased shall devolve as if the parties were not married to each other.

(3) Subject to an agreement evidenced in writing or otherwise,

where the parties to the marriage who were under judicial separation cohabit again with each other, all property to which either party acquired individually during the judicial separation shall be held to the separate ownership of that party.

(4) Subject to subsections (5) and (6), where a court grants a decree for judicial separation, the court may, in addition, make any one or more of the following orders—

(*a*) an order to make provision for the distribution of any or all of the matrimonial property as may be necessary to prevent undue hardship to either spouse;

(*b*) an order prohibiting alienation or distribution of the matrimonial property to any third party unless there is evidence of a mutual agreement between the parties permitting such alienation or distribution; and

(*c*) an order that either party shall pay to the other party a periodical payment or a lump sum or supply necessities in kind to the requisite cash value as may be specified in the order, either for the benefit of that other party or for the benefit of the children of the marriage.

(5) Where maintenance has been decreed or ordered to be paid to either party upon the decree of judicial separation, and such maintenance is not duly paid, the defaulting party shall be liable for the necessaries supplied for the use of the other party.

(6) Nothing in this section shall prevent either party from joining the other party, at any time during the separation, in the exercise of a joint power given to the parties.

Petition to reverse decree of judicial separation

72.—(1) A party to a marriage against whom a decree of judicial separation has been pronounced, may present a petition praying for a reversal of the decree on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the conduct alleged as the ground for separation.

(2) The court may, on being satisfied of the truth of the grounds of the petition, reverse the decree of judicial separation.

Divorce proceedings after grant of judicial separation

73.—(1) A person shall not be prevented from presenting a petition for divorce, or the court from pronouncing a decree *nisi* of divorce, for the sole reason that such person has at any time been granted a judicial separation upon the same or substantially the same facts as those proved in support of the petition for divorce.

(2) On a petition for divorce, the court may treat the decree of judicial separation as sufficient proof of any ground on which it was granted, but the court shall not pronounce a decree *nisi* of divorce without receiving evidence from the petitioner.

(3) For the purpose of a petition for divorce, a period of desertion without cause immediately preceding the institution of proceedings for a decree of judicial separation, if the parties have not resumed cohabitation and the decree has been continuously in force since its granting, shall be deemed to precede the presentation of the petition for divorce.

Distribution of property upon dissolution of marriage

74. A court shall equitably divide and re-allocate property upon the dissolution of a marriage taking into account—

(*a*) the income of each spouse;

(*b*) the assets of each spouse;

(*c*) the financial needs of each spouse;

(*d*) the obligations of each spouse;

(*e*) the standard of living of the family during the subsistence of the marriage;

(*f*) the age and health of each spouse; or

(*g*) the direct and indirect contributions made by either spouse, including through the performance of domestic duties.

Effect of reversal or discharge of judicial separation or protection order

75.—(1) The reversal, discharge, or variation of a decree of judicial separation, or of a protection order, shall not affect any rights or remedies which a person would otherwise have had in respect of any contracts or acts of either spouse entered into or done between the dates of the decree or order and of the reversal, discharge or variation.

(2) A person who, in reliance on any decree or order, makes a payment to, or permits a transfer or act to be made or done by, the spouse, shall, notwithstanding—

(*a*) that the decree or order may then have been reversed, discharged or varied;

(*b*) that the separation of the wife from her husband may have ceased; or

(*c*) that at some time since the making of the decree or order, the separation may have been discontinued,

be protected and indemnified as if at the time of the payment, transfer or other act, the decree or order was valid and still subsisting without variation, and the separation had not ceased or been discontinued.

(3) Subsection (2) shall not apply where the person has at the time of payment, transfer or other act, known of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

Costs against a co-respondent

76.—(1) A co-respondent may be ordered to pay the whole or any part of the costs of the proceedings if adultery with the spouse of the petitioner has been established against him or her.

(2) The co-respondent shall not be ordered to pay the costs of the petitioner—

(*a*) if at the time of the adultery, he or she had no reason to believe the respondent was married; or

(*b*) if the respondent was at the time of the adultery living apart from his or her spouse.

Grounds for decree of nullity

77.—(1) The following are grounds on which a decree of nullity of marriage may be made—

(*a*) that the respondent was permanently impotent at the time of the marriage;

(*b*) that the parties are within the prohibited degrees of kindred or affinity;

(*c*) that either party was of unsound mind at the time of the marriage;

(*d*) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force;

(*e*) that the consent of either party to the marriage was obtained by force, duress, deceit or fraud;

(*f*) that the marriage has not been consummated owing to the willful refusal of the respondent to consummate the marriage;

(*g*) that the respondent was at the time of the marriage suffering from a sexually transmitted infection; or

(*h*) that the respondent was at the time of the marriage—

(i) pregnant by some person other than the petitioner; or

(ii) responsible for a pregnancy of some person other than the petitioner.

(2) If the court finds that the case for the petitioner has been proved, it shall announce a decree nisi declaring the marriage to be null and void.

(3) In the cases specified in subsection (1) (*c*), (*g*) and (*h*), the court shall not grant a decree *nisi* unless it is satisfied—

(*a*) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(*b*) that the proceedings were instituted within a year from the date of marriage; and

(*c*) that sexual intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(4) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

PART XII—GENERAL PROCEDURE ON DIVORCE, JUDICIAL SEPARATION AND NULLITY OF MARRIAGE

Petitions

78.—(1) A petition shall state, as distinctly as the nature of the case permits, the facts on which the claim is based, and shall be verified as if it were a writ of summons or an originating summons, and may at the hearing be referred to as evidence.

(2) A petition for dissolution of marriage or for judicial separation or for nullity of marriage, shall state that there is no condonation or connivance on the part of the petitioner nor collusion between the petitioner and the respondent.

Service of petition

79.—(1) A petition shall be served on the party to be affected either within or outside Malawi, in a manner that the court may, by general or special order, from time to time direct.

(2) A court may dispense with the service under subsection (1) where it is necessary or expedient to do so.

Examination of witness

80.—(1) Subject to subsection (2), a witness in any proceedings shall be examined orally.

(2) Subsection (1) shall not apply where a party verifies his or her case by affidavit, but in such cases, a court shall allow the deponent to be orally cross-examined and re-examined either on application of the other party or by direction of the court.

Husband and wife compellable witnesses

81. On any petition presented by a spouse for the dissolution of the marriage on the ground of adultery coupled with cruelty or desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence relating to such cruelty or desertion.

Sittings *in camera*

82. The court may hear the whole or part of any proceedings under this Act behind closed doors.

Adjournment

83. The court may adjourn the hearing of any petition under this Act, and may require further evidence.

Making decree *nisi* absolute

84.—(1) No decree *nisi* of dissolution or nullity of marriage shall be made absolute until after the expiry of six weeks from the date it is granted or such longer period as the Chief Justice may by Rules prescribe.

(2) During the intervening period between a decree *nisi* and before that decree may be made absolute, any person may show cause why the decree should not be made absolute by reason of its having been obtained by collusion, or by reason of material facts not having been, or being brought before the court.

(3) On cause being shown the court shall—

(*a*) make the decree absolute;

(*b*) reverse the decree nisi; or

(*c*) otherwise deal with the case as the interests of justice demand.

(4) A court may order the costs arising from cause to be paid by the parties or whichever one of them the court considers fit.

(5) Where a petitioner fails to move within a reasonable time that the decree *nisi* must be made absolute, the court may dismiss the suit.

(6) Where no application for a decree nisi to be made absolute is made by the party who obtained it, the party against whom it is granted shall be at liberty to apply to the court at any time after the expiry of six weeks from the earliest date on which the other party could have made the application.

(7) Upon the application referred to in subsection (6), the court shall have the power to—

(*a*) make the decree absolute;

(*b*) reverse the decree *nisi*;

(*c*) order an inquiry; or

(*d*) otherwise deal with the matter as it considers fit.

Enforcement of orders for payment of money

85.—(1) An applicant may apply to a court deponing that a sum to be paid to him or her following an order of that court has not been paid

(2 The court may, by warrant compel the respondent or any person against whom the order is made, to be brought before it, to be examined.

(3) If the court finds that the respondent or any other person brought before it neglects or refuses to pay the sum due together with any costs that may have been incurred, it may, by warrant, direct that all sums due be recovered by distress or sale of goods and chattels of that person, and may also order that the person be detained and kept in safe custody until return can be made to the warrant of distress.

(4) Where the person gives sufficient security by way of recognizance or otherwise to the satisfaction of the court for his or her appearance before the court, on a day which may be appointed for the return of the warrant of distress, within seven days of taking the security, that person need not be detained nor kept in safe custody.

(5) If at the time of making an order for maintenance, it is known to the satisfaction of the court that the spouse or person against whom the order for maintenance is made is employed and receives a salary, wage, benefit or other regular pecuniary employment benefit, the court may, if it considers fit, direct that the amount of maintenance so ordered shall be deducted by the employer from the salary, benefit or other employment benefit of the person against whom the order is made and paid to the applicant in such manner as the court may direct having regard to—

(*a*) the regular or particular needs of the applicant and any dependent children;

(*b*) defaults or likelihood of default by the person against whom the order is made in making such payments;

(*c*) places where the parties reside ; and

(*d*) any other relevant factors that the court considers fit.

(6) An employer who, having been served with an order of the court, fails to comply with the order commits an offence and is liable on conviction to a fine of up to K100,000, the whole or part of which may, by order, be applied for the maintenance of the applicant or any children concerned.

Re-marriage of the parties

86. It is lawful for parties to a marriage which—

(*a*) is dissolved by a decree of nullity and the time limit for appealing against it expires but no appeal is presented; or

(*b*) is dissolved or annulled after an appeal,

to marry again as if the prior marriage had been dissolved by death.

87. The Chief Justice may make Rules regulating the procedure for petitions for divorce, judicial separation or nullity of marriage under this Act.

PART XIII—MAINTENANCE DURING SUBSISTENCE OF MARRIAGE

Rules of court

88.—(1) A party to a marriage, a child or person specified in subsection (3) may apply to a court for an order against the other party of marriage or a party to the marriage for maintenance in

respect of the necessaries of life for a family member including shelter, food and education.

(2) In granting an order for maintenance under this section, the court shall consider—

(*a*) the standard of living enjoyed by the parties at the time of the application;

(*b*) the financial commitments of the party against whom the application is made;

(*c*) the ability of the person against whom the application is made to provide for the necessaries applied for;

(*d*) the income of the party making the application relative to the income of the party against whom the application is made; and

(*e*) any other consideration that the court considers relevant.

(3) An application under subsection (1) may also be made by a parent of a party to the marriage, a next of kin or other close relative or any other person on behalf of such party to the marriage or child.

Spouse may apply for order Cap: 7:01

89.—(1) A married person whose spouse—

(*a*) is convicted of an offence against her person under Chapters XXII or XXIV of the Penal Code;

(*b*) deserts him or her;

(*c*) is guilty of persistent cruelty to him or her or to his or her children;

(*d*) is guilty of willful neglect to provide reasonable maintenance for him or her or his or her children whom he or she is legally liable to maintain; or

(*e*) is a habitual drunkard,

may apply to the court where the conviction took place, or in which the cause or complaint wholly or partly arises, for an order for maintenance under the Act in Form I in the *First Schedule*. *First Schedule*

(2) A court shall upon receipt of an application under subsection (1) issue summons to the respondent in Form J in the First Schedule. *First Schedule*

Notifiable family misconduct

90.—(1) Where a party to a marriage neglects to maintain the other party or to provide the needs of the children to such an extent that the health, safety or security, nutrition and education of such other party or such children, as the case may be, is adversely affected, that neglect constitutes notifiable family misconduct and any of the persons named in section 88 (3) shall be under a duty to report the neglect to the Minister responsible for social welfare.

(2) Upon receipt of a report of notifiable family misconduct, the Minister responsible for social welfare shall, where appropriate, facilitate the separation of the parties and may make an application for maintenance under section 88.

PART XIV—MAINTENANCE FOLLOWING DIVORCE, JUDICIAL SEPARATION AND NULLITY OF MARRIAGE

Maintenance pending the suit

91.—(1) A spouse, whether or not he or she has obtained a protection order, may apply to the court, for an order of maintenance pending the suit.

(2) In granting the order of maintenance pending the suit, the court shall have regard to the financial resources of the party against whom the order is made, the conduct of the parties or any other factors it considers relevant.

(3) An order of maintenance pending the suit shall continue in the case of a decree *nisi* of divorce or nullity, until the decree is made absolute.

Permanent maintenance

92.—(1) On a decree absolute declaring a marriage to be dissolved, or on a decree of judicial separation obtained by the applicant, the court may order the respondent to secure to the applicant such sum of money as it thinks reasonable, having regard to—

(*a*) his or her income;

(*b*) the income of the respondent;

(*c*) the ability of the respondent; and

(*d*) the conduct of the parties.

(2) The court may direct the maintenance to be paid either in a lump sum or in yearly, monthly, or weekly payments for any period not exceeding the life of a spouse, and for that purpose may cause a proper instrument to be executed by all necessary parties.

(3) The court may direct the maintenance to be paid either to the spouse himself or herself or to a trustee to be approved on his or her behalf by the court, and may impose such terms and restrictions, and may direct the execution of the trust deeds as it considers fit, and may from time to time appoint a new trustee.

Discharge or alteration of order for maintenance

93.—(1) Where an order has been made for the payment of maintenance, and the respondent subsequently becomes unable to make the payments, the court may discharge, modify, or suspend the order in whole or in part.

(2) A court may revive the order in whole or in part, upon application, if there is a change in the circumstances of the respondent.

Power to vary settlements

94.—(1) Subject to subsection (2), after a decree absolute of divorce or of nullity of marriage, a court may inquire into the existence of ante-nuptial or post-nuptial settlements made by the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or part of the settled property, whether for the benefit of the husband or wife or of the children, if any, or of both children and the parties, as the court considers appropriate.

(2) No order for the benefit of the parties, or either of them, shall be made at the expense of the children.

Welfare of children

95.—(1) In any proceedings for divorce or judicial separation or any proceedings brought by either party to the marriage, the court shall consider—

(*a*) whether there are any children of the marriage to whom this section applies; and

(*b*) if there are any children to which this section applies, whether, in light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare the court should exercise any of its powers under the Child Care, Protection and Justice Act, 2010 in respect to any of them.

Act. No 22 of 2010

(2) Where, in any case to which this section applies, it appears to the court that—

(*a*) the circumstances of the case require it to refer the child to the court exercising jurisdiction on children under the Child Care, Protection and Justice Act, 2010; and

Act. No 22 of 2010

(*b*) there are exceptional circumstances which make it desirable in the best interests of the child that the court exercising jurisdiction on children under the Child Care, Protection and Justice Act, 2010 should give a direction under this section, the court may direct that the decree absolute of divorce or judicial separation is not granted until the court exercising jurisdiction on the children under that Act orders otherwise.

Act No. 22 of 2010

(3) In deciding whether the circumstances as mentioned in subsection (2) (*a*) exist, the court shall treat the welfare of the child as paramount and shall also have particular regard, on the evidence before it, to—

(*a*) the wishes and feelings of the child considered in relation to his or her age and level of understanding and the circumstances in which those wishes are expressed;

(*b*) the conduct of the parties in relation to the upbringing of the child;

(*c*) the general principle that, in the absence of evidence to the contrary, the welfare of the child will best be served—

(i) by his or her regular contact with those who have parental responsibility for him or her and with other members of his or her family and where siblings are brought up together in the same family; and

(ii) where the maintenance of a good continuing relationship with his or her parents is possible;

(*d*) any risk to the child attributable to—

(i) the place where the person with whom the child will reside, is residing or proposes to reside;

(ii) any person with whom that person is residing or with whom he or she proposes to reside with; or

(iii) any other arrangements for the care and upbringing of the child.

PART XV—MAINTENANCE OF SINGLE PREGNANT WOMAN

Maintenance during pregnancy of a single woman

96.—(1) Where a woman is pregnant and the alleged father does not dispute responsibility for the pregnancy or is adjudged by the court to be responsible for the pregnancy, he shall be liable to maintain the woman during the period of the pregnancy and to pay for or reimburse the attendant costs of delivery and the court may, on application by the woman, make an order for enforcement as the court may consider appropriate.

(2) An application for an order for enforcement under this section may be heard in like manner as an application under section 89.

(3) Where the alleged father is a child, liability shall lie against his parents or guardian, but the liability shall revert to him after he ceases to be a child or to be dependent on his parents or guardian.

PART XVI—GENERAL PROVISIONS ON MAINTENANCE

Powers of the courts to make orders

97.—(1) Subject to subsection (2), notwithstanding that a marriage has been declared void by the court, the court shall have the power to make an order—

(*a*) for property settlement;

(*b*) for temporary or permanent maintenance; or

(*c*) for the award of custody of any children of the annulled marriage, in favour of either of the parties as may be deemed appropriate.

(2) Where an order for the maintenance or custody of a child is made, the court shall base its decision on the best interests of the child.

Court may vary or discharge order

98. A court having jurisdiction in the place in which any order under this Act has been made may vary or discharge the order—

(*a*) on the application of either party;

(*b*) upon cause being shown; or

(*c*) upon fresh evidence given to the satisfaction of the court.

Mode of maintenance payments

99. A court may allow non-pecuniary payments amounting to the value of the sum ordered either at the request of either or both of the parties to the action or on its own motion where having regard to all the circumstances, the court considers the non-pecuniary payments to be appropriate.

Order for accommodation

100.—(1) Where an applicant is entitled to an order for maintenance following a decree of judicial separation, a court may, in addition to making an order for maintenance, also make an order—

(*a*) giving the applicant the right not to be evicted or excluded from the matrimonial home or any part of it by the respondent for such period as may be specified in the order; and

(*b*) prohibiting the respondent from evicting or excluding the applicant during the period.

(2) If the respondent is entitled to occupy the matrimonial home by virtue of a beneficial estate or interest or contract or any other legal entitlement but the applicant is not so entitled, the court may order the respondent to provide suitable accommodation for the applicant and any child who is entitled to be maintained.

(3) In making an order under this section, the court shall consider—

(*a*) the financial and other resources of each of the parties;

(*b*) the needs of each of the parties and any child who is entitled to be maintained;

(*c*) the likely effect of an order, refusing to grant an order for accommodation, on the health, safety or well-being of the parties or any child;

(*d*) the conduct of the parties in relation to each other;

(*e*) the state of the inter-personal relationship between the parties;

(*f*) the length of time the parties have lived together as husband and wife;

(*g*) whether there are or have been children who are children of both parties or for whom both parties have responsibilities;

(*h*) if the parties are separated, the length of time that has elapsed since the parties ceased to live together; or

(*i*) any other relevant factors.

Address to be provided to the court

101.—(1) A person obliged by order to make payments of maintenance, shall provide full details of his or her address in writing to the clerk of the court which made the order and shall notify the court of any change in his or her address.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of K50,000 which shall be applied to the maintenance of the other party or child by order of the court.

Appeals against maintenance orders

102. For avoidance of doubt, an appeal from an order for maintenance or the refusal of an order by a court shall lie, in the case of a court subordinate to the High Court, to the High Court and in the case of the High Court, to the Supreme Court of Appeal.

PART XVII—EXTRA-TERRITORIAL ENFORCEMENT OF MAINTENANCE ORDERS

Registration of a maintenance order made in a foreign country

103.—(1) Where, before or after the commencement of this Act—

(*a*) a maintenance order is made against a person by a court in a foreign country; and

(*b*) a certified copy of the order has been transmitted to the Registrar of the High Court,.

the Registrar of the High Court shall send a copy of the order to the office of a court, as specified in subsection (2), for registration of the order in Malawi.

(2) Where—

(*a*) the order was made in the court of superior jurisdiction in the foreign country, it shall be registered in the High Court;

(*b*) the order was not made in a court of superior jurisdiction, it shall be registered in a court of a resident magistrate or a court of a magistrate of the first or second grade as the Registrar of the High Court shall consider appropriate in the circumstances.

Transmission of order made in Malawi

104. Where a court in Malawi has made a maintenance order against any person before or after the commencement of the Act, and it is proved to the court that the person against whom the order is made is resident in a foreign country, the court shall send a

certified copy of the order to the appropriate authority in the foreign country.

Power to make order against a person resident in foreign country

105.—(1) Where a maintenance order is made in a court in Malawi against any person who is proved to be resident in a foreign country, the court may make an order in his or her absence as if a summons had been duly served on that person and he or she failed to appear if, after hearing the evidence, the court is satisfied of the propriety of the application.

(2) The evidence of any witness who is examined on the application shall be put into writing, and the deposition shall be read over to and signed by him or her.

(3) Where the order is made, the court shall send to the appropriate authority in the foreign country—

(*a*) any deposition taken;

(*b*) a certified copy of the order;

(*c*) a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with summons and had appeared at the hearing; and

(*d*) any other information as the court possesses for facilitating the identification of that person, and ascertaining his or her whereabouts.

(4) It shall be permissible for the appropriate authority in a foreign country, which receives a provisional order for confirmation, to remit the order back to Malawi for purposes of taking further evidence.

(5) The court in Malawi shall after giving the prescribed notice proceed to take the evidence in the same manner and subject to the same conditions as evidence in support of the original application.

(6) Where upon the hearing of the evidence it appears to the court in Malawi that the order ought not to have been made, the court may rescind the order, and any depositions taken shall be dealt with in the same manner as an original deposition.

(7) Subject to subsection (9), the confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order.

(8) On the making of a varying or rescinding order, the court shall send a certified copy of the order to the appropriate authority in the foreign country, and that in the case of an order varying the original order, the order shall not have any effect unless confirmed in the same way as the original order.

(9) The applicant shall have the same right of appeal, if any, against refusal to make a provisional order as he or she would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Chief Justice to make rules for facilitating communication

106. The Chief Justice may make Rules as to the manner in which a case may be remitted to a court authorized to confirm a provisional order, and generally for facilitating communication between a court in Malawi and an appropriate authority in a foreign country.

Mode of enforcing orders

107.—(1) A court—

(*a*) in which an order is registered under this Act;

(*b*) by which an order has been confirmed under this Act,

shall take all such steps for enforcing the orders as may be prescribed.

(2) An order registered or confirmed is enforceable in the same way as a civil debt and is recoverable summarily.

(3) A warrant of distress or commitment issued by a court for the purpose of enforcing any order so registered or confirmed under this Part may be executed in any part of Malawi in the same way as if the warrant had been originally issued or subsequently endorsed by a court having jurisdiction in the place where the warrant is executed.

Proof of documents

108.—(1) A document purporting to be signed by a judge or officer of a court in a foreign country shall, until the contrary is proved, be deemed to have been signed accordingly without proof of the signature or judicial or official character of the person appearing to have signed it.

(2) The officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to be the proper officer of the court to sign the document.

Depositions to be evidence

109. A deposition taken in a court in a foreign country for the purposes of this Act may be received in evidence in proceedings before a court under this Act.

Powers of President to extend the application of this act to other countries

110. Where the President is satisfied that reciprocal provisions have been or are about to be made by the legislature of any foreign country for the enforcement within that country or part of it of maintenance orders made by courts in Malawi, he or she may, by proclamation extend the Act to a foreign country or part of it, and this Act shall apply accordingly in respect of that country or part so that the references to foreign country in this Act were references to that country.

PART XVIII—MISCELLANEOUS

Establishment of Family Counseling Panels

111.—(1) The Minister may, by order published in the *Gazette*, or by directions in writing, establish Family Counselling Panel to counsel parties to a marriage to prevent or to address any case of notifiable family misconduct.

(2) A Family Counseling Panel may intervene in a case of neglect or abuse upon information it may receive from a party to the marriage or from any person.

(3) In any case of neglect or abuse coming before a court, the court shall inquire if the case was referred to a Family Counseling Panel and may itself refer the case to a Family Counseling Panel, but the intervention of a Family Counseling Panel, whether before or upon reference to it by a court, shall have no effect on any ensuing proceedings for maintenance before any court.

(4) The Minister may make rules for the regulation and functioning of Family Counseling Panels.

Conduct by third parties

112.—(1) A person who uses his or her influence, as a close relation to a party to a marriage, whether by conduct or language to—

(*a*) cause a breakdown of a marriage relationship between the parties to a marriage;

(*b*) instigate any conduct by either or both of the parties to the marriage likely to adversely affect their marriage relationship;

(*c*) cause one party of the marriage to withhold maintenance or support from the other; or

(*d*) in any way render a marriage relationship to deteriorate or fail,

commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for twelve months.

(2) The court may, upon application, make an order of restraint or compensation against a person convicted of an offence under subsection (1).

Forms and fees

113. The Chief Justice may prescribe the forms to be used and the fees to be paid by a person applying for an order of maintenance under this Act.

Repeals and savings
Cap.25:01
Cap.25:02
Cap.25:04
Cap.25:03
Cap.25:05
Cap.26:04

114.—(1) The Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act are hereby repealed.

(2) A licence or certificate issued, notice published, registration effected, caveat entered or other thing done under the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act repealed by subsection (1) shall, if in force at the commencement of this Act, continue in force, and have effect as if issued, published, effected, entered or done under the corresponding provisions of this Act.

(3) Where a period of time specified in the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act repealed by subsection (1) is current at the commencement of this Act, this Act shall have effect as if the corresponding provisions of this Act had been in force when that period begun to run.

(4) A document referring to the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act and the Maintenance Orders (Enforcement) Act repealed by subsection (1) shall be construed as referring to the corresponding provisions of this Act.

(5) Nothing in this Act shall affect the validity of any marriage celebrated before the commencement of this Act, under an enactment repealed by this Act.

(6) Any proceedings taken with reference to—

(*a*) a marriage celebrated or entered into;

(*b*) a register book kept; or

(*c*) any warrant issued,

under an enactment repealed by this Act, shall have effect as if taken with reference to the corresponding provisions of this Act.

FIRST SCHEDULE

FORMS

FORM A

MARRIAGE REGISTER BOOK (ss. 6 and 8)

No.	Date when celebrated

Contracting Parties	(Man) .....
	(Woman)
Age	(Man) .....
	(Woman)
Nationality	(Man) .....
	(Woman)
Village	(Man) .....
	(Woman)
Traditional Authority	(Man) .....
	(Woman)
District	(Man) .....
	(Woman)
Occupation	(Man) .....
	(Woman)
Residence	(Man) .....
	(Woman)
Witness	(1) .....
	(2)
Signature	.....
	(registrar)

Celebrated under the above Act according to Rites of the .....
(religious body, sect, denomination or ethnic group)

Entered this.....day of ..... 20 ..... at the Registry of Marriages at ..... District

Address.....

Date of signature.....

(*The register is in duplicate*)

FORM B

NOTICE OF MARRIAGE (ss. 19 and 27)

To the Registrar of Marriages for the ..... District of Malawi.

B. No. 5

I HEREBY give you notice that a marriage is intended to be had within three months from this date between me, the undersigned, and the other party named at .....

Name	*Status*	*Occupation, Rank or Profession*	*Age*	*Dwelling or Place of abode*

Witness my hand this ..... day of ..... 20 .....

.....
Signature

FORM C

FORM OF ATTESTATION (s. 20)

Signed by the said ....., at ....., on the .....day of ..... 20....., this notice having been first read over to him [her] [or, read over and truly interpreted t o him [her] in the ..... Language] by ..... He [she] seemed to understand the same and made his [her] mark thereto in my presence.

.....
Signed

FORM D

REGISTRAR'S PERMIT (ss. 24 and 28)

I,..... Registrar of marriages in the ..... District in Malawi, do hereby certify that on the ..... day of ....., 20....., notice was duly entered in the Marriage Notice Book of this district of the marriage intended between the parties herein named and described, such notice being delivered under the hand of .....one of the parties, that is to say—

Name	*Status*	*Occupation Rank or Profession*	*Age*	*Residence*	*Length of Residence*

Date of notice entered ..... day of ..... 20 .....

.....

Place of intended marriage as set out in the Notice of Marriage .....

B. No. 5

Date of certificate given, ... day of ....., 20 .....

No caveat has been entered against the issue of this certificate: or

A caveat was entered against the issue of this certificate on the .....day of ....., 20 ....., but it has been cancelled.

.....

Signed, A.B.

Registrar of Marriages .....District

NOTE—This permit will be void unless the marriage is solemnised on or before the ..... day of ..... 20 .....

FORM E

SPECIAL LICENCE (s. 25)

Whereas A.B. and C.D. desire to marry, and sufficient cause has been shown to me why the preliminaries required by the Marriage, Divorce and Family Relations Act should be dispensed with:

Now, therefore, in pursuance of the Act, I do dispense with the giving of notice and the issue of the prescribed permit, and do hereby authorise any registrar of marriages, to celebrate the marriage between the said A.B. and C.D. at [place of celebration], within ..... days from the date specified in this licence.

This marriage may be celebrated by a registrar of marriages between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon.

Given under my hand this ..... day of....., 20 .....

.....

Minister

FORM F

OATH OF MARRIAGE (s. 34)

Registrar: "Do I understand that you A.B., and you C.D., have come here for the purpose of being husband and wife"?

If the answer is "Yes", the registrar shall proceed as follows—

"By the public declaration that you take each other as husband and wife made in my presence, and in the presence of persons now here, and by their subsequent attestation and by signing your names to that effect you become legally married to each other, although no other rite of a customary or religious nature shall take place, and that this marriage cannot be dissolved during your lifetime except by a valid decree of divorce, and if either of you before the death of the other shall contract another marriage while this remains undissolved you commit an offence

and shall be liable to punishment for that offence."

Each of the parties shall then say to the other—

"I call upon all persons present here to witness that I, A.B. takes C.D., to be my lawful wife (or husband)."

FORM G

CERTIFICATE OF MARRIAGE (s.35)

MALAWI

The Marriage, Divorce and Family Relations Act

Section

Marriage celebrated in the .....

at..... in Malawi

CERTIFICATE OF MARRIAGE

No

Date

19	No.	When Married	Names and Surnames	Age	Status	Profession	Residence at time of Marriage	Parent(s) name	Occupation or profession of parent(s)
Name of Husband									
Name of wife									
Witnesses									

Married at ..... by (or before) me
A.B.,

Minister (or Registrar)
(as case may be)

MALAWI

The Marriage, Divorce and Family Relations Act

Section

Marriages celebrated in the.....

at..... in Malawi

CERTIFICATE OF MARRIAGE

No

Date

19	No.	When Married	Names and Surnames	Age	Status	Profession	Residence at time of Marriage	Parent(s) name	Occupation or profession of parent(s)
Name of Husband									
Name of wife									
Witnesses									

Married at ..... by (or before) me
A.B.,

Minister (or Registrar)
(as case may be)

B. No. 5

This marriage was celebrated between us	A.B. C.D.	in the presence of us	E.F. G.H Witnesses	This marriage was celebrated between us	A.B. C.D.	in the presence of us	E.F. G.H Witnesses

MARRIAGE, DIVORCE AND FAMILY RELATIONS ACT

Marriage celebrated in the ..... at ..... in Malawi.

CERTIFICATE OF MARRIAGE

Date ..... 20 .....

	No.	When married	Name and Surnames	Full age or minor	Status	Rank or Profession	Resistance at time of Marriage	Parent(s	Rank or Profession of Parent(s
Husband									
Wife									
Witness									
Witness									

Married at .....by (or before) me, ...(Signature of Cleric)

{This Marriage was celebrated between us} Signature of Husband..... Signature of Wife..... {in the presence of us} Signature of First Witness..... Signature of Second Witness.....

FORM H

COPY OF REGISTER OF MARRIAGE (s. 43)

No	Date	Contracting Parties	Age	Nationality	Village	Traditional Authority	District	Witness	Signature of officiating minister, address and date of signature
		Man							
		Woman							

* religious body, sect, denomination or ethnic group

FORM I

APPLICATION (s. 89)

In the High Court of Malawi ..... Registry

In the Resident Magistrate's Court at .....

In the ..... Grade Subordinate Court

Matrimonial Cause No. ..... of 20 ....

.....*Applicant*

and

.....*Respondent*

The application of ..... of .....(hereinafter called the "Applicant") who states that his or her spouse .....

..... of .....(hereinafter called the "Respondent"):

(*a*) On the ..... day of .....20 ..... at ..... in the District of ..... was convicted in the ..... Court of an offence against his or her person namely ..... contrary to Section ..... of the Penal Code and sentenced to pay a fine of K ..... (or imprisonment for a term of .....)

(*b*) That legal custody of ..... (child(ren)) of the marriage between the Applicant and the Respondent be committed to the Applicant until the age of 16 years;

(*c*) The Respondent pay to the Applicant personally, or for her use to any officer of the Court or third person on her behalf, such weekly sum as the Court shall, having regard to the means both of the Applicant and the Respondent, consider reasonable.

(*d*) That the costs of the Court and of the Applicant shall be paid by the Respondent.

.....
(*Applicant*)

1. Taken before me this .... day of .....20 .... at .....
Registrar/Magistrate

2. Filed on behalf of the Applicant this .... day of .....20...
Legal Practitioner for the Applicant

NOTE: If the Applicant is not represented by a Legal Practitioner, he or she must appear before the Magistrate in person and (2) should be deleted.

If the Application is filed by a Legal Practitioner on his or her behalf, 1. must be deleted.

Fee of K10 is payable for filing.

B. No. 5

FORM J

SUMMONS (s.89)

In the High Court of Malawi ..... Registry
In the Resident Magistrate's Court .....at .....
In the ..... Grade Subordinate Court

Matrimonial Cause No. ..... of 20 ....

.....*Applicant*

and

.....*Respondent*

TO :
OF :

TAKE NOTICE that you are required to attend before this Court by yourself or by your legal practitioner at .....o'clock in the ..... noon on the ..... day of .....20 ..... to show cause why an order should not be made against you pursuant to the application of ..... made herein the .....day of ..... 20 ... (a copy of which application is attached to this Notice).

AND FUTHER TAKE NOTICE that in default of such appearance an order may be made in your absence.

Dated this ..... day of ..... 20 ..... at .....
(Seal) *Registrar/Magistrate*

FORM K

ACKNOWLEDGEMENT OF REGISTRAR'S EXPLANATION (s. 18)

We ..... and ..... acknowledge that the registrar at ..... in ..... district has explained to us, in accordance with section 19 of the Act, the prohibited degrees of kindred affinity, the prohibition on polygamy and the penalties applicable for offences under this Act.

Signed: [AB]

Signed: [CD]

.....
Registrar

Date : .....

B. No. 5

SECOND SCHEDULE

FEES (s. 113)

	K	*t*
Filing every notice and entering same.	10	00
Issuing each certificate or certified copy or any certified copy of an extract from it.	20	00
On each marriage in the Registrar's office.	50	00
Special Licence	50	00
For each search of the Marriage Register Book	10	00
For each search of the Marriage Notice Book.	10	00

THIRD SCHEDULE (s. 17)

PROHIBITED DEGREES OF KINDRED AND AFFINITY

FIRST COLUMN	SECOND COLUMN
PART I	
Mother	Father
Adoptive mother or former adoptive mother	Adoptive father or former adoptive father
Daughter	Son
Adoptive daughter or former adoptive daughter	Adoptive son or former adoptive son
Father's mother	Father's father
Mother's mother	Mother's father
Son's daughter	Son's son
Daughter's daughter	Daughter's son
Sister	Brother
Father's sister	Father's brother
Mother's sister	Mother's brother
Brother's daughter	Brother's son
Sister's daughter	Sister's son
First cousin	First cousin
Daughter of former wife	Son of former husband

PART II

Former wife of father	Former husband of mother
Former wife of father's father	Former husband of father's mother
Former wife of mother's father	Former husband of mother's mother
Daughter of son of former wife	Son of son of former husband
Daughter of daughter of former wife	Son of daughter of former husband

PART III

Mother of former wife	Father of former husband
Former wife of son	Former husband of daughter

PART IV

Sister of deceased or divorced wife	Brother of deceased or divorced husband
Daughter of brother of deceased or divorced wife	Son of brother of deceased or husband
Daughter of sister of deceased or divorced wife	Son of sister of deceased or husband
Sister of father of deceased or divorced wife	Brother of father of deceased or husband
Sister of mother of wife	Brother of mother of deceased husband

OBJECTS AND REASONS

The principal object of this Bill is to implement the recommendations of the special Law Commission contained in the report of the Law Commission on the Review of the Laws on Marriage and Divorce (Law Commission Report No. 16) published on 26th June, 2006, and to consolidate statutory and customary laws on marriage and divorce.

KALEKENI KAPHALE
Attorney General

Printed and published by THE GOVERNMENT PRINTER, Lilongwe, Malawi—3958—(*Price K1,000.00*)