

## **Review of the Adoption of Children Act (Cap. 26:01) of the Laws of Malawi**

The Adoption of Children Act was enacted in 1949. After several minor amendments, a special Law Commission was empanelled in 2009 to conduct a comprehensive review of the Act. This work commenced in September, 2009 and was concluded formally on 7<sup>th</sup> October, 2011, as the special Law Commission on the Review of the Adoption of Children Act conducted a Press Briefing to present its final findings and recommendations to the nation. The Press Briefing took place from 18.00 hours at Capital Hotel, Lilongwe.

The special Law Commission, among other things, made the following key recommendations:

- (a) **concept of adoption:** adoption has been defined as the complete severance of parental rights and responsibility of birth parents over the child and the vesting of such rights and responsibilities in the adoptive parents. In matters of adoption the best interests of the child is considered of paramount importance;
- (b) **children eligible for adoption:** the maximum age for adoptable children is 18 years and before a child is adopted, they will be subjected to a psycho-medico-social study whose aim is to gather information on the child's psychological and social circumstances as well as the child's medical history;
- (c) **eligibility requirements for prospective adoptive parents:** adoptive parents shall be of a minimum age of 25 years and a maximum age of 65 years and the age gap between the parent and the child shall be at least 21 years. The following persons cannot adopt; a person of an unsound mind, a homosexual, a person convicted of any offence set out in the schedule, a person who has been declared unsuitable or prohibited by a court of competent jurisdiction from working with children. A sole male applicant cannot adopt a female child neither can a sole female applicant adopt a male child;
- (d) **procedural issues:** the Child Justice Court shall have jurisdiction in adoption matters. Unless the court orders otherwise the petitioner is mandated to attend the court in person. Adoption orders may be rescinded or discharged in certain exceptional circumstances;
- (e) **adoption services:** the proposed legislation clearly stipulates roles and functions of social workers and guardians *ad litem* in adoption matters;
- (f) **matching children and families:** the legislation emphasizes the importance of matching a child eligible for adoption with prospective adoptive parents with the optimal facilities and capacity to meet the needs of that child;
- (g) **records:** there shall be a register of adopted children and all records pertaining to adoption shall be confidential;
- (h) **inter-country adoption:** the Central Authority shall oversee inter-country adoption. The High Court retains jurisdiction to deal with such matters;
- (i) **offences:** the legislation has created a new enhanced regime of offences in relation to adoption; and
- (j) **fees and charges:** fees and charges for adoption services shall be borne by the adoptive parents.