

GAZETTE EXTRAORDINARY

**The Malawi Gazette Supplement, dated 4th September, 2017, containing
Report of the Law Commission (No. 2D)**

LAW COMMISSION REPORT NO. 33

CONSTITUTION OF MALAWI

REPORT OF THE LAW COMMISSION ON THE TECHNICAL
REVIEW OF THE PREVENTION OF DOMESTIC VIOLENCE ACT

The Report of the Law Commission on the Technical Review of the Prevention of Domestic Violence Act is hereby published and shall be laid in Parliament pursuant to section 135 (*d*) of the Constitution.

Dated this 18th day of April, 2016.

SAMUEL BATSON TEMBENU, SC
*Minister of Justice and
Constitutional Affairs*

(FILE NO. LC/01/68)

REPORT OF THE LAW COMMISSION ON THE TECHNICAL REVIEW OF THE PREVENTION OF DOMESTIC VIOLENCE ACT

TO: HONOURABLE SAMUEL BATSON TEMBENU, SC, MINISTER OF JUSTICE AND
CONSTITUTIONAL AFFAIRS

This is the Report on the Technical Review of the Prevention of Domestic Violence Act (Cap. 7:05) by the special Law Commission appointed under section 133 of the Constitution to review the Prevention of Domestic Violence Act.

We, members of the Commission, submit this Report pursuant to section 135 (d) of the Constitution and commend the Report and its recommendations to the Government, Parliament and people of Malawi.

MEMBERS



.....
HONOURABLE JUSTICE IVY C. KAMANGA

— *Chairperson*
Judge of the High Court
of Malawi



.....
MR. JOSEPH KAZIMA

— *Deputy Chairperson*
Ministry of Women and
Child Development¹



.....
MRS. GERTRUDE LYNN HIWA, SC

— *Law Commissioner*



.....
MRS. FIONA KALEMBA

— Ministry of Justice and
Constitutional Affairs

¹ As the Ministry was known at the time the special Law Commission was empanelled, but currently referred to as Ministry of Gender, Children, Disability and Social Welfare.



MS. TINYADE KACHIKA

— Civil Society



.....
MR. CHRISPINE SIBANDE

— Malawi Human Rights
Commission²

Dated: October, 2015

² Commissioner Sibande was a member of staff of the Human Rights Commission at the time of his appointment as Commissioner.

Programme Officers

The Commission was professionally serviced by Mr. William Yakuwawa Msiska, LLB (Hons), LLM, Chief Law Reform Officer and was assisted by Mr. Robert Kandulu, LLB (Hons), Assistant Law Reform Officer.

Acknowledgement

Funding for this Programme was primarily provided by the United Nations Population Fund (UNFPA) while the UN Women and the Government of Malawi funded certain aspects of the Programme.

TABLE OF CONTENTS

	PAGE
EXECUTIVE SUMMARY	6
INTRODUCTION	8
Terms of Reference	8
Work Methodology	9
Structure of the Report	9
Overview of the Prevention of Domestic Violence Act	9
Draft Amendment Legislation	10
 SPECIFIC FINDINGS AND RECOMMENDATIONS	
PART I – PRELIMINARY	11
PART II – PROTECTION ORDERS	21
PART III – OCCUPATION ORDERS	25
PART IV – TENANCY ORDERS	28
PART V – PROVISIONS RELATING TO OCCUPATION ORDERS AND TENANCY ORDERS	29
PART VI – INTERIM ORDERS	30
PART VII – PROCEDURES IN RESPECT OF APPLICATIONS FOR ORDERS	31
PART VIII – BREACH OF ORDERS	33
PART IX – DESIGNATION, DUTIES AND POWERS OF ENFORCEMENT OFFICER	34
PART X – DUTIES AND POWERS OF POLICE OFFICERS	36
PART XI – MISCELLANEOUS	38
SCHEDULE	41
 APPENDICES	
APPENDIX I: PREVENTION OF DOMESTIC VIOLENCE (AMENDMENT) BILL, 20.. .. .	65
APPENDIX II: List of Stakeholders Invited to all the Consultative Workshops	94
APPENDIX III: List of Participants	99

EXECUTIVE SUMMARY

Work on the Technical Review of the Prevention of Domestic Violence Act commenced after the Law Commission received a submission, in 2009, from the Ministry of Women and Child Development (as it was known then). The Ministry made the submission after noting that there were technical problems encountered in the implementation of the Act.

A special Law Commission on the Technical Review of the Prevention of Domestic Violence Act was empanelled to review the Act with the aim of removing any technical defects from the Act. The special Law Commission conducted thorough desk research, deliberated in plenary, went on comparative study visits and also held consultative workshops regarding the provisions of the Act. The special Law Commission has since completed its task and has made its recommendations.

The recommendations are on specific provisions of the Act and include, among others, definition of “child.” “[C]hild” is defined as “a person under the age of eighteen years who ordinarily or periodically resides with the applicant, whether or not the child is a child of the applicant and respondent or either of them, and includes an adopted child, a step child, or a child who is treated as a child of the family but does not include a person who is married”. According to the submission, the definition of child was considered too broad. In its analysis, the special Law Commission was of the view that the broadness would ensure that all children falling within a domestic relationship are well covered and recommends that the definition should be retained.

Another recommendation is on the definition of “domestic violence” which the Act defines as “any criminal offence arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship”. The special Law Commission found that the definition is restrictive in that any act of domestic violence should be an offence or criminal in nature. Consequently, the special Law Commission acknowledged that there may be acts which qualify as domestic violence but are not an offence or a crime in their own respect. Thus the special Law Commission recommends that the definition of “domestic violence” should be amended to include aspects that are not criminal offences.

Further, the special Law Commission recommends that section 30 of the Act should be amended to make it clear that breach of a court order issued under the Act is an offence; and also to provide for an alternative penalty of imprisonment in default of payment of a fine stipulated under the provision.

Furthermore, the special Law Commission recommends that section 42 of the Act should be amended. The section confers a general duty on any person who witnesses the commission of an act of domestic violence or has reason to believe that an act of domestic violence has been, is being or is likely to be committed, to report to the police, or give information to an enforcement officer who shall in turn report the matter to the police.

The special Law Commission was of the view that the provision should make it clear that the duty to report domestic violence is obligatory and the failure to report domestic violence is an offence punishable under the law.

Lastly, the special Law Commission recommends amendments to the Schedule which comprises various forms used in domestic violence matters in order to improve the clarity of the forms and make them more user friendly, especially for those persons who are not trained in legal matters.

INTRODUCTION

The general mandate of the special Law Commission on the Technical Review of the Prevention of Domestic Violence Act (the Commission) was to conduct a technical review³ of the Act with the aim of eliminating problems faced or encountered in the implementation of the Act.

The Prevention of Domestic Violence Act (hereinafter referred to as “the Act”) was enacted in May, 2006 with two broad purposes. First, is to ensure the commitment of the State to eliminate gender-based violence occurring within a domestic relationship. Second, is to provide for effective legal remedies and other social services to persons affected by domestic violence. The substance of the legislation is generally acceptable and admirable within the Southern Africa Development Community Region.

However, in the period in which the Act has been in operation, it was noted by the Ministry of Women and Child Development⁴ that there are gaps and challenges in the legislation which have caused problems with implementation that need to be corrected. As such, in 2009, the Ministry made a submission to the Law Commission requesting that a review of the Act be carried out.

Terms of Reference

The special Law Commission on the Technical Review of the Prevention of Domestic Violence Act developed the following Terms of Reference:

(a) to review the Act in order to—

(i) identify gaps in the Act that may have negatively affected its implementation;

(ii) suggest and make recommendations for amendment;

(iii) check for consistency and accuracy within the provisions of the Act and between the Act and other laws; and

(iv) make textual and editorial suggestions as to how any gaps and inconsistencies identified might be corrected;

(b) to consult with stakeholders with a view to eliciting their views on the findings and recommendations of the Commission;

(c) to recommend any other matters relating to prevention of domestic violence; and

(d) to produce a Report containing findings and recommendations accompanied by draft legislation based on the findings and recommendations.

³ A technical review, as opposed to a general review, focuses on perceived problem areas and a general clean up of the Act to get rid of any technical defects or implementation problems.

⁴ See note 1 (above).

Work Methodology

The Commission adopted the following methodology in reviewing the Act—

(a) invited submissions from members of the public in general through notices in the local papers and general written submissions were received;

(b) held Commission meetings during which the Commission scrutinized the whole Act, provision by provision and examined comparable statutes from other jurisdictions;

(c) undertook comparative study visits to Namibia and Mauritius to share experiences on the implementation of domestic violence legislation;

(d) held three (3) regional consultative workshops and one (1) national consultative workshop on the recommendations made by the Commission; and

(e) undertook study visits locally to learn what practices obtain in Malawi.

All submissions and comments that were received by the Commission were considered and debated upon and have influenced the development of the final recommendations contained in this Report.

Structure of the Report

This Report has been structured to commence with a brief overview of the Act. This is followed by a detailed analysis of the Act by sequence of Parts and sections. However, some of the sections which were considered not to raise any implementation problems have been recommended for retention and are not included in this Report. All matters recommended to be incorporated into the Act have been indicated in **bold**.

Overview of the Prevention of Domestic Violence Act

The Act is divided into eleven Parts.

Part I deals with preliminary matters that include the short title, interpretation, the purpose of the Act and persons who may apply for orders.

Part II makes provision for the mode of application for a protection order, the grant of an interim protection order and protection order. It also deals with circumstances where there are existing proceedings other than those of a protection order.

Part III provides for the application for an occupation order, the grant of an occupation order and interim occupation order, the effect of an occupation order and how such orders can be varied or discharged.

Part IV provides for an application for a tenancy order, the granting of a tenancy order and an interim tenancy order, the effect of a tenancy order and powers to discharge such order and revesting of the tenancy in the original tenant.

Part V makes provision for the procedure relating to occupation orders and tenancy orders. It also provides for ancillary orders which the court can make with respect to furniture, etc.,

Part VI deals with interim orders in general.

Part VII makes provision for procedures in respect of applications for orders. These include the date of hearing, notice of proceedings, the effect of the absence of either the applicant or respondent and the mode of service of orders.

Part VIII makes provision for breach of orders.

Part IX deals with designation of enforcement officers, duties of enforcement officers and powers of enforcement officers.

Part X makes provision for the duties and powers of police officers with respect to domestic violence. This Part also deals with refractory witnesses, granting of bail and makes it clear that existing criminal law shall continue to apply.

Part XI deals with a number of miscellaneous matters. These include the duty to report domestic violence, jurisdiction of court, conduct of proceedings, matters of evidence, standard of proof, restriction of publication of reports of proceedings, appeals, the power to make rules of the court and the general power of the Minister to make regulations.

Draft Amendment Legislation

As required by section 7 (1) (g) of the Law Commission Act,⁵ the Commission has prepared proposed legislation incorporating the recommendations of the Commission, and the proposed legislation is attached as part of this Report.

⁵ Cap. 3:09.

SPECIFIC FINDINGS AND RECOMMENDATIONS

PART I—PRELIMINARY

Long title

The long title of the Act provides for the prevention of domestic violence; protection of persons affected by domestic violence; and for other matters connected with domestic violence. The Commission considered the long title and was of the view that the long title clearly stipulates the spirit and intention of the Act. The Commission therefore recommends retention of the long title.

SECTION 1 [*Short title*]

The Commission considered the short title of the Act as the “Prevention of Domestic Violence Act” and recommends retention.

SECTION 2 [*Interpretation*]

The Commission considered the words defined under the interpretation section in light of the problems with implementation of the Act. While some of the definitions were considered without problem, a number of them, in the Commission’s view, needed recasting.

“child”, is defined as a person under the age of eighteen years who ordinarily or periodically resides with the applicant, whether or not the child is a child of the applicant and respondent or either of them, and includes an adopted child, a step child, or a child who is treated as a child of the family but does not include a person who is married.

According to the submission that the Commission received from the Ministry requesting the review of the law, the definition of child is considered too broad. In its consideration of the provision, the Commission was at pains to come to terms with the submission noting that the broadness would ensure that all children falling within a domestic relationship are well covered. As such, the Commission recommends that, in the absence of any problems with implementation, the definition should be retained.

Participants to the national consultative workshop requested the Commission to consider including a person who is married and below eighteen (18) years in the definition of child. The Commission noted that in the Malawi social context, someone who is married is regarded as an adult and independent of his or her parents. Marriage severs the parental rights and responsibilities a parent has over such a person. If such a person is a victim of domestic violence while staying with parents, he or she would only be able to institute proceedings under the Act through enforcement officers, the police and service providers as provided for under section 4.

Another issue that was raised in the course of the deliberations was whether a grandchild is also included in the definition of child. The Commission observed

that the definition as it currently stands covers even a grandchild. The Commission therefore saw no reason or justification for specifically including grandchild in the definition.

“court” is defined as a court which in accordance with section 45, has competent jurisdiction. Section 45 provides that any court within the area in which the applicant or respondent ordinarily resides, carries on business or where the domestic violence occurs, has jurisdiction to grant all the orders provided for under the Act. According to the submission, the issue for consideration by the Commission is whether the definition under the Act is inconsistent with the one under the Courts Act. Under the Courts Act, the term “court” is defined to mean the High Court and any subordinate court.⁶ A subordinate court means any court subordinate to the High Court, established under the Act but does not include a Traditional Court established under the Traditional Courts Act⁷ or any Act replacing the same.⁸

The Commission observed that the definition under the Act is not in any way inconsistent with the definition under the Courts Act for a number of reasons. The Commission noted that the definition of “court” under the Act is premised on the concept of jurisdiction i.e. locality or geographical position of where the applicant or respondent stays, carries on business or is employed. This is what is called jurisdiction of the court as regards the person. The Commission further noted that the area where an act of domestic violence takes place falls within the jurisdiction of the court with respect to the matter. The Commission thus was of the view that the definition of “court” as explained in section 45 aims at facilitating access to courts.

The Commission also found that the Act does not create, establish or envisage the creation or establishment of specific types of courts to deal with matters of domestic violence. If anything, the Act recognizes the existing court structure.

Based on these findings, the Commission is of the view that the definition under the Act is not inconsistent with the definition under the Courts Act. As such, the Commission recommends retention of the definition. The ancillary issue that arose in the course of the discussion on the definition of the term “court” was whether the High Court has original jurisdiction to deal with matters of domestic violence, more especially noting that there might be such a court in the area where an act of domestic violence arises or where the applicant or respondent ordinarily resides.

The Commission acknowledged that the way the definition is framed, as read with section 45, confers concurrent jurisdiction between the High Court and subordinate courts. There exists shared jurisdiction between the High Court and subordinate courts. An individual is at liberty to commence domestic violence

⁶ Section 2 of Cap.3:02, Laws of Malawi.

⁷ Cap. 3:03, Laws of Malawi.

⁸ Cap. 3:02, Laws of Malawi.

proceedings either in the High Court or subordinate court if such a court is within the area where the individual ordinarily resides or an act of domestic violence has occurred. The position the Commission took is supported by the Constitution which provides that the High Court shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law;⁹ as well as the Courts Act which provides that the High Court has all the jurisdiction and powers, criminal or civil which a subordinate court has.¹⁰ Therefore, it cannot be denied that any law includes the Act.

The Commission was, however, mindful of the existence of case law on the subject matter which appears to bear conflicting views. Of particular interest was the case of *Mungomo v. Mungomo*,¹¹ where the dispute, among other issues, hinged on whether the High Court with its extensive jurisdiction under section 108 of the Constitution is competent to hear divorce petitions even in cases involving customary marriages. The issue was answered in the affirmative. However, it was observed that the High Court has to look at the matter from a practical point of view. The court stated as follows:

“It would be inappropriate and wrong for the High Court to proceed and assume jurisdiction over proceedings which fall within the jurisdiction of a subordinate court simply because the High Court has, as we have just seen, unlimited original jurisdiction. Such an approach would create confusion, as parties would be left to their whims to bring proceedings willy-nilly in the High Court or subordinate court as they please. This would also open the floodgates for trivial cases to come before the High Court”.

The Commission was of the opinion that though the dictum is instructive, it should be distinguished from what is contemplated under the Act. The Act does not confer jurisdiction on any particular or specific cadre of courts to adjudicate on matters of domestic violence. The Commission therefore concluded that the term “court” as used under the Act, includes the High Court.

On whether the term “court” includes a local court, the Commission found that although a local court is a subordinate court under the Constitution, such a court is not competent to deal with matters under the Act. First, according to the Constitution,¹² the jurisdiction of local courts is limited exclusively to civil cases at customary law and such other minor common law or statutory offences as prescribed by an Act of Parliament.¹³ The Commission conceded that domestic violence matters are of a civil nature by statute and thereby fall outside the parameters as set by the Constitution.

Second, the criminal jurisdiction of local courts is also limited in such a way that these courts have and may exercise criminal jurisdiction in such minor offences under the Penal Code and in any written law as prescribed in the First

⁹ Section 108 of the Constitution of the Republic of Malawi.

¹⁰ Section 11 (b), Cap 3:02, Laws of Malawi.

¹¹ Matrimonial Cause No. 6 of 1996 (unreported).

¹² Section 110 (3).

¹³ Section 22, Act No. 9 of 2011.

Schedule to the Local Courts Act.¹⁴ A consideration of the First Schedule reveals that the Act is not on the list of written laws prescribed for the exercise of criminal jurisdiction by local courts.

On whether the definition should be qualified in order to exclude courts or institutions that do not amount to courts, the Commission was of the view that such an exercise would be far-fetched as the law is very clear in terms of the institution of courts.

“[D]ependant” is defined as a person over the age of eighteen years, living within the household, who by reason of age, physical or mental disability or infirmity is reliant on either the applicant or respondent for his or her welfare. At first, the Commission took issue with the phrase “who by reason of age”. However, in the course of the deliberations it was clarified that the phrase is meant to identify which category of persons over the age of 18 years would be reliant on either the applicant or respondent for his or her welfare. It is not everybody over the age of 18 years and living within the household that would qualify as a dependant. For example, “by reason of age” would mean a person who is very old and unable to make provision for his or her welfare.

The Commission also had recourse to foreign jurisdictions with comparable legislation in order to ascertain whether its reasoning was correct. Under section 2 of the Domestic Violence Act of Jamaica, the term “dependant” is defined to include:

- (a) member of the family of a respondent being a person who is eighteen years of age or older and normally resides, or resides on a regular basis with the respondent; and
- (b) a person who, by reason of physical or mental disability, age or infirmity, is reliant on the respondent for his welfare or maintenance.

The Commission considered the definition and noted that it supports the clarification it has made in respect of the definition under the Act.

During the national consultative workshop, participants suggested that the definition of the word “dependant” should include persons who are 18 years and above but still living with parents. In its consideration of the matter, the Commission was of the view that dependant under the Act should be seen in the light of inability either by reason of old age, physical infirmity or mental infirmity which exposes that person to any form of vulnerability. As such, a person who is 18 years and above and economically relies on parents does not qualify as a dependant. Therefore, the Commission recommends retention of the definition.

The Act has defined the term “domestic relationship” in the following terms—

¹⁴ *Ibid.*

“domestic relationship” in relation to domestic violence, means the relationship between persons who are family members and share a household residence or are dependent on each other socially or financially and includes the relationship where—

- (a) the applicant and the respondent are husband and wife;
- (b) a person has a child in common with the respondent and that person is being subjected or is likely to be subjected to domestic violence by the respondent;
- (c) one is a parent and the other is his or her child or dependant; and
- (d) the applicant and the respondent are or have been in a visiting relationship for a period exceeding twelve months.

Initially, the Commission was of the opinion that the definition is limiting and suggested that the expression “but not limited to” be inserted after the word “includes”. However, upon reflection, the Commission was of the view that insertion of the words “but not limited to” would not serve any other meaningful purpose as the provision in its current state is indicative of the fact that the list of the situations where domestic relationship would arise is not exhaustive. The word “includes” is appropriate as it is intended to remove the doubt arising from the meaning stipulated in the first clause which is from the words “in relation to domestic violence, means the relationship between persons who are family members and share a household residence or are dependent on each other socially or financially”.

The Commission therefore resolved to maintain the current wording of the provision.

The Commission also raised an issue with paragraph (d) of the definition in particular the phrase “visiting relationship”. The Commission thought that the phrase is not clear as it does not elaborate which relationships are referred to as “visiting relationship”. As such, the Commission was of the view that the phrase should be clarified. In order to clarify what the phrase “visiting relationship” would mean, the Commission had recourse to comparable statutes in other jurisdictions. In South Africa,¹⁵ the expression “domestic relationship” is defined to mean a relationship between a complainant and a respondent in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each, or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);

¹⁵ Section 1 of Domestic Violence Act, Act No. 116 of 1998.

(d) they are family members related by consanguinity, affinity or adoption;

(e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or

(f) they share or recently shared the same residence.

The Commission observed that the definition under the South African legislation does not mention anything concerning a visiting relationship. The same observation applies to legislation dealing with domestic violence in Namibia¹⁶ and Botswana.¹⁷ However, the Commission was inclined to accept that, being in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration would be closer to what is meant by visiting relationship in the Malawi social context.

Further, the Commission had recourse to the Jamaican legislation on domestic violence. Under that legislation “visiting relationship” is specifically defined as:

a relationship between a man and a woman who do not share a common residence, which is a close relationship by virtue of its nature and intensity having regard to—

- (a) the amount of time that the persons spend together;
- (b) the place where that time is ordinarily spent;
- (c) the manner in which that time is ordinarily spent;
- (d) the duration of the relationship; and
- (e) the existence of a child (if any) of both parties.¹⁸

In its analysis, the Commission thought that this definition is clear and precise in meaning than the other three which it thought are close to the meaning of the expression “visiting relationship”.

Furthermore, the Commission noted that for a relationship to qualify as a “visiting relationship” such relationship should have been in existence for a period exceeding twelve months. The Commission queried the rationale of having this time stipulation, more especially when abuses amounting to domestic violence may occur any time into the relationship. The Commission was of the view that the time stipulation is an unnecessary hindrance to the fight against domestic violence. The Commission’s finding was confirmed by stakeholders during the regional consultative workshops in the North and Centre.

¹⁶ Combating Domestic Violence Act, Act No. 4 of 2003.

¹⁷ Domestic Violence Act (2008) available at < <http://sgdatabse.unwomen.org/uploads/DV%20Act%202008.pdf> > [accessed in December, 2009].

¹⁸ Section 2 of Domestic Violence Act, Act No. 15 of 1995.

In that regard, the Commission recommends that paragraph (d) of the definition of “domestic relationship” be deleted and replaced as follows—

“a man and a woman in a relationship who do not share a household residence, which relationship is very close by virtue of its nature and intensity, and includes engagement, dating, courting or any actual or perceived intimate, romantic or sexual relationship”.

Still on the definition of the expression “domestic relationship”, the Commission noted that the law does not provide for persons who were married and are divorced. The Commission was divided on whether to include such matters in the definition. Some Commissioners were for inclusion, while others were against the idea. As for those who were in support of the idea their justification was that, in practice, people who have been divorced do molest one another in various ways that would amount to domestic violence in the form of psychological or emotional abuse. Whereas those Commissioners who were against the idea, thought it would not be appropriate to prolong relationships which have since been terminated or which are presumed under the pretext of preventing domestic violence. The very same divergent views also emerged during the National Consultative Workshop.

In its consideration of the issue, the Commission resolved and agreed that the definition of domestic relationship would be applicable to people who have been divorced if they have a child in common. However, in circumstances where there is no child between the divorced parties, the Commission was of the view that if such people suffer physical abuse, sexual abuse, psychological abuse or emotional abuse from the other party, the party who is aggrieved or victimised would invariably have recourse to existing criminal law or civil remedies available under law. Such remedies would be compensation in the form of money which is generally known as damages or the equitable relief of injunction. As such, the Commission recommends that the definition of “domestic relationship” should not include people who have been divorced, except in cases where the parties have a child in common.

“domestic violence” means any criminal offence arising out of physical, sexual, emotional or psychological, social, economic or financial abuse committed by a person against another person within a domestic relationship. The Commission observed that the definition presupposes that any act of domestic violence should be criminal in nature. The Commission took notice of the fact that an offence is an act, attempt or omission punishable by law.¹⁹ However, on the contrary, the Commission noted that there may be acts which constitute domestic violence but are not criminal in their own respect. The Commission found that the definition is unduly restrictive as it leaves out very important aspects which are not criminal offences but would amount to domestic violence.

¹⁹ Section 4 of the Penal Code, Cap.7:01, Laws of Malawi.

Again, the Commission observed that the scheme under the legislation is meant to deal with domestic violence as a civil matter. This is clear from the reliefs an individual can get from the courts, the mode of commencement of proceedings and also the standard of proof which is on a balance of probabilities. In that regard, the Commission sought guidance from comparable jurisdictions on how the expression “domestic violence” has been defined. In Namibia, the expression has been defined in such a way that it details acts or courses of conduct that amount to physical abuse, sexual abuse, economic abuse, emotional or psychological abuse, etc. as forming part and parcel of the whole definition.²⁰ In Malawi, on the other hand, the acts and courses of conduct have been individually defined which to some extent may be detrimental in the implementation of the Act. For clarity and better presentation, the Commission recommends that the definition be deleted and replaced as follows—

““domestic violence” within the context of a domestic relationship, means engaging in any of the following acts or courses of conduct—

(a) economic abuse, which includes—

(i) unreasonable deprivation of any economic resources to which a person, or a family member or dependant of the person is entitled under any law;

(ii) denying a person the liberty to undertake any lawful income generating activity or access to economic resources;

(iii) refusal to provide basic household necessities;

(iv) deprivation of a person of his or her income or salary; or

(v) denying a person the opportunity to seek employment;

(b) emotional or psychological abuse which includes—

(i) persistent intimidation by the use of abusive or threatening language;

(ii) persistent following of a person from place to place;

(iii) depriving a person of the use of his or her property;

(iv) the watching or besetting of the place where a person resides, works, carries on business or happens to be;

(v) interfering with or damaging the property of a person;

**(vi) persistent and unwelcome communication with a person ;
and**

(vii) making unwelcome and repeated or intimidatory contact with a child, dependant or elderly relative of a person;

²⁰ Section 2 of Combating Domestic Violence Act, Act No. 4 of 2003.

(c) financial abuse, which means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit access of that person to financial resources, so as to ensure financial dependence;

(d) physical abuse, which means any act or omission which causes or is intended to cause physical injury or reasonable apprehension of physical injury;

(e) sexual abuse, which includes—

(i) engaging in any sexual contact or conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of a person;

(ii) forcing or threatening a person to engage in any sexual contact or conduct;

(iii) exposing a person to sexual material which humiliates, degrades or violates integrity of that person;

(iv) engaging in sexual contact or conduct with another person with whom the applicant has emotional ties; or

(v) the commission of, or an attempt to commit any of the offences under Chapter XV of the Penal Code; or

(f) social abuse, which includes denying a person the freedom to associate freely with others with the aim of possessing that person so as to make that person completely dependent on the abuser.”.

Cap. 7:01

“[P]arent” is defined to mean a person who is a parent or grandparent in relation to a child, dependant, spouse or respondent, as the case may be, by blood, marriage or adoption. The Commission was concerned with the use of the words “spouse or respondent” in the definition. In its deliberations, the Commission considered that the word “spouse” does not fit well and is bound to cause confusion. Thus, the Commission was of the view that the word “applicant” would be appropriate in the circumstances. In that regard, the Commission recommends that the provision be amended by deleting the word “spouse” and replacing it with the word **“applicant”**.

SECTION 4 [*Persons who may apply for orders*]

This section makes provision for persons who may apply for an order. In the main, persons who may lodge an application for a protection order are: (a) a husband or a wife; (b) a person who has a child in common with the respondent and that person is being subjected to or is likely to be subjected to domestic violence by the respondent; (c) a parent or guardian of the dependant, or a person with whom the child or dependant ordinarily or periodically resides;

(d) a dependant, where such dependant is not mentally disabled; (e) a parent or sibling, by blood or marriage of the applicant or respondent, not being a member of the household; (f) a police officer; (g) an enforcement officer; and (h) a service provider approved by the Minister by order published in the *Gazette*.

The Commission considered subsection (1) and recommends retention.

Subsection (2) deals with persons who can apply for an occupation order. It provides that a husband or wife being the person against whom domestic violence has been, or is likely to be engaged in by the respondent; a parent or guardian of the child or dependant, or a person with whom the child or dependant ordinarily or periodically resides where domestic violence involves the child; a dependant, where the dependant is not mentally disabled; a parent or sibling by blood or marriage of the dependant or respondent, not being a member of the household; a police officer; and a service provider approved by the Minister by order published in the *Gazette*.

The subsection further prevents a person who has a child in common with the respondent and that person is being subjected to or is likely to be subjected to domestic violence by the respondent to apply for an occupation order. It also prevents persons described in subsection (1) (b) and (c) from applying for an occupation order.

Lastly, subsection (3) provides for persons who can apply for a tenancy order. Persons who can apply for a tenancy order are (a) husband or wife of the respondent; or (b) in the case of a child or dependant who is subjected to domestic violence, and the husband or wife is unwilling to make an application, then the parent or guardian of that child or dependant.

The Commission questioned the rationale of paragraph (b) as there is room for abuse more especially where the parent or guardian of the child or dependant is not in good terms with the wife or husband. The Commission expressed the view that the provision would pave way for molestation of either the husband or wife using the law.

However, some members of the Commission were of the view that considering the social composition of the Malawian society where there are extended families, enabling persons spelt out in paragraph (b) to apply for a tenancy order is a step in the right direction in the fight against domestic violence.

Upon consultations and further deliberations on the matter, the Commission found that an application for a tenancy order can only be made by the spouse who is a victim or on behalf of such spouse. The Commission concluded that allowing a parent or guardian of a child or dependant who is subjected to domestic violence to apply for a tenancy order in circumstances where the wife or husband is unwilling to make such application would not be appropriate. The Commission took this position because under law, the guardian or parent of the child in question is permitted to apply for a protection order where domestic violence is against or affects the child.

The Commission, therefore, recommends the deletion of paragraph (b).

PART II—PROTECTION ORDERS

SECTION 7 [*Grant of a protection order*]

Subsection (1) provides for conditions upon which the court should be satisfied before it grants a protection order. These conditions are that a case for domestic violence has been made out against the respondent and having regard to all the circumstances, the order is necessary for the protection of the prescribed person. The court may also attach a power of arrest to the protection order.

In the case where a court makes an order which directs payment of compensation, such compensation shall include, but not limited to: (a) loss of earnings; (b) medical and dental expenses; (c) moving and accommodation expenses; and (d) reasonable legal costs, including the costs of an application pursuant to the Act.²¹

Subsection (3) states that where the Court makes an order which directs counselling, that order shall specify that the Court should receive written notification from the counselor or therapist of sessions missed without reasonable excuse; and the date by which the counselor or therapist is to submit a report to the court in respect of the counselling or therapy, such report to include a prognosis for recovery. Further, subsection (4) confers jurisdiction on the Court to award compensation not exceeding K1,000,000 payment of which shall be received by the Court.

Lastly, where the Court makes an order directing the respondent to vacate the household residence or any place; or directing the respondent to return to the applicant specified property that is in his or her possession or control, the Court may in the same order direct the police to remove the respondent from the place or residence, or to accompany the applicant to specified premises to supervise the removal of property belonging to the applicant.²²

The Commission noted that there is nothing substantially wrong with the provision. However, the Commission observed that there is a difference in the spelling of the word “court” as contained in the interpretation section and under this section. The interpretation section has the word “court” with a small letter “c” while in subsections (3), (4) and (5), the word “court” has a capital letter “C”. The Commission found no justification for such a difference. Thus, for purposes of consistency in the phrasing throughout the text of the Act, the Commission recommends that subsections (3), (4) and (5) be amended by deleting the word “Court” wherever it appears in the Act and replacing it with the word “**court**”.

SECTION 8 [*Court may make direction for alternative dispute resolution*]

The provision gives opportunity to parties to domestic violence proceedings, in particular, on an application for a protection order to request the court to

²¹ Section 7 (2).

²² Section 7 (5).

suspend the issuing of an order on condition that the parties, including children or any person within the domestic relationship, agree to undergo an alternative dispute resolution process with the assistance of a service provider.

Further, where the parties to the proceedings have not made the request, the court shall, if it considers that it is in the best interest of the parties, inform the parties of their right to make such a request.

Lastly, a request to undergo an alternative dispute resolution process cannot be made more than once in relation to the same protection order.

The Commission made some observations in relation to this section. Firstly, the Commission observed that the court can only make a direction to undergo an alternative dispute resolution process upon request by the parties. Recognising that an agreement between the parties to undergo alternative dispute resolution upon request is a good and welcome step in the fight against domestic violence, it was nevertheless, thought that the court should also have powers on its own initiative to order or direct the parties to undergo an alternative dispute resolution process, but that the exercise of such powers should be based in the best interest of parties and also on a case by case basis depending on the circumstances obtaining in each particular case.

Secondly, the Commission observed that the provision is silent on the modes of alternative dispute resolution that the parties can undergo. Based on research carried out by the Commission, it was clear that alternative dispute resolution methods include: arbitration, mediation, conciliation and negotiation.²³ Arbitration is defined to mean a mini-trial, which may be for a lawsuit ready to go to trial, held in an attempt to avoid a court trial and conducted by a person or a panel of people who are not judges. The arbitration may be agreed to by the parties, may be required by a provision in a contract for settling disputes, or may be provided for under statute.²⁴ The Commission took notice of the existence of the Arbitration Act²⁵ which regulates disputes of a commercial nature between contracting parties. Invariably, arbitration agreements are embedded in the contract between the parties. As such, the Commission observed that matters of domestic violence, though they may arise from a contractual relationship, would not fit in the scheme envisaged under that Act.

The Commission then looked at mediation as a mode of alternative dispute resolution in relation to domestic violence. Mediation is a voluntary and confidential process in which a neutral person, a mediator, assists disputing parties to clarify issues, develop options and work towards a mutually beneficial resolution.²⁶ In respect of mediation as well, the Commission was mindful of the existence of court rules that govern mediation in Malawi. These rules are the

²³ Kew, D, and Nwoson K. [2007] Training Manual on Alternative Dispute Resolution and Restorative Justice (UNODC) p. 17.

²⁴ < www.dictionary.law.com/Default.aspx?selected=2429 > [accessed on 1 May 2015].

²⁵ Cap. 6:03 of Laws of Malawi.

²⁶ See note 23 above.

Courts (Mandatory Mediation) Rules.²⁷ Rule 2 states that the Rules shall apply to civil actions pending before the High Court and subordinate courts, and all civil actions commenced before the High Court and subordinate courts. However, the Rules also do exempt other civil actions to which the Rules do not apply per Rule 3 as follows:

Rule 3. These Rules shall not apply to proceedings—

(a) arising out of or relating to or concerning the interpretation or application of the provisions of the Constitution;

(b) concerning the liberty of an individual;

(c) commenced under the Subordinate Courts (Small Claims Procedure) Rules;

(d) for—

(i) judicial review matters;

(ii) an injunction;

(iii) summary possession of land;

(iv) an expedited originating motion; and

(v) any such matters where, by law or practice, the trial is expedited;

(e) where the court makes an order on an application by a party requesting the court to exempt the action from these Rules; or

(f) where the court, in its discretion, so orders.

The Commission considered the Rules and observed that the application of the Rules covers all civil actions or matters. The Commission also acknowledged that the scheme under the Act is such that the process of obtaining the relevant orders is of a civil nature and not criminal. In that regard, the Commission resolved that Courts (Mandatory Mediation) Rules do apply to domestic violence matters which are civil in nature.

The Commission also considered conciliation as a method of alternative dispute resolution. Conciliation can be explained to mean a practice of guiding litigants, usually in a civil suit to create an equitable, negotiated settlement instead of proceeding to trial.²⁸ Conciliation may also incorporate suggestions for resolution of the dispute. The Commission was of the view that conciliation, as one of the well-known methods of alternative dispute resolution, is suitable for use in matters of domestic violence.

The Commission noted that there have been concerns elsewhere on the suitability of using alternative dispute resolution mechanisms in matters of

²⁷ Government Notice No. 9 of 2004.

²⁸ See note 23 above.

domestic violence. The New South Wales Law Reform Commission expressed the concerns in 2005.²⁹ The reasons why alternative dispute resolution may be inappropriate in the context of domestic violence include—

(a) safety concerns – alternative dispute resolution process may place women and children in danger because the offender may use the process as an opportunity for violence or intimidation;

(b) power imbalances – sometimes extreme imbalance in power in relationships characterized by domestic violence undermines the fairness of the process;

(c) mediation requires honesty, desire to settle the dispute and some capacity for compromise. Perpetrators of domestic violence are not generally capable of such behaviour in relation to the target of their violence;

(d) mediation places too great a burden on the woman who has been the victim of violence, and who may, for example, be afraid to be in the same room with the perpetrator; and

(e) alternative dispute resolution is a private and confidential process, with the effect that violence against women is shielded from the public eye.³⁰

The Commission considered the justifications for the inappropriateness of alternative dispute resolution processes in matters of domestic violence and noted that the risks associated with domestic violence in alternative dispute resolution processes are capable of being managed. One of the ways in which the risks can be managed is ensuring that victims are prepared for the process. This would be possible noting that under the Act, alternative dispute resolution process is sanctioned by the court at the request of the parties. Additional modalities which have worked in other jurisdictions include—

(a) allowing the presence of support persons;³¹

(b) co-mediation with male and female mediator;³² and

(c) using shuttle mediation, where parties sit in different rooms and the mediator shuttles between them.

Thus, the Commission resolved that there are potential benefits of using alternative dispute resolution in domestic violence. The first is that alternative dispute resolution processes may be more accessible as they are arguably cheaper and faster. Second, if the process is conducted by an experienced practitioner with the appropriate safeguards as suggested above, it is bound to yield positive outcomes.

²⁹ New South Wales Law Reform Commission, Community Justice Centres, Report 106 (2005), Chapter 4.

³⁰ *Ibid*

³¹ Keys, Young, Research/Evaluation of Family Mediation Practice and Issues of Violence: Final Report 1996, Australian Ag. Department, 39.

³² Domestic Violence and Incest Centre, Behind Closed Doors; Family Dispute Resolution and Family Violence, Discussion Paper No. 6 (2007), 56-57.

These sentiments coupled with the fact that since time immemorial alternative dispute resolution mechanisms have been used in settling disputes, including domestic violence at the community level setting, the Commission concluded that such an arrangement be maintained under the provisions of the Act.

Thus, the Commission recommends retention of the provision subject to amending subsection (2) by deleting the full stop and inserting the following words “**or order that the parties undergo an alternative dispute resolution process**”.

The Commission acknowledged that there is an acute shortage of human resource. As such, the Commission was of the firm view that Government should make a deliberate effort to ensure training of service providers and social welfare officers in alternative dispute resolution in matters of domestic violence.

SECTION 10 [*Variation or discharge of a protection order*]

The section provides that the court may vary or discharge a protection order or an interim protection order at the instance of any party to the proceedings. The court can vary or discharge any condition; impose a new condition; make a direction that the parties undergo an alternative dispute resolution process; or vary or discharge a direction to undergo an alternative dispute resolution process. The court may also vary a protection order by directing that the protection order should also apply for the benefit of a particular person within the domestic relationship. Further, it is a requirement that a copy of the application to vary or discharge the protection order must be served on each person who was a party to the initial proceedings in which the protection order was granted.

Lastly, the section provides that in determining whether to discharge a protection order the court shall be guided by the matters referred to in section 7 which deals with the granting of a protection order.

The Commission considered the provision and observed that it is a restatement of normal court process which is that an order of court obtained *ex parte* may only be varied by the hearing of an *inter partes* application. The Commission recommends retention subject to minor amendments. In subsection (1) by deleting the word “of” immediately after the word “party” and replacing it with the word “**to**”; and in subsection (4) by deleting the word “Court” and replacing it with the word “**court**”.

PART III—OCCUPATION ORDERS

SECTION 12 [*Grant of an occupation order on ex-parte application*]

The section in subsection (1) provides that an occupation order may be granted by the court on an *ex parte*³³ application if two things are satisfied i.e. the respondent has used violence against a prescribed person or caused physical or

³³ An application in judicial proceedings made by one party in the absence of the other.

emotional injury to a prescribed person, and that the delay that would be caused by proceeding on notice could or might expose the prescribed person to physical or emotional injury. Subsection (2) basically states the obvious in that an occupation order granted on an *ex parte* application shall be an interim order.

Subsection (3) empowers the court to also make an interim protection order in addition to the grant of an occupation order on an *ex parte* application. The interim protection order shall only be made after the court considers that there are special reasons necessitating or warranting the grant of such an order.

Subsection (4) makes provision for circumstances in which an interim occupation order shall expire in a scenario where the prescribed person and the respondent are living in the same household residence. The interim occupation order shall expire on its discharge by the court; on the discharge of an interim protection order made simultaneously with an interim occupation order; or at the expiration of fourteen days after the date on which the order was made.

Further, according to subsection (5), the respondent who is affected by an interim occupation order may apply immediately for its variation or discharge.

The Commission raised issue with subsection (4) (c) having noted that the provision is silent on whether the applicant can apply for extension of the operation of the interim occupation order at the expiration of the fourteen days. However, upon reflection, the Commission observed that the interim order of occupation is a stop gap measure to take care of situations where proceeding with the hearing on notice would result in delay which might expose the prescribed person to physical or emotional injury. The Commission equated the interim occupation order to an interim injunction which is also temporal in nature. Invariably, such orders are granted as an interim measure pending the hearing of the substantive action. In that regard, the Commission concluded that the provision cannot be faulted and therefore no need arises for suggesting a provision on extension of time for the operation of the interim occupation order. In the circumstances, the Commission recommends retention of the provision.

SECTION 13 [*Effect of an occupation order*]

The section provides that where an occupation order is made in respect of a prescribed person, that person shall be entitled to occupy the household residence to the exclusion of the respondent. The Commission considered the provision in the light of the definition of the expression “household residence”. Household residence is defined to mean the dwelling-house that is or was last used habitually by persons within a domestic relationship as the only principal family residence, together with any land, buildings or improvements appurtenant thereto and wholly or mainly used for the purposes of the household. The Commission observed that the definition includes such structures as servants’ quarters and guest houses. There may be a scenario where the court may order that the prescribed person should occupy the guest house or indeed any particular part of the household residence to the exclusion of the respondent.

During consultations, some stakeholders were concerned that it may not be safe for disputing parties to share the household residence as that could be a recipe for continuation of the violence.³⁴ Another view was that the provision would make the Act effective, in that respect, only for persons of a particular class that has divisible household residences.³⁵ In that regard, it was proposed that the provision should be changed or removed. Nevertheless, the Commission found that due to non-availability of safe homes for victims of domestic violence, it may be practicable for the court to order that a party occupy a particular part of the household residence. The Commission was aware that granting of orders under the Act is at the discretion of the court. In that regard, there was need for the applicant to make a full and frank disclosure of all the material facts when making the application. Such facts could include: the nature or size of the household residence; place where the household residence is located; and the social arrangement at the location, for instance, whether the applicant is living under *chikamwini* (matrilineal system), *lobola* (bride price commonly paid in a patrilineal system) or is in an *urban setting*. The Commission observed that such information would give the court a chance to give an appropriate order taking into account all the circumstances of the case.

In the United Kingdom, courts have been known to apply what is called a ‘balance of harm test’ whereby the court considers the likelihood of significant harm to the applicant, the respondent and any children if an order is made; balanced against the likelihood of significant harm if an order is not made.³⁶ Further, the Commission found that the law does not confine the court to grant only the order applied for, but that the court can also grant a protection order where necessary.³⁷ With that in mind, the Commission was of the view that the provision as it currently stands may yield absurdity in its implementation. The Commission thus recommends that the provision should be amended by inserting the words “**or the part of the household residence**” between the words “residence” and “to”.

SECTION 14 [*Variation or discharge of occupation order*]

The section provides that the court may on application by either party extend or reduce the time period for the operation of the order; or vary or discharge any terms or conditions imposed by the court pursuant to section 11 (2). The Commission identified no substantive problem with the provision, except a textual error in paragraph (b) in particular, the expression “Court”. The Commission recommends that the word “Court” be deleted and replaced with the word “**court**”.

³⁴ See Malawi Law Commission, Report of the Proceedings of the Regional Consultative Workshop on the Technical Review of the Prevention of Domestic Violence Act, Mzuzu Hotel, 26th March, 2012. p.5.

³⁵ See Malawi Law Commission, Report of the Proceedings of the Regional Consultative Workshop on the Technical Review of the Prevention of Domestic Violence Act, Pacific Hotel, Lilongwe, 3rd October, 2013.

³⁶ <<https://www.citizensadvice.org.uk/relationships/relationship-problems/relationship-breakdown-and-housing/common-issues-relationship-breakdown>> [accessed on October, 2015].

³⁷ Section 12(3) of the Prevention of Domestic Violence Act.

PART IV—TENANCY ORDERS

SECTION 15 [*Application for a tenancy order*]

Subsection (1) states that an application may be lodged with the court for an order vesting in the applicant the tenancy of any dwelling-house which at the time of making the order, the respondent is either the sole tenant or a tenant holding jointly or in common with the applicant and that the household residence is that of the applicant or respondent.

Subsection (2) outlines conditions with which the court should be satisfied for an order to be made. These conditions are that the order is necessary for the protection of the applicant; or that the making of the order is in the best interests of a child or a dependant.

The Commission considered the provision and raised a concern with the phrase “dwelling-house” when considered in the light of the definition of the expression “household residence”. The Commission observed that the definition of the expression “household residence” is qualified in such a way that it is a dwelling-house that is used or was last used as the only principal family residence. On the other hand, the expression “dwelling-house” has not been defined. However, the Commission had recourse to case law in order to unravel what would be the meaning as used in the provision. In the case of *Lewin v. End*,³⁸ Lord Atkinson said, “by a “dwelling-house”, I understand a house in which people live or which is physically capable of being used for human habitation.”

Further, in the case of *Belfast Corporation v. Kelso*³⁹ the court said that “it is not difficult to see that the word dwelling-house may be used in different senses in different connections. Thus, we may speak of a garden attached to or surrounding a dwelling-house. In this sense by “dwelling-house” we mean only the dwelling-house itself, the actual bricks and mortar.”

Upon analysis of the case law cited, the Commission resolved that there is indeed a distinction between “household residence” and “dwelling house”. It is possible to have a tenancy for a dwelling-house which dwelling-house would also be a household residence. To confirm its finding, the Commission also looked at a comparable jurisdiction to gain more insights. In the Cayman Islands⁴⁰ both terms are defined. “Household residence” is defined in the same way as in Malawi, whereas “dwelling-house” is defined to mean a building used or intended to be used mainly as a separate dwelling or place of residence and includes an apartment. That being the case though, the Commission was of the view that for a tenancy order to be made, two factors should be satisfied namely: (a) the respondent should be either the sole tenant or a tenant holding jointly or in common with the applicant; and (b) the dwelling-house in issue should be the household residence of the applicant or the respondent.

³⁸ (1906) AC 299 at 304.

³⁹ (1953) NI 150 at 163.

⁴⁰ Protection Against Domestic Violence Act of 2010.

With this explanation, the Commission was satisfied that there was no issue upon which to fault the provision. Thus, the Commission recommends retention subject to deletion of the word “Court” in subsection (2) and replacing it with the word “**court**”.

SECTION 16 [*Grant of a tenancy order on an ex parte application*]

The section regulates the granting of a tenancy order on an *ex parte* application. It also provides for the procedure for discharging an interim tenancy order. Again, the Commission recommends retention subject to deletion of the word “Court” and replacing it with the word “**court**”.

SECTION 17 [*Effect of a tenancy order*]

The section makes provision for the effect of a tenancy order. In the main, a tenancy order has the effect of making the applicant to become the tenant of the dwelling house subject to terms and conditions contained in the tenancy agreement, and that the respondent ceases to be the tenant. In addition, every tenancy order has the effect and may be enforced as if it were an order for possession of land. However, the provisions of the Act or any tenancy order shall not limit or affect the operation of any written law applicable to any tenancy; or to authorise the court to vary any express or implied term or condition of the tenancy.

The Commission noted that the section does not make it clear as to who shall be liable for the payment of rent. However, the Commission observed that under section 5 (b) (viii) as one of the terms and conditions of a protection order, the court may order the respondent to make payments in respect of rent for premises occupied by the applicant for a reasonable time. The Commission agreed that such an arrangement is not satisfactory. The Commission was therefore of the view that it would be proper to provide for who shall be responsible for the payment of rent under the provisions dealing with the effect of a tenancy order. Thus the Commission recommends that the section be amended by adding a new subsection (4) to read as follows—

“(4) A court may, taking into account the financial circumstances of both parties, order that a party who—

(a) by the terms of a tenancy agreement; and

(b) before a tenancy order was granted,

was responsible for the payment of rent either in whole or in part, continue to be so responsible.”.

PART V—PROVISIONS RELATING TO OCCUPATION ORDERS AND TENANCY ORDERS

SECTION 19 [*Procedure relating to occupation orders and tenancy orders*]

Subsection (1) states that before the court can make a substantive occupation order or tenancy order it shall direct that notice be given to any person having an

interest in the property which would be affected by any such order. In subsection (2), a person upon whom a notice has been served shall be entitled to appear and be heard and be deemed to be a party to the application. Subsections (3) and (4) address a situation where an application is made for an occupation order or tenancy order. In either situation the court may treat an application for one order to be an application for another or both if it is satisfied that it has jurisdiction to make either of the orders and that the making of such an order is appropriate. Further, that subsection (1) which requires a notice to be served on a person having interest in the affected property has been complied with.

The Commission observed that subsection (4) is redundant and irrelevant as what it contains would appropriately be subsumed in subsection (3). Secondly, the Commission questioned the rationale for requiring the court to be satisfied that it has jurisdiction to make both of the orders noting that such jurisdiction has already been conferred by section 45. Again, the Commission thought that such an emphasis does not serve any purpose beneficial to society. As such, the Commission recommends that subsection (4) be deleted. Further, the Commission also recommends that subsection (3) be redrafted as follows—

“(3) Where an application is made for an occupation order or a tenancy order, the court may grant an occupation order or tenancy order, if it is satisfied that—

(a) the making of the orders is appropriate; and

(b) subsection (1) has been complied with in respect of the making of the orders.”.

PART VI—INTERIM ORDERS

SECTION 21 [*Interim orders*]

The section provides that any interim order made under the Act shall specify a date which shall not be later than twenty one days from the date of the order for hearing on whether an order should be made in substitution for the interim order. A copy of every interim order shall be served on the respondent and shall also state that unless the respondent attends court on the specified date to show cause why an order should not be made in place of the interim order, the court may discharge the interim order and make an order in substitution for it.

On the date of hearing of the substantive application, the court may discharge the interim order; discharge the interim order and make a final order; or, on good cause, adjourn the hearing to a date and place specified by the court. However, the adjournment should not exceed thirty days from the date of the application.

The Commission, in its deliberation, raised issue with the time period for adjournment not to exceed thirty days from the date of application. The concern was that the practical operation of the provision would be difficult. The

suggestion was that the calculation of time should be from the date of adjournment. The Commission suggested that fourteen (14) days would be appropriate. However, upon reflection and acknowledging that the scheme under the Act is aimed at expeditious and quick disposal of matters, the Commission recommends that the period not exceeding thirty (30) days be retained.

PART VII—PROCEDURES IN RESPECT OF APPLICATIONS FOR ORDERS

SECTION 22 [*Date of hearing*]

The section empowers the Clerk of the Court or the Registrar to fix a date for the hearing of the application. The date shall be no more than twenty-one days from the date of filing the application. The Commission noted that the introduction of the office of a “Clerk of the Court” to be responsible for fixing dates of hearing is an anomaly. The Commission was mindful that in practice, court clerks in subordinate courts and in the High Court carry out their duties on the direction of a magistrate and the Registrar, respectively. The views of the Commission are confirmed when one reads subsection (4) of section 23 which deems a notice of hearing to be a summons. It is only a magistrate or Registrar who, according to law, has powers to issue a summons. In light of the findings, the Commission recommends amendment to the provision by deleting the expression “Clerk of the Court” and replacing it with the word “**court**”.

SECTION 23 [*Notice of proceedings*]

The section provides for the procedure as regards notice of hearing of the application. The application, together with the notice, is to be served on the respondent. Where an application for an order is in respect of a child or dependant, the application together with the notice shall be served on the parent or guardian or other person with whom the child or dependant normally resides. Further, a notice of the proceedings issued and served is deemed to be a summons that has the effect of compelling the respondent to appear in court to answer the application as if it were a complaint. Lastly, proof of service of a notice of proceedings shall be verified by affidavit.

The Commission raised concern with the way subsection (3) is drafted. It was observed that the provision details matters such as date, time and place where the application is to be heard. The Commission looked at Form 13 in the Schedule and considered the repetition of the concerned words in the text of the provision as unnecessary. Thus, the Commission recommends amendment of subsection (3) by deleting the words “**of the date on which, and the time and place at which, the application is to be heard**”.

SECTION 24 [*Absence of respondent*]

The provision addresses situations where the respondent has been served with the notice of the proceedings and fails to attend court on the appointed date. In such circumstances, the court may proceed to hear and determine the matter in

the absence of the respondent or adjourn the matter and issue a warrant for the respondent to be apprehended and brought before court.

The Commission considered the provision and observed that the words “for the respondent to be apprehended and brought before the court” do not add anything valuable to the general tenor of the provision. The Commission recommends deletion of the words “for the respondent to be apprehended and brought before the court” and replacing them with the words “**of arrest**”.

SECTION 27 [*Service of orders*]

The section provides that where an order or interim order is made or varied by the court, the Clerk of the Court shall arrange for the order or interim order to be drawn up on the relevant form as prescribed and cause a copy of the order or interim order to be served on: (a) the respondent; (b) any other person to whom the order or interim order relates regardless of whether or not that person was a party to the proceedings; and (c) the police officer in charge of the station located nearest to the area where the respondent or applicant resides. In circumstances where the order or interim order relates to real property, the order or interim order shall also be lodged with the registrar of titles by the applicant.

The Commission adopted its views as regards the expression “the Clerk of the Court” when it was considering section 22. In light of the views expressed under that section, the Commission recommends that the section be redrafted.

Further, the Commission considered the use of the words “registrar of titles” as misleading and inappropriate noting that under the Registered Land Act⁴¹ or any land legislation there is no such title. Under the Registered Land Act the words “land registry” are the ones in use. For consistency the Commission recommends that the words “registrar of titles” be deleted and replaced with “**land registry**”.

For reasons of better punctuation the Commission recommends the substitution of the “comma” after the word “resides” in paragraph (c) with a “semi-colon” and also that the statement beginning with the words “and if” be made a stand alone paragraph (d). The redrafted section 27 shall read as follows—

“Service of
Orders
Schedule

27. Where a court makes or varies an order or an interim order, it shall issue the appropriate order on the prescribed form contained in the Schedule hereto, and shall cause a copy of the order or interim order to be served on—

(a) the respondent;

(b) any other person to whom the order or interim order applies, whether or not the person is a party to the proceedings;

⁴¹ Cap. 58:01 of Laws of Malawi.

(c) the police officer in charge of the station located nearest to the area where the applicant or respondent resides; and

(d) if the order or interim order relates to real property, it shall also be lodged with a land registry by the applicant as a *lis pendens*.⁴²

PART VIII—BREACH OF ORDERS

SECTION 30 [*Breach of orders*]

The section makes provision that any person against whom an order has been made; has had notice of the order; and fails to comply with the order or any direction of the court in relation to any order or direction is liable to a fine of up to K500,000. In the case where the applicant or respondent unreasonably refuses or neglects to comply with a direction requiring him or her to seek counselling or therapy, as the case may be, that person shall be liable to a fine of K50,000.

The Commission observed that the provision purports to create offences for which the punishments are fines. However, there is an omission in that the provision does not provide that the breach of an order is a commission of an offence. The Commission was of the view that if the provision is left as it currently stands; it will create absurdity in interpretation as the provision lacks precision and clarity.

The Commission also noted that the provision has omitted to provide for imprisonment as a punishment. Generally, provisions creating offences would also provide for an alternative punishment to a fine which caters for instances where a person found guilty of an offence is unable to pay the fine.

Thus, the Commission recommends amendment of the provision in subsection (1) (c) by—

(a) inserting the words “**commits an offence and shall, upon conviction**” between the words “thereto” and “is liable”;

(b) adding the words “**and imprisonment for two (2) years**” after the words “K500,000”; and

(c) deleting the words “up to” and the “semi-colon” after the words “K500,000”.

In subsection (2) by deleting the word “seek” and replacing it with the word “**undergo**” and also inserting the words “**commits an offence and upon conviction**” between the words “may be” and “shall be”. Further, deleting the “full stop” after the word “K50,000” and adding the words “**and to imprisonment for six (6) months.**” However, upon noting the extent of the proposed amendments, the Commission recommends redrafting the provision as follows—

⁴² Pending suit, action, petition or matter, particularly one relating to land.

“Breach of orders

30. — (1) Subject to subsection (2), any person against whom an order has been made and who has had notice of the order but fails to comply with the order or any direction of the court in relation thereto,

commits an offence and shall, upon conviction, be liable to a fine of five hundred thousand Kwacha (K500,000) and to imprisonment for two (2) years.

(2) Where an order contains a direction of the court, pursuant to section 5 (b) (x), requiring the respondent, or the applicant, as the case may be, to undergo counselling or therapy and the respondent, or the applicant, unreasonably refuses or neglects to comply with each direction, the respondent, or the applicant, commits an offence and shall, upon conviction, be liable to a fine of fifty thousand Kwacha (K50,000) and to imprisonment for six (6) months.”

PART IX—DESIGNATION, DUTIES AND POWERS OF ENFORCEMENT OFFICERS

SECTION 32 [*Duties of enforcement officers*]

The section provides for the duties of an enforcement officer. Some of these duties are to ensure that victims of domestic violence are accorded proper treatment and provided with necessary assistance; to ensure the proper administration and enforcement of the Act; to give advice to the Minister on the effective implementation of the Act and other incidental matters. An enforcement officer has the duty to perform such other duties as are necessary for the effective carrying out of the purposes of the Act. The Commission considered the provision and found no fault with the substance. It however, noted a textual omission of the word “and” after the semi-colon at the end of paragraph (c). In keeping with good legislative drafting practice, the Commission recommends amendment to paragraph (c) by inserting the word “**and**” after the semi-colon.

SECTION 33 [*Powers of enforcement officers*]

Subsection (1) outlines the powers of an enforcement officer in cases where the enforcement officer reasonably suspects or has received information that a person has been or is likely to be subjected to domestic violence. In such situations, the enforcement officer has to initiate an investigation into the matter or cause an entry to be made at the nearest police station in the book or such other record which is maintained for that purpose.

Subsection (2) provides for the powers of an enforcement officer after an investigation has been carried out and the enforcement officer reasonably believes that steps should be taken to protect the victim of violence. As such, the

enforcement officer is, among other things, empowered to explain to the victim of domestic violence of his or her right to protection against domestic violence; arrange for the provision of medical assistance to the victim of domestic violence at the nearest hospital or health facility; and also to inform the victim of domestic violence, and where possible the perpetrator of the domestic violence about the available alternative dispute resolution mechanisms, including counselling and reconciliation.

Lastly, an enforcement officer may also file an application for an order or interim order on behalf of a victim of domestic violence. Such application should be supported by an affidavit sworn by the enforcement officer.

The Commission observed that substantively, the provision is in order. However, technically, the Commission noted that in paragraph (e) of subsection (2) the provision is drafted in such a way that the words “counselling” and “reconciliation” have been presented as forms of alternative dispute resolution. The Commission was mindful that in statutory interpretation, where a particular class is spoken of first and general words follow, the class mentioned first is to be taken as the most comprehensive and the general words are treated as referring to matters *eiusdem generis* with such a class.⁴³ In the Black’s Law Dictionary, *Eiusdem generis* (spelt as *Ejusdem generis*) is considered to mean that where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.⁴⁴ The Commission considered whether counselling and reconciliation are forms of alternative dispute resolution under section 8 of the Act, in light of the discussion in Part II of this Report, and also upon considering the words based on their natural meaning. The Commission found that in the natural and ordinary sense the term “counselling” means giving advice; recommending a course of action; or giving professional help and advice to a person to resolve personal, social, or psychological problems.⁴⁵ The Commission was of the view that in that sense counselling cannot be a form of alternative dispute resolution, although it can properly form part of a process that could lead to alternative dispute resolution.

Regarding the term “reconciliation”, the Commission found that it means the action of reconciling; or an instance or occasion of friendly relations being restored.⁴⁶ Elsewhere, reconciliation has been considered as: the renewal of amicable relations between two persons who had been at enmity or variance, usually implying forgiveness of one or both sides; and in law of domestic relations, a voluntary resumption of marital relations in the fullest sense.⁴⁷ The Commission was of the view that in that regard, reconciliation as opposed to conciliation is a state of affairs. It can be the end result of some other process, for instance mediation. Reconciliation cannot therefore be properly considered as a

⁴³ *Nseula v Attorney-General and another* [1999] MLR 313 (MSCA).

⁴⁴ Sixth Edition, p. 517.

⁴⁵ Concise Oxford English Dictionary, Twelfth Edition, p. 326.

⁴⁶ *Op cit.* Concise Oxford English Dictionary, p. 1201.

⁴⁷ Black’s Law Dictionary, Sixth Edition, p. 1272.

form of alternative dispute resolution. Nevertheless, the Commission made a finding that although not forms of alternative dispute resolution, counselling and reconciliation were still important in ending domestic violence and promoting peaceful co-existence within the domestic relationship. The problem was with the use of the word ‘including’ in the provision.

Therefore, the Commission recommends that subsection (1) (a) should be amended by inserting the word “**and**” after the semi-colon. The Commission further recommends that paragraph (e) of subsection (2) should be amended by deleting the word “including” from the provision.

PART X—DUTIES AND POWERS OF POLICE OFFICERS

SECTION 34 [*Duties of police officers*]

The section states that every police officer shall respond to every complaint or report alleging domestic violence. This duty shall be executed regardless of whether or not the complainant is the victim.

The section also makes provision for the format of a domestic violence report. The Commission recommends that subsection (2) be redrafted for better presentation as follows—

“(2) Every police officer, who responds to a domestic violence complaint, shall complete a domestic violence report which shall form part of a national domestic violence register, and shall be maintained by the Commissioner of Police of each region.”.

SECTION 35 [*Issue of warrant*]

The section provides for the grounds upon which a police officer, by information on oath, can obtain a warrant from court to enter any premises. These grounds are twofold: First, is that there are reasonable grounds to suspect that a person on the premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent injury. Second, is a situation where a police officer has been refused permission to enter the premises in order to give assistance.

The Commission queried the use of the word “imminent” in paragraph (a) and observed that it is not necessary as it may result in negatively affecting the fight against domestic violence.

Thus, the Commission recommends amendment of paragraph (a) by deleting the word “imminent”.

SECTION 36 [*Police powers of entry without warrant*]

The section provides for circumstances in which a police officer may enter the premises upon reasonable belief that a person is engaging in or attempting to

engage in conduct which amounts to domestic violence and that failure to act may result in serious injury or death. The Commission approved the general tenor of the provision as being in conformity with the Constitution. However, of concern to the Commission is subsection (5) which states that where a complaint is made against a police officer by a person resident in the premises alleging that the officer's entry onto the premises was unwarranted, the Commissioner of Police of the region in which the incident occurred shall immediately after receipt of the complaint institute investigations into the complaint and shall, within 14 days of the complaint having been made, submit a report in relation thereto to the Inspector General of Police.

The Commission observed that the provision is intended to enhance police accountability and act as a check on abuse of powers by the police officers. However, the Commission was aware that under the Police Act⁴⁸ such complaints by the public against police officers and Police Service shall be lodged with the Independent Complaints Commission established under that Act. The Commission was therefore of the view that the scheme under the Police Act should be reflected in subsection (5). In that regard, the Commission recommends that subsection (5) be deleted and replaced as follows—

“(5) Any complaint against a police officer alleging that the entry by the police officer onto the premises under subsection (1) was unwarranted, shall be—

(a) lodged with the Independent Complaints Commission established for that purpose under the Police

Act No. 12 of 2010 Act; or

(b) made to the Commissioner of Police of the region in which the incident occurred who shall immediately, after receipt of the complaint and shall, within fourteen (14) days of the complaint having been made, submit a report in relation thereto to the Inspector General of Police.”.

SECTION 39 [*Existing criminal law to apply*]

Subsection (1) provides that a person arrested under sections 35 or 36 shall be charged with the commission of an offence in accordance with the relevant provisions of criminal law. In subsection (2), where a person has been arrested pursuant to sections 35 or 36 and charged with an offence, and after hearing all the evidence, the court is satisfied that the incident leading to the prosecution was an isolated one; that it is desirable to preserve the family unit and the conduct complained of is of a minor nature that it would not warrant imposition of either the order or penalty, the court may with the consent of the applicant or complainant withhold the granting of a protection order or the imposition of any penalty prescribed by law and require the respondent or defendant to enter into a bond of good behaviour for a period not exceeding six months.

⁴⁸ Act No. 12 of 2010, PART XIII

According to subsection (3), the court may prescribe additional conditions for the bond of good behaviour. These conditions are that the parties receive professional counselling, including family counselling; that the parties report to an enforcement officer at certain fixed intervals; or that the matter be reviewed by the court within three months.

A bond of good behaviour entered into shall be forfeited, if the court is satisfied that the respondent or defendant has continued to engage in conduct amounting to domestic violence against the complainant; based on a report from an enforcement officer, a police officer or such other service provider, domestic violence is likely to be perpetrated against the applicant or complainant; or the applicant or complainant has become fearful of the respondent or defendant to the extent that he or she is no longer willing to continue the relationship.

The Commission recommends retention of the provision subject to amending subsection (3) (a) by deleting the word “professional” on the ground that due to the unavailability of sufficiently trained personnel in the area, it would be almost impossible to find professional counsellors; and in subsection (4) (c) by inserting the word “**with**” between the words “continue” and “the”.

SECTION 41 [*Grant of bail*]

The section provides that regardless of the provisions of the Bail (Guidelines) Act,⁴⁹ when granting bail in respect of an offence under the Act the court shall consider the need to protect the applicant from domestic violence; the welfare of a child where the respondent or victim of the alleged offence has custody of that child; the welfare of the child being a member of the household residence; and any hardship that may be caused to the respondent or other members of the family if bail is granted.

Further, if bail is granted, it shall be subject to such conditions as the court may deem appropriate in the circumstances of the case. Some of the conditions that the court may impose, include that the respondent shall not harass or molest or cause another person to harass or molest the victim of the alleged offence and that the respondent shall not be on the premises in which the victim resides, works or carries on business.

Furthermore, a police officer may, without warrant arrest a person who was admitted to bail, if on reasonable grounds the police officer believes that the person has failed to comply with the conditions of bail.

The Commission considered the whole provision and recommends retention.

PART XI—MISCELLANEOUS

SECTION 42 [*Duty to report domestic violence*]

The section confers a general duty on any person who witnesses the commission of an act of domestic violence or has reason to believe that an act of

⁴⁹ Cap.8:05 of Laws of Malawi

domestic violence has been, is being or is likely to be committed, may report to the police, or give information to an enforcement officer, who shall in turn report the matter to the police.

The Commission questioned the use of the word “may” noting that the provision confers a duty which a particular person should perform. In its deliberations, the Commission was of the view that the word “may” detracts from the general nature of duties to be performed. The use of the word “may” presupposes that a person who witnesses the commission of an act or acts of domestic violence has a choice whether or not to report to the police.

The Commission concluded that the use of the word “may” is a textual error which should be corrected. Thus, the Commission recommends that the provision be amended by deleting the word “may” and replacing it with the word “**shall**” which imposes an obligation.

In addition, and having made a recommendation to amend the provision so as to impose an obligation, the Commission thought there was need to make provisions for an offence in case of breach of the duty to report. The Commission recommends that the section be amended by adding subsection (2) which shall read as follows—

“(2) Any person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of fifty thousand Kwacha (K50,000) and imprisonment for six (6) months.”.

SECTION 46 [*Single act of condonation*]

Under this section, a court shall not refuse to grant an order merely on the grounds that only a single act of domestic violence has been committed by the respondent or that the applicant condoned acts of domestic violence committed by the respondent.

The Commission observed that the marginal note and the substantive provision present different senses. The Commission concluded that the word “of” in the marginal note be deleted and replaced with “**or**” so as to align the meaning in the marginal note to the one in the provision.

Further, the Commission thought the use of the word “merely” and “only” as repetitive noting that the two words mean the same thing. In light of that, the Commission recommends amendment of the provision by deleting the word “merely” and replacing it with the word “**only**”.

Furthermore, the Commission recommends deletion of the word “only” immediately after the expression “the grounds”.

SECTION 47 [*Conduct of proceedings*]

This section prohibits the attendance of any person or the general public during the hearing of any proceedings other than criminal proceedings. There are

exceptions to this general rule. According to the section, the exceptions include: officers of the court; parties to the proceedings and their legal counsel; witnesses; and any other person permitted by the presiding Judge or Magistrate to be present.

Subsection (2) is to the effect that a witness shall leave the courtroom if asked to do so by the presiding Judge or Magistrate. In addition, subsection (3) makes it clear that nothing shall limit any other power of the court to hear proceedings *in camera* or to exclude any person from the court.

In keeping with good legislative drafting practice, the Commission recommends that subsection (1) (c) be amended by inserting the word “**and**” after the semi-colon.

Furthermore, the Commission did not find any justification for using capital “J” and capital “M” in the words “Judge” and “Magistrate” respectively. As such it recommends that subsection (1) (d) and subsection (2) be amended by deleting the words “Judge” and “Magistrate” and replacing them with the words “**judge**” and “**magistrate**”.

SECTION 51 [*Order of consent*]

The section permits the court in any proceedings to make an order by the consent of all parties to the proceedings. For reasons of better punctuation, the Commission recommends that a “**comma**” be inserted after the clause “In any proceedings under this Act”.

SECTION 52 [*Counselling*]

The section permits the court on the making of any order, to recommend that either or both parties to the proceedings participate in counselling of any nature which the court may specify. Such counselling may include counselling by marriage advocates, relations, religious leaders and chiefs.

The Commission considered the provision, and was concerned with the involvement of marriage advocates who are perceived to be biased and have a reputation of encouraging domestic violence. Nevertheless, the Commission recommends retention based on the fact that the court shall, when making an order of counselling, do so based on an informed point of view taking into account the available evidence.

SECTION 53 [*Appeals*]

The section provides for the right of appeal against any order made by the court or the refusal of the court to make an order. Such appeal against the decision of the court may be lodged within twenty-eight days. In subsection (2), the lodging of an appeal shall not be a ground for staying or suspending the operation of the order appealed against.

The Commission considered the provision and noted that the use of the clause “the making of” in subsection (1) (a) cannot be justified as it is bound to

yield two meanings. The first meaning would be that the aggrieved party is appealing against the process of making the order. The other meaning might be the one which is intended, that is to say, appealing against an order.

For clarity, the Commission recommends that subsection (1) (a) be amended by deleting the words or phrase “the making of”.

SECTION 56 [*Regulations*]

The section gives power to the Minister to make regulations for the better implementation of the Act. Such regulations may be made with respect to the designation of enforcement officers; the approval of persons or organisations that could provide services; the approval of services or programmes; the prescribing of qualifications and experience for persons who may provide services; the collection of data; the additions to, amendment or substitution of any forms; and any other matter required to be prescribed.

The Commission considered the provision and was aware that the designation of enforcement officers by the Minister has already been provided for under section 31. Thus, the Commission found no justification for the repetition in section 56 (a). Consequently, the Commission recommends deletion of paragraph (a) and that the remaining paragraphs be renumbered accordingly.

SCHEDULE

The Commission considered the Schedule which comprises various court forms used in domestic violence matters and recommends a number of amendments to the Schedule and in particular the Forms.

FORM 1

In the Court at

Civil Cause No..... of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION FOR PROTECTION ORDER/INTERIM PROTECTION ORDER*

(Section 5 or 6* of the Prevention of Domestic Violence Act)

I
(Name of Applicant)

of
(Address of Applicant)

hereby apply under section 5 or 6* of the Prevention of Domestic Violence Act
for a protection order or interim protection order*

against
(Name of Respondent)

who is
(Specify relationship to named Respondent)

and who resides at
(Specify address of Respondent)

in respect of the following conduct:

.....
.....
.....
.....
(Specify dates, times, place and details of alleged conduct)

Dated this day of 20.....

.....
Applicant

To: The Respondent

*Delete whichever is not applicable

FORM 2

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

INTERIM PROTECTION ORDER

(Section 6 of the Prevention of Domestic Violence Act)

The Court having heard an application made by (Name of Applicant)

in respect of the conduct or threatened conduct of (Name of Respondent)

towards (Name of person to be protected)

NOW THIS COURT ORDERS that for the period from the day of 20..... to the day of 20.....

YOU (Name of Respondent)

of (Address of Respondent)

(a) shall not engage in the following conduct: (Specify conduct)

(b) shall not engage in any conduct that constitutes domestic violence under this Act; and

(c) shall comply with the following prohibitions and conditions:

.....
.....
.....

(Specify prohibitions and conditions imposed and any period for which they may be imposed).

If you, the said fails to comply (Name of Respondent)

with any terms of this Order, you shall be liable to imprisonment and to a fine pursuant to section 30 of the Act.

Dated this day of 20.....

..... Registrar/Magistrate

FORM 2 (A)

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

PROTECTION ORDER

(Sections 5 and 7 of the Prevention of Domestic Violence Act)

The Court having heard an application made by

(Name of Applicant)

in respect of the conduct or threatened conduct of

(Name of Respondent)

towards

(Name of person to be protected)

NOW THIS COURT ORDERS that from the date of this order YOU

.....

(Name of Respondent)

of

(Address of Respondent)

(a) shall not engage in the following conduct

.....
.....
.....

(b) shall not engage in any conduct that constitutes domestic violence under this Act; and

(c) shall comply with the following prohibitions and conditions

.....
.....
.....

(Specify prohibitions and conditions imposed and any period for which they may be imposed)

If you the said fails to

(Name of Respondent)

comply with any terms of this order, you shall be liable to imprisonment and to a fine pursuant to section 30 of the Act.

Dated this day of 20.....

.....

Registrar/Magistrate

FORM 3

In the Court at

Civil Cause No. of 20.....

Between

A. B.

Applicant

and

C. D.

Respondent

APPLICATION FOR DISCHARGE/VARIATION* OF PROTECTION ORDER/INTERIM PROTECTION ORDER*

(Section 10 of the Prevention of Domestic Violence Act)

I
(Name of Applicant)¹

of
(Address of Applicant)

hereby apply under section 10 of the Prevention of Domestic Violence Act for the discharge/variation* of the Protection Order or Interim Protection Order* made against

.....
(Name of person against whom the order was made)

of
(Address)

on the day of 20..... by the Court (a copy of which is attached to the said application) in respect of certain conduct or threatened conduct towards
(Name of person protected by an Order)

on the following grounds:

.....
.....
.....
.....
(Specify grounds and details)

Dated this day of 20.....

.....
Applicant

To: The Respondent

*Delete whichever is not applicable

¹ Applicant may either be the complainant or the respondent.

FORM 4

In the Court at
Civil Cause No. of 20.....

Between
A. B. Applicant
and
C. D. Respondent

ORDER DISCHARGING/VARYING* PROTECTION ORDER/INTERIM PROTECTION ORDER*

(Section 10 of the Prevention of Domestic Violence Act)

The Court, having heard an application made under section 10 of the Prevention of Domestic Violence Act by
(Name of Applicant)¹

of
(Address of Applicant)

in respect of conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards and the Court
(Name of person protected by the Order)

having on the day of made an Order prohibiting the Respondent from engaging in the conduct specified therein.

NOW the Court on the application of
(Name of Applicant)

this day orders that the Protection Order or Interim Protection Order* be:

1. Discharged
.....
(Specify effective date of discharge)

.....; OR*

2. Varied as follows:
.....
.....
(Specify details of variation)

Dated this day of 20.....

Registrar/Magistrate

*Delete whichever is not applicable

¹ Applicant may either be the complainant or the respondent.

FORM 5

In the Court at.....

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION FOR OCCUPATION ORDER OR INTERIM OCCUPATION ORDER*

(Section 11 or 12* of the Prevention of Domestic Violence Act)

I
(Applicant)

of
(Address of Applicant)

hereby apply under section 11 or 12* of the Prevention of Domestic Violence Act
for an Occupation Order or Interim Occupation Order* against.....
(Name of Respondent)

who is
(Specify relationship to the named Respondent)

and who resides at
(Specify address of Respondent)

in respect of the following conduct:

.....
.....
.....
.....
.....

(Specify dates, times, place and details of alleged conduct)

Dated this day of 20.....

.....
Applicant

To: The Respondent

*Delete whichever is not applicable

FORM 6

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

INTERIM OCCUPATION ORDER

(Section 12 of the Prevention of Domestic Violence Act)

The Court having heard an application made by
(Name of Applicant)

of
(Address of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that for the period from the day of
..... 20..... to the day of..... 20.....

YOU
(Name of Applicant)

shall have the exclusive right to live at the household residence now occupied by both of you pending the hearing of an application for an Occupation Order.

If you, the said fails to comply
(Name of Respondent)

with any of the terms of this Order, you shall be liable to imprisonment and a fine pursuant to section 30 of the Act.

Dated this day of 20

.....
Registrar/Magistrate

FORM 6 (A)

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

OCCUPATION ORDER

(Section 11 of the Prevention of Domestic Violence Act)

The Court having heard an application made by (Name of Applicant)

in respect of the conduct or threatened conduct of (Name of Respondent)

towards (Name of person to be protected)

NOW THIS COURT ORDERS that you (Name of Applicant)

of (Address of Applicant)

shall from the day of 20.... have the exclusive right to occupy the household residence for a period of (months, weeks, etc.).

If you, the said fails (Name of Respondent)

to comply with any terms of this order, you shall be liable to imprisonment and to a fine pursuant to section 30 of the Act.

Dated this day of 20.....

..... Registrar/Magistrate

FORM 7

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION FOR DISCHARGE/VARIATION* OF OCCUPATION ORDER/INTERIM OCCUPATION ORDER*

(Section 14 of the Prevention of Domestic Violence Act)

I (Applicant)¹

of (Address of Applicant)

hereby apply under section 14 of the Prevention of Domestic Violence Act for a discharge/variation* of the Order made against (Name of person against whom Order was made)

of (Address of person against whom Order was made)

on day of 20..... by the Court (a copy of which is attached to the said application) in respect of certain conduct or threatened conduct towards (Name of person who is protected by Order)

on the following grounds: (Specify grounds and details)

Dated this day of 20.....

..... Applicant

*Delete whichever is not applicable

¹ The applicant may either be the complainant or the respondent.

FORM 8

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

ORDER DISCHARGING/VARYING* OCCUPATION ORDER/INTERIM OCCUPATION ORDER*

(Section 14 of the Prevention of Domestic Violence Act)

The Court having heard an application made by (Name of Applicant)¹

of (Address of Applicant)

in respect of the conduct or threatened conduct of (Name of Respondent)

of (Address of Respondent)

towards and the Court having (Name of person to be protected)

on the day of 20 made an Order, a copy of which is attached, prohibiting the Respondent from engaging in the conduct specified therein:

Now, the Court on the application of (Name of Applicant)¹

this day orders that the Occupation Order or Interim Occupation Order* be:

1. Discharged (Specify effective date of discharge)

.....; OR*

2. Varied as follows:

.....
.....
.....

(Specify details of variation)

Dated this day of 20.....

..... Registrar/Magistrate

*Delete whichever is not applicable

¹ The applicant may either be the complainant or the respondent.

FORM 9

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION FOR TENANCY ORDER OR INTERIM TENANCY ORDER*

(Section 15 or 16* of the Prevention of Domestic Violence Act)

I
(Applicant)

of
(Address of Applicant)

hereby apply under section 15 or 16* of the Prevention of Domestic Violence Act,
for a Tenancy Order or Interim Tenancy Order* against
(Name of Respondent)

in respect of household residence/dwelling house.....
(Specify house number, street, location, etc.)

who is
(Specify relationship to the named Respondent)

and who resides at
(Specify address of Respondent)

in respect of the following conduct:
.....
.....
(Specify dates, times, place and details of alleged conduct)

Dated this day of 20.....

.....
Applicant

To: The Respondent

*Delete whichever is not applicable

FORM 10

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

INTERIM TENANCY ORDER

(Section 16 of the Prevention of Domestic Violence Act)

The Court, having heard an application made by
(Name of Applicant)

of
(Address of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that for the period from the

day of 20..... to the day of 20.....

YOU
(Name of Applicant)

shall have the exclusive right to live at the household residence now occupied by both of you and the tenancy of which is vested in you pending the hearing of an application for a Tenancy Order.

If you, the said fails
(Name of Respondent)

to comply with any of the terms of this order, you shall be liable to imprisonment and a fine pursuant to section 30 of the Act.

Dated this day of 20.....

.....
Registrar/Magistrate

FORM 10 (A)

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

TENANCY ORDER

(Section 15 of the Prevention of Domestic Violence Act)

The Court having heard an application made by
(Name of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that from the date of this order YOU
(Name of Applicant)

of
(Address of Applicant)

shall have the exclusive right to live in and occupy the household residence and vesting in you the tenancy thereof.

The Court further orders
(Respondent/Applicant)

to continue to pay the landlord of the household residence the rent when due.

If you, the said fails to
(Name of Respondent)

comply with any terms of this order, you shall be liable to imprisonment and to a fine pursuant to section 30 of the Act.

Dated this day of 20.....

.....
Registrar/Magistrate

FORM 11

In the Court at.....

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION TO DISCHARGE TENANCY ORDER AND REVEST A TENANCY

(Section 18 of the Prevention of Domestic Violence Act)

I
(Applicant)¹

of
(Address of Applicant)

hereby apply under section 18 of the Prevention of Domestic Violence Act for a discharge of the Order made against
(Name of person against whom the Order was made)

on day of 20..... by the Court in respect of certain conduct or threatened conduct towards
(Name of person who is protected by Order)

on the following grounds:
.....
.....
.....
(Specify grounds and details)

Dated this day of 20.....

.....
Applicant

To: The Respondent

¹ The applicant may either be the complainant or the respondent.

FORM 12

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

ORDER DISCHARGING TENANCY ORDER AND REVESTING TENANCY

(Section 18 of the Prevention of Domestic Violence Act)

The Court having heard the application made by
(Name of Applicant)¹

of
(Address of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards
(Name of person to be protected)

on the day of 20.... made an order, a copy of which is attached
(Date of original order)

prohibiting the respondent from engaging in the conduct specified therein;

Now the Court on the application of this day orders
(Name of Applicant)

that the Tenancy Order be discharged and the tenancy reverted in the
.....
(Name of Applicant or Respondent)

with effect from

Dated this day of 20.....

.....
Registrar/Magistrate

¹ Applicant may either be the complainant or respondent.

FORM 13

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

NOTICE OF HEARING

(Section 23 of the Prevention of Domestic Violence Act)

TO THE RESPONDENT

TAKE NOTICE that the hearing of an application for a/an*
(Protection, Occupation, Tenancy*)

Order shall take place on day of 20..... at
..... in the noon
at
(Place)

A copy of the application is attached.

AND FURTHER TAKE NOTICE that if you do not appear at the hearing of the application, the Court may—

- (a) deal with the application in your absence; or
- (b) issue a warrant for your arrest and to be brought before the Court.

Dated this day of 20.....

.....
Registrar/Magistrate

*Delete whichever is not applicable

FORM 14

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

AFFIDAVIT OF SERVICE

I, make oath
(name, address and description of deponent)

and say as follows

That I did on the day of 20..... personally/by post*
serve with a true copy of the application
(Name of Respondent)

for Order.
(Protection, Occupation, Tenancy*)

Sworn by me.....
at this day of
..... 20

BEFORE ME:

COMMISSIONER FOR OATHS

*Delete whichever is not applicable

FORM 15

DOMESTIC VIOLENCE POLICE REPORT

(Section 34 of the Prevention of Domestic Violence Act)

STATION: REGION Reference No.

Complaint made by
Surname First Name

Address

Relationship to Victim or Alleged Offender

Telephone No.

Mode of Report
(Telephone, Personal, Referred (by whom), etc.)

Date Time Diary Reference

Recorded by: (Number/Rank/Name)

Name of Victim
Surname First Name

Religion

Address

Telephone No. Marital Status Relationship to Alleged Offender

Sex Age Occupation

Address of Employment

.....

Name of Alleged Offender
Surname First Name

Religion

Address

Sex Age Marital Status Telephone No.....

Occupation Address of Employment

.....

Name of Witness

Address

Relationship to Victim or Alleged Offender

History of domestic violence between the parties

.....

.....

.....

.....

.....

Type of abuse and weapon used, if any

.....

.....

.....

.....

.....

.....

.....

APPENDICES

APPENDIX I

PREVENTION OF DOMESTIC VIOLENCE

(AMENDMENT) BILL, 20..

PREVENTION OF DOMESTIC VIOLENCE
(AMENDMENT) BILL, 20..

ARRANGEMENT OF SECTIONS

SECTION

- 1. Short title
- 2. Amendment of s. 2 of the principal Act
- 3. Amendment of s. 4 of the principal Act
- 4. Amendment of s. 7 of the principal Act
- 5. Amendment of s. 8 of the principal Act
- 6. Amendment of s. 10 of the principal Act
- 7. Amendment of s. 13 of the principal Act
- 8. Amendment of s.14 of the principal Act
- 9. Amendment of s. 15 of the principal Act
- 10. Amendment of s. 16 of the principal Act
- 11. Amendment of s. 17 of the principal Act
- 12. Amendment of s. 19 of the principal Act
- 13. Amendment of s. 22 of the principal Act
- 14. Amendment of s. 23 of the principal Act
- 15. Amendment of s. 24 of the principal Act
- 16. Replacement of s. 27 of the principal Act
- 17. Replacement of s. 30 of the principal Act
- 18. Amendment of s. 32 of the principal Act
- 19. Amendment of s. 33 of the principal Act
- 20. Amendment of s. 34 of the principal Act
- 21. Amendment of s. 35 of the principal Act
- 22. Amendment of s. 36 of the principal Act
- 23. Amendment of s. 39 of the principal Act
- 24. Amendment of s. 42 of the principal Act
- 25. Amendment of s. 46 of the principal Act
- 26. Amendment of s. 47 of the principal Act
- 27. Amendment of s. 51 of the principal Act
- 28. Amendment of s. 53 of the principal Act
- 29. Amendment of s. 56 of the principal Act
- 30. Replacement of Schedule
Schedule

A BILL

entitled

An Act to Amend the Prevention of Domestic Violence Act

ENACTED By the Parliament of Malawi as follows—

1. This Act may be cited as the Prevention of Domestic Violence Short title
(Amendment) Act 20..

Amendment
of s. 2 of the
principal Act

2. Section 2 of the Prevention of Domestic Violence Act (hereinafter referred to as the “principal Act”) is amended —

(a) in the definition of the words “domestic relationship” by deleting paragraph (d) and substituting therefor the following new paragraph (d)—

“(d) a man and a woman in a relationship who do not share a household residence, which relationship is very close by virtue of its nature and intensity and includes engagement, dating, courting or any actual or perceived intimate, romantic or sexual relationship.”;

(b) by deleting the definition of the words “domestic violence” and substituting therefor the following new definition—

““domestic violence” within the context of a domestic relationship, means engaging in any of the following acts or courses of conduct—

(a) economic abuse, which includes—

(i) unreasonable deprivation of any economic resources to which a person, or a family member or dependant of the person is entitled under any law;

(ii) denying the other person the liberty to undertake any lawful income generating activity or access to economic resources;

(iii) refusal to provide basic household necessities;

(iv) deprivation of the other person of his or her income or salary; or

(v) denying the other person the opportunity to seek employment;

(b) emotional or psychological abuse, which includes—

(i) persistent intimidation by the use of abusive or threatening language;

(ii) persistent following of a person from place to place;

(iii) depriving a person of the use of his or her property;

(iv) the watching or besetting of the place where a person resides, works, carries on business or happens to be;

(v) interfering with or damaging the property of a person;

(vi) persistent and unwelcome communication with a person; and

(vii) making unwelcome and repeated or intimidatory contact with a child, dependant or elderly relative of a person;

(c) financial abuse, which means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit access of that person to financial resources so as to ensure financial dependence;

(d) physical abuse, which means an act or omission which causes or is intended to cause physical injury or reasonable apprehension of physical injury;

(e) sexual abuse, which includes—

(i) engaging in any sexual contact or conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of a person;

(ii) forcing or threatening a person to engage in any sexual contact or conduct;

(iii) exposing a person to sexual material which humiliates, degrades or violates the integrity of that person;

(iv) engaging in sexual contact or conduct with another person with whom the applicant has emotional ties; or

(v) the commission of, or an attempt to commit any of the offences under Chapter XV of the Penal Code; or

Cap.7:01

(f) social abuse, which includes denying a person the freedom to associate freely with others with the aim of possessing that person so as to make that person completely dependent on the abuser.”;

(c) by deleting the definition of the words “economic abuse”;

(d) by deleting the definition of the words “emotional or psychological abuse”;

(e) by deleting the definition of the words “financial abuse”;

(f) by deleting the definition of the words “physical abuse”;

(g) by deleting the definition of the words “sexual abuse”;

(h) by deleting the definition of the words “social abuse”;

(i) in the definition of the word “parent” by deleting the word “spouse” and substituting therefor the word “applicant”.

3. Section 4 of the principal Act is amended by deleting subsection (3) and substituting therefor the following—

Amendment
of s. 4 of the
principal Act

“(3) An application for a tenancy order may be made by the husband or wife of the respondent, as the case may be.”

Amendment
of s. 7 of the
principal Act

4. Section 7 of the principal Act is amended—

(a) in subsection (1), by deleting the word “Court” and substituting therefor the word “court”;

(b) in subsection 3 by deleting the word “Court” and substituting therefor the word “court”;

(c) in subsection 3 (a) by deleting the word “Court” and substituting therefor the word “court”;

(d) in subsection 3 (b) by deleting the word “Court” and substituting therefor the word “court”;

(e) in subsection (4) by deleting the word “Court” and substituting therefor the word “court”;

(f) in subsection (5) by deleting the word “Court” and substituting therefor the word “court”; and

(g) in subsection (5) paragraph (b) by deleting the word “Court” and substituting therefor the word “court”.

Amendment
of s. 8 of the
principal Act

5. Section 8 of the principal Act is amended in subsection (2) by deleting the punctuation mark “.” and inserting the words “or order that the parties undergo an alternative dispute resolution process.”.

Amendment
of s. 10 of the
principal Act

6. Section 10 of the principal Act is amended—

(a) in subsection (1) by deleting the word “of” immediately after the word “party” and substituting therefor the word “to”; and

(b) in subsection (4) by deleting the word “Court” and substituting therefor the word “court”.

Amendment
of s. 13 of the
principal Act

7. Section 13 of the principal Act is amended by inserting the words “or the part of the household residence” between the words “residence” and “to”.

Amendment
of s. 14 of the
principal Act

8. Section 14 of the principal Act is amended in paragraph (b) by deleting the word “Court” and substituting therefor the word “court”.

Amendment
of s. 15 of the
principal Act

9. Section 15 of the principal Act is amended in subsection (2) by deleting the word “Court” and substituting therefor the word “court”.

Amendment
of s. 16 of the
principal Act

10. Section 16 of the principal Act is amended in subsection (1) by deleting the word “Court” and substituting therefor the word “court”.

Amendment
of s. 17 of the
principal Act

11. Section 17 of the principal Act is amended by adding thereto the following new subsection as subsection (4)—

“(4) A court may, taking into account the financial circumstances of both parties, order that a party who—

- (a) by the terms of a tenancy agreement; and
- (b) before a tenancy order was granted,

was responsible for the payment of rent either in whole or in part, continue to be so responsible.”.

12. Section 19 of the principal Act is amended—

Amendment of s. 19 of the principal Act

(a) by deleting subsection (3) and substituting therefor the following—

“(3) Where an application is made for an occupation order or a tenancy order, the court may grant an occupation order or tenancy order, if it is satisfied that—

- (a) the making of the orders is appropriate; and
- (b) subsection (1) has been complied with in respect of the making of the orders.”; and

(b) by deleting subsection (4).

13. Section 22 of the principal Act is amended by deleting the words “Clerk of the Court or Registrar” and substituting therefor the word “court”.

Amendment of s. 22 of the principal Act

14. Section 23 of the principal Act is amended by deleting the words “of the date on which, and the time and place at which, the application is to be heard”.

Amendment of s. 23 of the principal Act

15. Section 24 of the principal Act is amended in paragraph (b) by deleting the words “for the respondent to be apprehended and brought before court” and substituting therefor the words “of arrest.”.

Amendment of s. 24 of the principal Act

16. Section 27 of the principal Act is repealed and replaced as follows—

Replacement of s. 27 of the principal Act

“Service of orders
Schedule

27. Where a court makes or varies an order or an interim order, it shall issue the appropriate order on the prescribed form contained in the Schedule hereto, and shall cause a copy of the order or interim order to be served on—

- (a) the respondent;
- (b) any other person to whom the order or interim order applies, whether or not the person is a party to the proceedings;
- (c) the police officer in charge of the station located nearest to the area where the applicant or respondent resides; and

(d) if the order or interim order relates to real property, it shall also be lodged with a land registry by the applicant as a *lis pendens*.”.

Replacement of s. 30 of the principal Act

17. Section 30 of the principal Act is repealed and replaced as follows—

“Breach of orders

30. —(1) Subject to subsection (2), any person against whom an order has been made and who has had notice of the order but fails to comply with the order or any direction of the court in relation thereto, commits an offence and shall, upon conviction, be liable to a fine of five hundred thousand Kwacha (K500,000) and to imprisonment for two (2) years.

(2) Where an order contains a direction of the court, pursuant to section 5 (b) (x), requiring the respondent, or the applicant, as the case may be, to undergo counselling or therapy and the respondent, or the applicant, unreasonably refuses or neglects to comply with each direction, the respondent, or the applicant, commits an offence and shall, upon conviction, be liable to a fine of fifty thousand Kwacha (K50,000) and to imprisonment for six (6) months.”.

Amendment of s. 32 of the principal Act

18. Section 32 of the principal Act is amended in paragraph (c) by inserting the word “and” after the “;”.

Amendment of s. 33 of the principal Act

19. Section 33 of the principal Act is amended—

(a) in subsection (1) (a) by inserting the word “and” after the “;” and

(b) in subsection (2) paragraph (e) by deleting the word “including”.

Amendment of s. 34 of the principal Act

20. Section 34 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2)—

“(2) Every police officer, who responds to a domestic violence complaint, shall complete a domestic violence report which shall form part of a national domestic violence register, and shall be maintained by the Commissioner of Police of each region.”.

21. Section 35 of the principal Act is amended in paragraph (a) by deleting the word “imminent”.

Amendment of s. 35 of the principal Act

22. Section 36 of the principal Act is amended by deleting subsection (5) and substituting therefor the following new subsection (5)—

Amendment of s. 36 of the principal Act

“(5) Any complaint against a police officer alleging that the entry by the police officer onto the premises under subsection (1) was unwarranted, shall be—

(a) lodged with the Independent Complaints Commission established for that purpose under the Police Act; or

Act No. 12 of 2010

(b) made to the Commissioner of Police of the region in which the incident occurred who shall immediately, after receipt of the complaint and shall, within fourteen (14) days of the complaint having been made, submit a report in relation thereto to the Inspector General of Police.”.

23. Section 39 of the principal Act is amended—

Amendment of s. 39 of the principal Act

(a) in subsection (3) paragraph (a) by deleting the word “professional”; and

(b) in subsection (4) paragraph (c) by inserting before the words “the relationship” the word “with”.

24. Section 42 of the principal Act is amended—

Amendment of s. 42 of the principal Act

(a) in paragraph (b) by deleting the word “may” and substituting therefor the word “shall”;

(b) by inserting the subsection number “(1)” before the words “Any person who”; and

(c) by adding thereto a new subsection as subsection (2) as follows—

“(2) Any person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of fifty thousand Kwacha (K50,000) and to imprisonment for six (6) months.”.

25. Section 46 of the principal Act is amended by—

Amendment of s. 46 of the principal Act

(a) deleting the word “merely” and substituting therefor the word “only”;

(b) deleting the word “only” after the expression “the grounds”; and

(c) deleting the word “of” in the marginal note and substituting therefor the word “or”.

Amendment of
s. 47 of the
principal Act

26. Section 47 of the principal Act is amended—

(a) in subsection (1) by inserting the word “and” after the “;” in paragraph (c); and

(b) in subsection 2—

(i) by deleting the word “Judge” and substituting therefor the word “judge”; and

(ii) by deleting the word “Magistrate” and substituting therefor the word “magistrate”.

Amendment
of s. 51 of the
principal Act

27. Section 51 of the principal Act is amended by inserting a “,” after the words “in any proceedings under this Act”.

Amendment
of s. 53 of the
principal Act

28. Section 53 of the principal Act is amended in subsection (1) paragraph (a) by deleting the words “the making of”.

Amendment
of s. 56 of the
principal Act

29. Section 56 of the principal Act is amended—

(a) by deleting paragraph (a);

(b) by renumbering existing paragraphs (b), (c), (d), (e), (f) and (g) as follows—

(i) by inserting letter “(a)” before the words “the approval of services”;

(ii) by inserting the letter “(b)” before the words “the approval of”;

(iii) by inserting the letter “(c)” before the words “the prescribing of”;

(iv) by inserting the letter “(d)” before the words “the collection of”;

(v) by inserting the letter “(e)” before the words “additions to”; and

(vi) by inserting the letter “(f)” before the words “any matter required”.

Replacement
of the
Schedule

30. The Schedule is repealed and replaced as follows—

“SCHEDULE

FORM 1

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION FOR PROTECTION ORDER/INTERIM PROTECTION ORDER*

(Section 5 or 6* of the Prevention of Domestic Violence Act)

I
(Name of Applicant)

of
(Address of Applicant)

hereby apply under section 5 or 6* of the Prevention of Domestic Violence Act
for a protection order or interim protection order*

against
(Name of Respondent)

who is
(Specify relationship to named Respondent)

and who resides at
(Specify address of Respondent)

in respect of the following conduct:

.....
.....
.....
.....
(Specify dates, times, place and details of alleged conduct)

Dated this day of 20.....

.....
Applicant

To: The Respondent

*Delete whichever is not applicable

FORM 2

In the Court at
Civil Cause No. of 20.....

Between Applicant
A. B. and
C. D. Respondent

INTERIM PROTECTION ORDER

(Section 6 of the Prevention of Domestic Violence Act)

The Court having heard an application made by
(Name of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that for the period from the day of
20..... to the day of 20.....

YOU
(Name of Respondent)

of
(Address of Respondent)

(a) shall not engage in the following conduct:
.....
.....
(Specify conduct)

(b) shall not engage in any conduct that constitutes domestic violence under this Act.

(c) shall comply with the following prohibitions and conditions:
.....
.....
(Specify prohibitions and conditions imposed and any period for which they may be imposed).

If you, the said fails to comply
(Name of Respondent)

with any terms of this Order, you shall be liable to imprisonment and to a fine pursuant to section 30 of the Act.

Dated this day of 20.....

.....
Registrar/Magistrate

FORM 2 (A)

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

PROTECTION ORDER

(Sections 5 and 7 of the Prevention of Domestic Violence Act)

The Court having heard an application made by

(Name of Applicant)

in respect of the conduct or threatened conduct of

(Name of Respondent)

towards

(Name of person to be protected)

NOW THIS COURT ORDERS that from the date of this order YOU

(Name of Respondent)

of

(Address of Respondent)

(a) Shall not engage in the following conduct

.....

(Specify conduct)

(b) Shall not engage in any conduct that constitutes domestic violence under this Act.

(c) Shall comply with the following prohibitions and conditions

.....

(Specify prohibitions and conditions imposed and any period for which they may be imposed)

If you the said fails to

(Name of Respondent)

comply with any terms of this order, you shall be liable to imprisonment and to a fine pursuant to section 30 of the Act.

Dated this day of 20.....

Registrar/Magistrate

FORM 3

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION FOR DISCHARGE/VARIATION* OF PROTECTION ORDER/INTERIM PROTECTION ORDER*

(Section 10 of the Prevention of Domestic Violence Act)

I

(Name of Applicant)¹

of

(Address of Applicant)

hereby apply under section 10 of the Prevention of Domestic Violence Act for the discharge/variation* of the Protection Order or Interim Protection Order* made against

.....
(Name of person against whom the order was made)

of

(Address)

on the day of 20..... by the Court (a copy of which is attached to the said application) in

respect of certain conduct or threatened conduct towards
(Name of person protected by an Order)

on the following grounds:

.....
.....
.....

(Specify grounds and details)

Dated this day of 20.....

.....
Applicant

To: The Respondent

*Delete whichever is not applicable

¹ Applicant may either be the complainant or the respondent.

FORM 4

In the Court at
Civil Cause No. of 20.....

Between

A. B. Applicant
and
C. D. Respondent

ORDER DISCHARGING/VARYING* PROTECTION ORDER/INTERIM PROTECTION ORDER*

(Section 10 of the Prevention of Domestic Violence Act)

The Court, having heard an application made under section 10 of the Prevention of Domestic Violence Act by
(Name of Applicant)¹

of
(Address of Applicant)

in respect of conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards and the Court
(Name of person protected by the order)

having on the day of made an Order prohibiting the Respondent from engaging in the conduct specified therein.

NOW the Court on the application of
(Name of Applicant)

this day orders that the Protection Order or Interim Protection Order* be:

1. Discharged
.....
(Specify effective date of discharge)

.....; OR*

2. Varied as follows:
.....
.....
(Specify details of variation)

Dated this day of 20.....

.....
Registrar/Magistrate

Delete whichever is not applicable.

¹ Applicant may either be the complainant or the respondent.

FORM 5

In the Court at.....

Civil Cause No. of 20.....

Between

A. B.

Applicant

and

C. D.

Respondent

APPLICATION FOR OCCUPATION ORDER OR INTERIM OCCUPATION ORDER*

(Section 11 or 12* of the Prevention of Domestic Violence Act)

I

(Applicant)

of

(Address of Applicant)

hereby apply under section 11 or 12* of the Prevention of Domestic Violence Act

for an Occupation Order or Interim Occupation Order* against.....

(Name of Respondent)

who is

(Specify relationship to the named Respondent)

and who resides at

(Specify address of Respondent)

in respect of the following conduct:

.....
.....
.....
.....
.....
.....
.....
.....
.....

(Specify dates, times, place and details of alleged conduct)

Dated this day of 20.....

.....
Applicant

To: The Respondent

*Delete whichever is not applicable

FORM 6

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

INTERIM OCCUPATION ORDER

(Section 12 of the Prevention of Domestic Violence Act)

The Court having heard an application made by
(Name of Applicant)

of
(Address of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that for the period from the day of
..... 20..... to the day of 20.....

YOU
(Name of Applicant)

shall have the exclusive right to live at the household residence now occupied by both of you pending the hearing of an application for an Occupation Order.

If you, the said fails to comply
(Name of Respondent)

with any of the terms of this Order, you shall be liable to imprisonment and a fine pursuant to section 30 of the Act.

Dated this day of 20

.....
Registrar/Magistrate

FORM 6 (A)

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

OCCUPATION ORDER

(Section 11 of the Prevention of Domestic Violence Act)

The Court having heard an application made by
(Name of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that you
(Name of Applicant)

of
(Address of Applicant)

shall from the day of 20..... have the exclusive right to
occupy the household residence for a period of (months, weeks, etc.).

If you, the said fails
(Name of Respondent)

to comply with any terms of this order, you shall be liable to imprisonment and to
a fine pursuant to section 30 of the Act.

Dated this day of 20.....

.....
Registrar/Magistrate

FORM 7

In the Court at

Civil Cause No. of 20.....

Between

A. B.

Applicant

and

C. D.

Respondent

APPLICATION FOR DISCHARGE/VARIATION* OF OCCUPATION ORDER/INTERIM OCCUPATION ORDER*

(Section 14 of the Prevention of Domestic Violence Act)

I
(Applicant)¹

of
(Address of Applicant)

hereby apply under section 14 of the Prevention of Domestic Violence Act for a discharge/variation* of the Order made against
(Name of person against whom Order was made)

of
(Address of person against whom Order was made)

on day of 20..... by the Court (a copy of which is attached to the said application) in respect of certain conduct or threatened conduct towards
(Name of person who is protected by Order)

on the following grounds:
.....
.....
.....
(Specify grounds and details)

Dated this day of 20.....

.....
Applicant

*Delete whichever is not applicable

¹ The applicant may either be the complainant or the respondent.

FORM 8

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

ORDER DISCHARGING/VARYING* OCCUPATION ORDER/INTERIM OCCUPATION ORDER*

(Section 14 of the Prevention of Domestic Violence Act)

The Court having heard an application made by (Name of Applicant)¹

of (Address of Applicant)

in respect of the conduct or threatened conduct of (Name of Respondent)

of (Address of Respondent)

towards and the Court having (Name of person to be protected)

on the day of 20 made an Order, a copy of which is attached, prohibiting the Respondent from engaging in the conduct specified therein:

Now, the Court on the application of (Name of Applicant)¹

this day orders that the Occupation Order or Interim Occupation Order* be:

1. Discharged; OR* (Specify effective date of discharge)

2. Varied as follows: (Specify details of variation)

Dated this day of 20.....

Registrar/Magistrate

*Delete whichever is not applicable

¹ The applicant may either be the complainant or the respondent.

FORM 9

In the Court at.....

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION FOR TENANCY ORDER OR INTERIM TENANCY ORDER*

(Section 15 or 16* of the Prevention of Domestic Violence Act)

I (Applicant)

of (Address of Applicant)

hereby apply under section 15 or 16* of the Prevention of Domestic Violence Act, for a Tenancy Order or Interim Tenancy Order* against..... (Name of Respondent)

in respect of household residence/dwelling house (Specify house number, street, location, etc.)

who is (Specify relationship to the named Respondent)

and who resides at (Specify address of Respondent)

in respect of the following conduct: (Specify dates, times, place and details of alleged conduct)

Dated this day of 20.....

Applicant

To: The Respondent

*Delete whichever is not applicable

FORM 10

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

INTERIM TENANCY ORDER

(Section 16 of the Prevention of Domestic Violence Act)

The Court, having heard an application made by
(Name of Applicant)

of
(Address of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that for the period from the

day of 20..... to the day of 20.....

YOU
(Name of Applicant)

shall have the exclusive right to live at the household residence now occupied by both of you and the tenancy of which is vested in you pending the hearing of an application for a Tenancy Order.

If you, the said fails
(Name of Respondent)

to comply with any of the terms of this order, you shall be liable to imprisonment and a fine pursuant to section 30 of the Act.

Dated this day of 20.....

.....
Registrar/Magistrate

FORM 10 (A)

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

TENANCY ORDER

(Section 15 of the Prevention of Domestic Violence Act)

The Court having heard an application made by
(Name of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS that from the date of this order YOU
(Name of Applicant)

of
(Address of Applicant)

shall have the exclusive right to live in and occupy the household residence and vesting in you the tenancy thereof.

The Court further orders
(Respondent/Applicant)

to continue to pay the landlord of the household residence the rent when due.

If you, the said fails to
(Name of Respondent)

comply with any terms of this order, you shall be liable to imprisonment and to a fine pursuant to section 30 of the Act.

Dated this day of 20.....

.....
Registrar/Magistrate

FORM 11

In the Court at.....

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

APPLICATION TO DISCHARGE TENANCY ORDER AND REVEST A TENANCY

(Section 18 of the Prevention of Domestic Violence Act)

I
(Applicant)¹

of
(Address of Applicant)

hereby apply under section 18 of the Prevention of Domestic Violence Act for a discharge of the Order made against
(Name of person against whom the Order was made)

on day of 20..... by the Court in respect of certain conduct or threatened conduct towards
(Name of person who is protected by Order)

on the following grounds:
(Specify grounds and details)

Dated this day of 20.....

.....
Applicant

To: The Respondent

¹ The applicant may either be the complainant or the respondent.

FORM 12

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

ORDER DISCHARGING TENANCY ORDER AND REVESTING TENANCY

(Section 18 of the Prevention of Domestic Violence Act)

The Court having heard the application made by
(Name of Applicant)¹

of
(Address of Applicant)

in respect of the conduct or threatened conduct of
(Name of Respondent)

of
(Address of Respondent)

towards
(Name of person to be protected)

on the day of 20..... made an order, a copy of which is attached
(Date of original order)

prohibiting the respondent from engaging in the conduct specified therein;

Now the Court on the application of this day orders
(Name of Applicant)

that the Tenancy Order be discharged and the tenancy revested in the
(Name of Applicant or Respondent)

with effect from

Dated this day of 20.....

.....
Registrar/Magistrate

¹ Applicant may either be the complainant or the respondent.

FORM 13

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

NOTICE OF HEARING

(Section 23 of the Prevention of Domestic Violence Act)

TO THE RESPONDENT

TAKE NOTICE that the hearing of an application for a/an*
(Protection, Occupation, Tenancy)*

Order shall take place on day of 20..... at in the
noon at
(Place)

A copy of the application is attached.

AND FURTHER TAKE NOTICE that if you do not appear at the hearing of the
application, the Court may—

- (a) deal with the application in your absence; or
- (b) issue a warrant for your arrest and to be brought before the Court.

Dated this day of 20.....

.....
Registrar/Magistrate

*Delete whichever is not applicable

FORM 14

In the Court at

Civil Cause No. of 20.....

Between

A. B. Applicant

and

C. D. Respondent

AFFIDAVIT OF SERVICE

I, make oath
(name, address and description of deponent)

and say as follows

That I did on the day of 20..... personally/by post*
serve with a true copy of the application
(Name of Respondent)
for Order.
(Protection, Occupation, Tenancy*)

Sworn by me

at this day of 20

BEFORE ME:

COMMISSIONER FOR OATHS

*Delete whichever is not applicable

FORM 15

DOMESTIC VIOLENCE POLICE REPORT

(Section 34 of the Prevention of Domestic Violence Act)

STATION: REGION Reference No.

Complaint made by
Surname First Name

Address

Relationship to Victim or Alleged Offender

Telephone No.

Mode of Report
(Telephone, Personal, Referred (by whom), etc.)

Date Time Diary Reference

Recorded by: (Number/Rank/Name)

Name of Victim
Surname First Name

Religion

Address

Telephone No. Marital Status Relationship to Offender

Sex Age Occupation

Address of Employment

.....

Name of Alleged Offender
Surname First Name

Religion

Address

Sex Age Marital Status Telephone No.....

Occupation Address of Employment

.....

Name of Witness

Address

Relationship to Victim or Alleged Offender

History of domestic violence between the parties

.....
.....
.....
.....
.....

Type of abuse and weapon used, if any

.....
.....
.....
.....
.....
.....
.....

”

APPENDIX II
LIST OF STAKEHOLDERS

List of Stakeholders Invited to all the Consultative Workshops

Central Region Workshop

No. Stakeholder

1. Society for the Advancement of Women
2. Catholic Commission for Justice and Peace (CCJP) – Lilongwe Diocese
3. Chief Legal Aid Advocate
4. Chief Resident Magistrate (Centre)
5. Executive Director, Ecumenical Counselling Centre
6. Executive Director, Malawi Interfaith Aids Alliance
7. Non Governmental Organisations–Gender Coordination Network (NGO–GCN)
8. Hospital Administrators: Kamuzu Central, Bwaila, Dedza, Dowa and Mchinji Hospitals.
9. Jesus Cares
10. Malawi Human Rights Commission
11. Nkhoma Synod
12. Chiefs Kachindamoto, Msakambewa, Zulu and Lukwa
13. Ministry of Gender, Children, Disability and Social Welfare
14. UNFPA Representative
15. Prosecutors and Victim Support Unit Officers: Lilongwe, Kanengo, Kasungu, Nkhotakota, Dowa, Mchinji, Ntchisi, Salima, Dedza and Ntcheu
16. Social Welfare Officers Lilongwe, Kasungu, Nkhotakota, Dowa, Mchinji, Ntchisi, Salima, Dedza and Ntcheu
17. 1 Magistrate per district
18. Malawi Law Society, Lilongwe Chapter
19. Centre Manager, Social Rehabilitation
20. Human Rights Consultative Committee
21. Representative, Solicitor General & Secretary for Justice
22. Media: Malawi Broadcasting Corporation (MBC), Television Malawi (TVM), The Nation, Daily Times, Zodiak Broadcasting Corporation (ZBS)

Northern Region Workshop

No. Stakeholder

1. St. John of God
2. CCJP—Mzuzu Diocese
3. Church and Society Mzuzu
4. Director SOS Village
5. Livingstonia Synod and Aid Programme
6. All Magistrates – Mzuzu

7. Magistrates: Chitipa, Karonga, Nkhata Bay, Mzimba and Rumphu
8. Malawi CARER
9. Mzuzu Central Hospital
10. Office of the Ombudsman – Mzuzu
11. Victim Support Unit Officers and Prosecutors: Mzuzu, Chitipa, Karonga, Mzimba, Rumphu, Likoma and Nkhata Bay
12. Social Welfare Officers: Chitipa, Karonga, Mzimba, Rumphu, Likoma, Nkhata Bay and Mzuzu
13. Chiefs: Mpherembe and Mwankhunikira
14. Media: MBC, TVM, The Nation, ZBS

Southern Region Workshop

No. Stakeholder

1. Association for the Empowerment of Women
2. Blantyre Synod Project Office
3. Centre for Human Rights Education Advice and Assistance
4. Chief State Advocate
5. Chief Legal Aid Advocate
6. Chief Resident Magistrate – (South)
7. Chief Resident Magistrate – (East)
8. Civil Liberties Committee
9. Victim Support Unit Officers and Prosecutions Officers: Limbe, Mulanje, Phalombe, Mwanza, Neno, Thyolo, Chikhwawa, Chiradzulu, Nsanje, Zomba, Machinga, Balaka and Mangochi
10. National Women Lobby
11. Office of the Ombudsman – Blantyre
12. Oxfam Malawi
13. Women Lawyers Association
14. Women’s Legal Resource Centre
15. Media: MBC, TVM, The Nation, Daily Times, ZBS

NATIONAL CONFERENCE

No. Stakeholder

16. Chief Resident Magistrates
17. Victim Support Unit Officers
18. Catholic Development Commission – Mchinji
19. Women in Law in Southern Africa – Malawi
20. Center for Human Rights, Education, Advice and Assistance
21. District Welfare Officer – Mzimba
22. District Welfare Officer – Chiradzulu

23. District Welfare Officer – Balaka
24. Youth Net Counselling
25. Livingstonia Synod
26. Traditional Leaders (Chiefs)
 - (a) Nkhata Bay (Nyaluwanga)
 - (b) Rumphu (Mwankhunikira)
 - (c) Ntcheu (Kwataine)
 - (d) Kasungu (Lukwa)
 - (e) Machinga (Chowe)
 - (f) Blantyre (Kapeni)
 - (g) Chikhwawa (Lundu)
27. Judges from High Court, Lilongwe District Registry
28. Muslim Association of Malawi
29. Quadria Muslim Association
30. UN Women
31. UNFPA
32. Peace, Ethics and Justice Commission of the Evangelical Lutheran Church
33. Malawi council of Churches
34. CCJP
35. Nkhoma Synod
36. Jesus Cares
37. Ministry of Gender, Children, Disability and Social Welfare
 - (a) Director of Child Welfare
 - (b) Director for Elderly Affairs
38. Director of Public Prosecutions
39. Malawi Law Society
40. Legal Aid Bureau
41. State Advocate Chambers
42. Child Justice Court
43. Gender Coordination Network
44. Human Rights Consultative Committee
45. Malawi Human Rights Commission
46. Centre for Human Rights and Rehabilitation
47. National Police Headquarters
 - (a) Victim Support Unit (VSU)
 - (b) Community Police
48. Women’s Legal Resource Centre
49. Media: MBC, TVM, ZBS, The Daily Times, Radio Maria

APPENDIX III
LIST OF PARTICIPANTS

**NOTHERN REGION CONSULTATIVE WORKSHOP ON THE
TECHNICAL REVIEW OF THE PREVENTION OF DOMESTIC
VIOLENCE ACT**

MZUZU HOTEL, 26 MARCH 2012

List of Participants:

No.	Name	Designation	Stakeholder	Sector
1.	Mr. Macsencie Chagomerana	District Social Welfare Officer	Ministry of Gender	Social Welfare
2.	Mr. Chipezayani Makwati	VSU Coordinator	Malawi Police Service	Likoma Police
3.	Maurine Chimseu	Prosecutor	Malawi Police Service	Likoma Police
4.	H/W Robert Botha	Magistrate	Judiciary	Likoma Magistrate Court
5.	H/W Billy Wankaya Wifwilire	Magistrate	Judiciary	Likoma Magistrate Court
6.	H/W Sophie Chimaliro	Magistrate	Judiciary	Nkhata Bay Magistrate Court
7.	Joyce Luhana	District Social Welfare Officer	Ministry of Gender	Chitipa Social Welfare
8.	Lone R. A. Tembo	Prosecutor	Ministry of Home Affairs	Chitipa Police
9.	Masauko G. Nyasulu	VSU Officer	Ministry of Home Affairs	Chitipa Police
10.	H/W Julius Kalambo	Magistrate	Judiciary	Chitipa Magistrate
11.	H/W George Thomson Longwe	Magistrate	Judiciary	Karonga Magistrate
12.	Peter Piringu	Prosecutor	Ministry of Home Affairs	Karonga Police
13.	Heston Jaji	District Social Welfare Officer	Karonga Social Welfare	Ministry of Gender
14.	Adson William Alfred Mapanda	Community Policing Coordinator	Ministry of Home Affairs	Rumphi Police

15	Bentley Henry Kumwenda	Magistrate	Judiciary	Rumphi Magistrate court
16.	Evance Kantukule	Prosecutor	Ministry of Affairs	Nkhata Bay Police
17.	Patricia Mwale	Social Welfare Officer	Nkhata Bay Social Welfare Office	Ministry of Gender
18.	H/W Alexander Gombar	First Grade Magistrate	Judiciary	Chintheche Magistrates Court
19.	Brown Ngalu	Community Policing Coordinator	Ministry of Home Affairs	Nkhata Bay Police Station
20.	Hans Katumbi	Community Policing Coordinator	Ministry of Home Affairs	Mzimba Police Station
22.	Christopher Mhone	Programme Coordinator	Saint John of God	Faith Organisation
23.	Hilda Cathy Phiri	Clinical Officer	Mzuzu Central Hospital	Government Department
24.	Inkosi Mpherembe Jere	Chief	Traditional Leader Mzimba	Traditional Authority
25.	Moses Mkandawire	Director	Church and Society	Faith Organisation
26.	Vickness Simwinga	Prosecutor	Mzuzu Police Station	Ministry of Home Affairs
27.	Paul Mvula	Project Manager	Church and Society	Faith Organisation
28.	Mowbray Chibwatiko	District Social Welfare Officer	Ministry of Gender	Mzuzu Welfare Office
29.	Fedson Makiyi	Prosecutor	Mzimba Police Station	Ministry of Home Affairs
30.	Saul Ngwira	Assistant Social Welfare Officer	Mzimba Social Welfare Office	Ministry of Gender
31.	H/W Brian Msiska	Magistrate	Mzuzu Magistrates Court	Judiciary
32.	H/W Lillian Munthali	Magistrate	Mzimba Magistrates Court	Judiciary

33. Tiwonge Gondwe	Women Forum	Bolero, Rumphu	Non Governmental Organization
34. H/W Cuthbert Phiri	Magistrate	Mzuzu Magistrate Court	Judiciary
35. Arnold Msimuko	Diocesan Secretary	Mzuzu CCJP	Faith Organisation
36. Fredrick Ndala	Reporter	Nation Publications	Media
37. Angella Mkandawire	Reporter	ZBS	Media
38. H/W Anthony Chimphonda Banda	Magistrate	Child Justice Court	Judiciary
39. John Floriano Mpasu	Regional Prosecutor	Northern Region Police Hqrs.	Ministry of Home Affairs
40. Wezi Moyo	Women's Rights Coordinator	Action Aid	Non Governmental Organization

**SOUTHERN REGION CONSULTATIVE WORKSHOP ON THE
TECHNICAL REVIEW OF THE PREVENTION OF DOMESTIC
VIOLENCE ACT**

HOTEL VICTORIA, 7TH MAY 2012

List of Participants

No.	Name	Address	Position
1.	Maxwell Vincent Mwaluka	Mangochi Police Station P.O. Box 133, Mangochi	Prosecutions Officer
2.	H/W Pyson Mwanyali	Mangochi Magistrate Court, P.O. Box 131, Mangochi	Magistrate
3.	Gift Maggie Karoti	Mangochi Police Station, P.O. Box 133, Mangochi	VSU Officer
4.	Joseph Mataya	Neno Police Station, P.O. Box 19, Neno	Prosecutions Officer
5.	Peter Magomero	District Social Welfare Office, P.O. Box 113, Neno	District Social Welfare Officer
6.	H/W Prestings Ingolo Beston Jeremiah	P.O. Box 109, Zomba	Resident Magistrate
7.	Godfrey Majamanda	Balaka Social Welfare Office P.O. Box 287, Balaka	Assistant Social Welfare Officer
8.	H/W Jones P. G. Masula	Liwonde Magistrate Court P.O. Box 46, Liwonde	First Grade Magistrate
9.	Evance Kalambule	District Social Welfare Office, P.O. Box 41, Mwanza	District Social Welfare Officer
10.	Robert Task Sawiche	District Social Welfare Office P/Bag 12, Mulanje	District Social Welfare Officer
11.	Pillot Ganizani	Machinga Police Station P.O. Box 20, Machinga	Prosecutor
12.	Milton Fackson Moyo	Machinga Police Station, P.O. Box 20, Machinga	Community Police Coordinator
13.	Mike Maulidi	District Social Welfare Office, P.O. Box 55, Chiradzulu	District Social Welfare Officer
14.	Rose Ziliro Khonje	UNFPA, P.O. Box 30135, Lilongwe 3	Programme Associate
15.	Benjamini Emillio	Mwanza Police, P.O. Box 53, Mwanza	VSU Coordinator
16.	Helix Million Kamweche	Mwanza Police, P.O. Box 63, Mwanza	Prosecutor
17.	Rose Chiwaya	VSU, Phalombe Police Station, P.O. Box 48, Phalombe	

18.	Gertrude Phwete	VSU, P.O. Box 19, Neno	
19.	H/W Ranwell Mangazi	Muloza Magistrate Court, P.O. Box 25, Mulanje	
20.	Davison Banda	Prosecutor, Muloza Police Station, P.O. Box 42, Muloza, Mulanje	
21.	Grace Chinyama Cell. 088154388	Victim Support, P.O. Box 48, Muloza, Mulanje	
22.	Hartwell Nathaniel M. Kachikonga	Phalombe Police Station, P.O. Box 48, Phalombe	Prosecutor
23.	Josphine Hlupekire Chigawa	Zomba Police Station, P.O. Box 45, Zomba	
24.	H/W Medson Damson	Balaka Magistrate Court, P.O. Box 283, Balaka	Magistrate
25.	Felix E. Mandala	Phalombe Magistrate Court,	Magistrate
26.	Collen Chabwela Sakala	Thyolo Police Station, P.O. Box 24, Thyolo	Victim Support Unit Officer
27.	Donner Kaoloka Phiri	Balaka Police Station, P.O. Box 3, Balaka	VSU Officer
28.	Petro Yohane	Thyolo Police Station, P.O. Box 24, Thyolo	Prosecutor
29.	Ellias Chitsulo	Balaka Police Station, P.O. Box 3, Balaka	Prosecutor
30.	H/W Tasaukilanjidala Nyambi Marsen	P.O. Box 132, Neno	Magistrate
31.	H/W Violet Nkhoma	Judiciary, Thyolo Magistrate Court, P.O. Box 61, Thyolo	
32.	H/W Chiyembekezo Kalumbu Phiri	Judiciary, P.O. Box 137, Chiradzulu	
33.	Beston Chimberenga	Nsanje Police Station, P.O. Box 8, Nsanje	
34.	Oscar Mwamtobe	Chiradzulu Police Station, P.O. Box 16, Chiradzulu	
35.	H/W Smart Maruwasa	P.O. Box 49, Nchalo, Chikhwawa	Magistrate
36.	H/W Daniel T.H. Dzowela	Mwanza Magistrate Court, P.O. Box 49, Mwanza	Magistrate
37.	H/W Meya James Kanyumbu	P.O. Box 39, Nsanje	Magistrate

38. Cathy Phiri	Zomba Police Station, P.O. Box 45, Zomba	VSU Coordinator
39. Yaona Mkusa	P.O. Box 33, Chikhwawa	VSU Coordinator
40. Grace Mindozo	Chikhwawa Police Station, P.O. Box 33, Chikhwawa	Prosecutor
41. Charity Naphwanga	VSU, Box 8, Nsanje	
42. Kondani Chinangwa	P.O. Box 524, Blantyre	
43. Owen Mavula	FM 101 Power, P/Bag 761, Limbe, Blantyre	Journalist
44. T/A Kuntaja	Blantyre District Council, Chilangoma Headquarters, Blantyre	
45. Gregory Mtemanyama	Blantyre Synod Governance Programme, P.O. Box 413, Blantyre	Director
46. H/W Brenda Vokhiwa	Blantyre Magistrate court, P/Bag 524, Blantyre	Magistrate
47. H/W Kitty Nkhono	Midima Magistrate court, C/O P/Bag 524, Blantyre	Magistrate
48. H/W Mangawa Makhalira	P/Bag 524, Blantyre	Senior Resident Magistrate
49. Gertrude Chinjati	Malawi Police Service, Blantyre Police Station, P.O. Box 101, Blantyre	
50. Nguchiyaga Nakanga	P/Bag 325, Blantyre	Senior Resident Magistrate
51. Richard Chirombo	Blantyre Newspaper Ltd, Scott Road, P/Bag 39, Blantyre	Journalist
52. Martin Munthali	Malawi CARER, P.O. Box 30479, Blantyre	
53. Zione Dziko	VSU, P.O. Box 5056, Limbe	
54. Charles Panyani	Malawi Police Service, Limbe Police Station, P.O. Box 5056, Limbe	
55. Harold Vanpelt Maluku	Ndirande Police, Box 101, Blantyre	Prosecutor
56. Rodrick Kapoloma	ZBS, Blantyre Offices	

57.	Wales M'bakah	Machinjiri, Chilaweni Hqtrs, P/Bag 97, Blantyre	Chief
58.	Chief Kapeni	P.O. Box 1736, Blantyre	Chief
59.	Lusako Phambana	P.O. Box 30225, Blantyre	Paralegal Officer
60.	H/W Joyce Tizifa	Blantyre Magistrate Court, P/Bag 524, Blantyre	Magistrate
61.	Harold Mmora	Chief State Advocate, Private Bag 312, Blantyre	
62.	H/W Catherine Daud	Judiciary, Chisenjere Magistrate Court, Private Bag 524, Blantyre	Magistrate
63.	Memory Mgeni	VSU, P.O. Box 24, Blantyre	
64.	Gerald Ng'ondoma	Office of the Ombudsman, P/Bag 171, Blantyre	
65.	H/W Annie Megan Chikhadzula	Limbe Magistrate Court, P/Bag 524, Blantyre	First Grade Magistrate
66.	H/W Esmie Tembenu	P/Bag 524, Blantyre	Child Justice Magistrate
67.	H/W Chrissie Prudence Khan	Ntonda Magistrate Court, c/o Chief Resident Magistrate Court, P/Bag 524, Blantyre	Magistrate
68.	H/W George Masangano	Chilangoma Magistrate Court	First Grade Magistrate
69.	Davie Mtete	P.O. Box 24, Blantyre	Regional Prosecutions Officer
70.	Obrey Jones Nyirenda	P.O. Box 24, Blantyre	Regional Community Policing Coordinator (SR)
71.	H/W Charles Baxtone Adison	Chiphamba Magistrate, P/Bag 524, Blantyre	Magistrate

**CENTRAL REGION CONSULTATIVE WORKSHOP ON THE
TECHNICAL REVIEW OF THE PREVENTION OF DOMESTIC
VIOLENCE ACT**

PACIFIC HOTEL, LILONGWE 3 OCTOBER 2013

No.	Name	Address	Position
1.	John Carl Washali	District Social Welfare Office, P.O. Box 33, Dowa	District Social Welfare Officer
2.	Janet Thaulo	Nkhotakota Police Station, P.O. Box 140, Nkhotakota	Police Officer
3.	Fillimo Patrisio Mikael	Kanengo Police Staton, P.O. Box 40053, Kanengo	Police Officer
4.	Hastings Mlambuzi	Dedza Hospital, P.O. Box 136, Dedza	Administrator
5.	John-Bosco Baluti	Mchinji District Hospital, P.O. Box 36, Mchinji	
6.	Aliphas Andrew Banda	Kasungu Police Station, P.O. Box 6, Kasungu	Police Officer
7.	Duncan Francis Pangani Banda	Kasungu Police Station, P.O. Box 6, Kasungu	Police Officer
8.	Levison Kanyenge	Dowa Police Station, P.O. Box 10, Dowa	Police Officer
9.	Ivy Sangwa	Dowa Police Station, Dowa	Police Officer
10.	Perry Mpangeni	Kanengo Police Station, P.O. Box 40053, Kanengo	Police Officer
11.	Nicholas Mwalwanda	Nkhunga Police Station, P.O. Box 99, Dwangwa	Police Officer
12.	Gerald Yamikani Gwaza	Mponela Police Station, P.O. Box 28, Dowa	Police Officer
13.	Ronald Edward Phiri	Ministry of Gender, P/Bag 330, Lilongwe 3	
14.	Peter Njiragoma	Ntchisi Police Station, P.O. Box 10, Ntchisi	Police Officer
15.	Phillip Polighu Sande	Ntchisi Police Station, P.O. Box 10, Ntchisi	Police Officer

16. Francis Jones Phandama	Salima Police Station, P.O. Box 37, Salima	Police Officer
17. Olasio Julio Ntopela	Mchinji Police Station, P.O. Box 131, Mchinji	Police Officer
18. Patrick Chambuluka	Dedza Police Station, P.O. Box 50, Dedza	Police Officer
19. Baxter Bokosi	Dedza Police Station, P.O. Box 50, Dedza	
20. Eneth Banda	Magistrate, P/Bag 18, Lilongwe	
21. Isaac Kadawayula	Mponela Police Station, P.O. Box 28, Mponela	
22. Malango Misasinga	Mchinji Police Station, P.O. Box 131, Mchinji	
23. Gift Mzembe	Lilongwe Police Station, P.O. Box 627, Lilongwe	
24. Fletcher Nuka Shaba	Ecumenical Counselling Centre, P/Bag 395, Lilongwe 3	
25. Yolam Chiwanda	District Social Welfare Office, P.O. Box 317, Kasungu	District Social Welfare Officer
26. Derick Mwenda	Social Welfare Office, P.O. Box 110, Nkhotakota	
27. Tiwonge Kayira	Malawi Human Rights Commission, P/Bag 378, Lilongwe 3	
28. Wilson Khaula Asibu	Nkhunga Police Station, P.O. Box 99, Dwangwa	
29. Lloyd K. Magweje	Nkhotakota Police Station, P.O. Box 140, Nkhotakota	
30. Patrick Maulidi	Gender Coordination Networks, P/Bag 225, Lilongwe	
31. Phyllis Mapara	Lilongwe DHO, P.O. Box 1274, Lilongwe	
32. Henry William Chigoli	Ntcheu Police Station, P.O. Box 136, Ntcheu	Police Officer
33. Andrew Mdala	CHRR, Box 2340, Lilongwe	

- | | | |
|---------------------------|-------------------------------------------------------------|---------------------------|
| 34. Dennis Sikwese | Social Welfare Office,
P. O. Box 1, Ntchisi | |
| 35. Jean Nthengwe | DSWO, P.O. Box 908,
Lilongwe | Social Welfare
Officer |
| 36. Macsencio Shillin | Salima Social Welfare Office,
P. O. Box 256, Salima | Social Welfare
Officer |
| 37. Raphael S. Njimbula | Ntcheu Police Station,
P.O. Box 136, Ntcheu | Police Officer |
| 38. Damiano Philip Kaputa | P.O. Box 627, Lilongwe | |
| 39. Grace Wezie Jere | Malawi Human Rights
Commission, P/Bag 378,
Lilongwe 3 | |

**NATIONAL CONSULTATIVE WORKSHOP ON THE TECHNICAL
REVIEW OF THE PREVENTION OF DOMESTIC VIOLENCE ACT**

LILONGWE HOTEL, 25 JUNE 2015

No.	Name	Address	Position
1.	H/W Ruth Chinangwa	Chief Resident Magistrate Court (C), P/Bag 18, Lilongwe	Chief Resident Magistrate
2.	Memory Mgeni	Southern Region Police Hqrs, P.O. Box 24,	VSU Coordinator
3.	Mr. Lameck Nda	P.O. Box 38, Chikwina, Nkhata Bay	STA Nyaluwanga
4.	Hon. Justice Rowland Mbvundula	High Court, Box 30488, Chichiri, Blantyre 3	High Court Judge
5.	H/W Thomson Ligowe	P/Bag 524, Blantyre.	Chief Resident Magistrate
6.	Hon. Justice Dingiswayo Madise	High Court of Malawi, P.O. Box 12, Mzuzu	High Court Judge
7.	H/W Agness T. Patemba	P.O. Box 109, Zomba	Chief Resident Magistrate
8.	H/W T. S. Masoamphambe	P.O. Box 12, Mzuzu	Chief Resident Magistrate (N)
9.	McJullior Carstens	Chief Kwataine, P/Bag 1, Ntcheu	Chief
10.	Paramount Chief Lundu	Mwewe Headquarters, P.O. Box 221, Nchalo, Chikhwawa	Chief
11.	Senior Chief Lukwa	Chizenje Hqrs, P.O. Box 95, Kasungu	Chief
12.	Senior Chief Kapeni	Chisenjere Hqrs, P/Bag 97, Blantyre	Chief
13.	Mr. Howard Kadaonanji	Lilongwe CADECOM, P.O. Box 631 Lilongwe, (Matutu T. Centre), Mikundi EPA, P.O. Box 83, Magawa, Mchinji	
14.	Mr. Geoffrey Tawakali	Economic Empowerment Action EEAG, P.O. Box 70193, Blantyre	
15.	Betty Sambakunsi	Malawi Police Services, Eastern Region Hqrs, P.O. Box 31, Zomba	

16. Ms. Natasha Nyirongo	Ministry of Justice, P/Bag 333, Lilongwe 3.	Senior State Advocate
17. Senior Chief Kawinga IX	Nanyumbu Hqrs, P.O. Box 5, Ntaja, Machinga	Chief
18. Sultan Chief Chowe	P.O. Box 138, Mangochi, Tel. 0999748315,	Chief
19. Mr. Thabo Chakaka Nyirenda	c/o Reserve Bank of Malawi, P.O. Box 30063, Lilongwe 3	President, Malawi Law Society, Lilongwe Chapter
20. Mr. Yolam Chiwanda	Ministry of Gender, Chief Social Welfare Officer, P/Bag 330, Lilongwe 3	
21. Mr. Peter Msefula	Ministry of Gender, P/Bag 330, Lilongwe 3.	
22. Ms. Linda Chatepa	Feed the Future, P/Bag 244, Lilongwe	Gender Officer,
23. Mercy Makombe	Women's Legal Resources Centre, P.O. Box 31472, Blantyre 3	
24. Hon. Justice Mankhambira	High Court, P/Bag 15, Lilongwe, Tel. 0992753434	High Court Judge
25. Mrs. Lileni Banda	Church & Society, Nkhoma Synod, P.O. Box 132, Lilongwe	
26. H/W Boswell Benson Kamphonda	P/Bag 18, Lilongwe	First Grade Magistrate
27. Mrs. Monica Nyangulu Phiri	Legal Aid, P.O. Box 675, Lilongwe	Paralegal Officer
28. Mr. James F. Mbale	Malawi Police Service, P/Bag 305, Lilongwe 3	Community Policing
29. Mr. Oliver Gondwe	P/Bag 333, Lilongwe 3.	Senior State Advocate
30. Mrs. Dorothy Chingaipe	Malawi Police Service, P/Bag 303, Lilongwe 3	Victim Support Unit Coordinator
31. Ms. Memory Lundu,	Center for Human Rights and Rehabilitation (CHRR), P.O. Box 2340, Lilongwe	
32. Rev. Spencer Jackson Mngongonda	Evangelical Lutheran Development Service, P/Bag 25, Lilongwe.	Human Rights Gender and Advocacy Coordinator

-
- | | | | |
|-----|------------------------------|----------------------------------------------------------------------|--------------------|
| 33. | Gena Pearson | Feed the Future, Malawi,
Area 4, Old Manobec Complex,
Lilongwe | |
| 34. | Ms. Habiba Reswana
Osman | UN Women, 13 Evelyn Court,
Area 13, City Centre, Lilongwe | Program Specialist |
| 35. | Ms. Mable Agnes Chipeta | Regional VSU,
Northern Region Police Hqrs,
P.O. Box 16, Mzuzu | Inspector |
| 36. | Ms. Gladys Kamakanda | Malawi News Agency (MANA),
P.O. Box 310, Lilongwe | |
| 37. | Mr. Andrew Kasondo | Star Radio FM, Area 47, Sector 5 | |
| 38. | Mr. Dumisani Prince
Tembo | Transworld Radio—Malawi,
P.O. Box 52, Lilongwe | |
| 38. | Mathews Mose | MBC TV, P.O. Box 30370,
Lilongwe 3 | |
| 39. | Mr. Chakulu Nyambo | Luso Television, P/Bag 130,
Lilongwe | |
| 40. | Ms. Ellas Chipipo Tsamwa | Luso Television, P.O. Box 130,
Lilongwe | |



LAW COMMISSION

**REPORT OF THE LAW COMMISSION
ON THE TECHNICAL REVIEW OF THE
PREVENTION OF DOMESTIC
VIOLENCE ACT**

October, 2015

ISBN: 978-99908-85-58-3

