



REPUBLIC OF THE GAMBIA

National Assembly, New Assembly Building, Reverend Pye Lane
Banjul, The Gambia



**REPORT OF THE
SELECT COMMITTEE ON
HEALTH, WOMEN,
CHILDREN, DISASTER,
HUMANITARIAN RELIEF
AND REFUGEES OF THE
NATIONAL ASSEMBLY OF
THE GAMBIA
ON THE MARRIED WOMEN'S
PROPERTY (AMENDMENT)
BILL, 2020**

October 2020

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MEMBERS OF THE COMMITTEE

1.1. Members of the National Assembly Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees

1. Hon. Ousman Sillah - Chairperson
2. Hon. Fatoumata Jawara - ViceChairperson
3. Hon. Saikou Marong - Rapporteur
4. Hon. Sulayman Saho - Rapporteur
5. Hon. Amadou Camara - Member
6. Hon. Musa Amul Nyassi - Member
7. Hon. Bakary Camara - Member
8. Hon. Omar Darboe - Member
9. Hon. Kaddy Camara - Member
10. Hon. Ndey Yassin Secka - Member
11. Hon. Momodou L. K. Sanneh -Member
12. Hon. Dawda Kawsu Jawara - Member

1.2. Support Staff

1. Sarata Bojang - Secretary
2. Isatou Sonko - Secretary

1.3. Subject Matter Specialists

1. Sekou Omar Dibba - SMS
2. Aminata L.R. Ngum - SMS
3. Dr. Ayo Palmer - SMS

2. ACKNOWLEDGEMENT

The Members of the Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees wish to acknowledge the positive response of all the stakeholder institutions from government, non-governmental organisations and civil society who were invited to participate in the consultations. Their position papers and presentations reflecting their views and recommendations had really enriched the exercise and its outcome. The participation of the Permanent Secretaries, Deputy Permanent Secretaries of the relevant ministries, the Directors and Assistant Directors of concerned departments, Executive Directors and Programme or Unit heads of NGOs and CSOs, senior officials, among others have been very instrumental in the consultations with their ideas and passion to achieve results.

It would therefore not be an exaggeration to conclude that without their invaluable participation and contributions in the process, as stakeholders in the promotion and protection of the rights of women and children, it would not have been easy for the Committee to complete and present this report for the consideration of the Assembly. They provided the evidence or information needed for inclusion in the amendment bill.

The Committee is obliged to express appreciation to the Office of the Clerk for providing the efficient support staff and logistics which enabled the Committee to carry out exhaustive consultation with all relevant stakeholders.

3. INTRODUCTION

After being handed over a copy of the Bill entitled the '**Married Women's Property (Amendment) Bill, 2020**' at the plenary on 22nd June, 2020 by the Attorney General and Minister of Justice, the Clerk of the National Assembly read aloud the short title which was deemed to be the First Reading, in accordance with Standing Order 65 of the National Assembly (Revised Edition, 2019).

On 07 July, 2020, the National Assembly plenary, following the conclusion of the second reading of the Bill, which witnessed a debate on its principles and merits by the honourable National Assembly Members, referred the said proposed legislation to the Assembly Business Committee (ABC), in accordance with Standing Order 68 (1). Consequently, the ABC committed the said Bill for consideration to the relevant committee which is the Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees, as provided for by Standing Order 68 (2).

In accordance with Standing Orders 68 (2), 69 (1) and (2), 97 (1) and (3) (b), the Select Committee on Health, Women, Children, Disaster, Humanitarian Relief and Refugees was tasked to review, consult and report to the plenary its findings and recommendations on the draft Women's (Amendment) Bill, 2020.

Immediately following the committal of the Married Women's Property (Amendment) Bill, 2019 to the appropriate Committee "for detailed investigation and report..." as per Standing Order 68 (2), the Select Committee immediately set itself to work by convening a planning meeting to adopt the methodology or approach to undertake in order to accomplish the task in accordance with the requirements of the Standings Orders. The Committee agreed to hold consultations and thus identified the key stakeholders from government and non-state institutions and organisations to be engaged to get their views and recommendations on the proposed Bill for consideration and incorporation in its report to the National Assembly.

4. MANDATE

Standing Order 69 requires the Committee not to discuss the principles of the Bill but its details in terms of the clauses. It is thus mandated as follows:

- a) List out witnesses, hold proceedings and take evidence from witnesses.
- b) Record the opinion of the Committee on each clause and schedule of the Bill and apprehend any amendment recommended.
- c) Present Amendments in the order in which they stand in the Bill.
- d) Present a report incorporating the summary of the evidence of the witnesses, the opinion of the Committee on the clauses and attach relevant records of minutes of its proceedings.

5. METHODOLOGY

Since Clause 66 (1) (b) requires a Committee, at the Committee Stage of the process, to engage in “detailed investigation” when considering a Bill committed to it, the Select Committee called witnesses from the identified institutions and organisations. This was after when each of them was provided with a copy of the Bill and thus asked to review and present a written report or position paper on their views and recommendations, if any, for the consideration of the Committee.

After holding the formal meetings at the National Assembly with the stakeholders from Government Ministries, Departments and Agencies (MDAs), Non-Governmental Organisations (NGOs) and Civil Society Organisations and platforms to present and discuss their written reports, the Committee convened a meeting to review and conclude on the positions and validate the Report.

6. THE PROPOSED MARRIED WOMEN’S PROPERTY (AMENDMENT) BILL, 2020

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NATIONAL ASSEMBLY

MARRIED WOMEN’S PROPERTY (AMENDMENT) BILL, 2020

A BILL ENTITLED

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AN ACT to review and amend the provisions of the Married Women’s Property Act found to be discriminatory against women and girls in The Gambia in furtherance of The Gambia’s international obligations and in line with the Constitution and for connected matters.

ENACTED by the President and the National Assembly.

1. Short title

This Act may be cited as the Married Women’s Property (amendment) Act, 2020.

2. Amendment of the Married Women’s Property Act 1885

The Married Women’s Property Act (In this Act referred to as “the Principal Act”) is amended as set out in this Act.

3. Amendment of the Whole Act

The Act is amended by deleting all references to the words “as a feme sole” and “as if she were a feme sole” wherever they occur in the Act.

OBJECTS AND REASONS

This amendment is the first of its kind in Africa for being the trail blazer for the recognition, observance and the domestication of international obligations and commitments relating to women’s rights into domestic laws. Since the enactment of the Women’s Act 2010, significant strides have been made to enforce the law and to protect women in line with the provisions of the Act. Section 25 of the Women’s Act recognised the need for periodic review of legislation every ten years to ensure further compliance with our international obligations as enshrined in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Protocol to the African Charter on Human and People’s Rights on The Rights of Women in Africa, (The Protocol). This amendment is intended to amend and repeal the provisions of this Act that are discriminatory against women as mandated by section 25 of the Women’s Act.

7. PLANNING MEETING

The Select Committee held a meeting on 29th September, 2020 to identify the relevant stakeholders to be consulted and to plan and adopt a Road Map for the engagements. During the deliberations, members identified the stakeholders to be consulted from the state and non-state institutions/organisations i.e. NGOs and civil society. The meeting agreed to hold sessions at the Assembly with the institutions to get their

views and recommendations of the stakeholders on the proposed Women’s Act (Amendment) Bill, 2020 for the consideration of the Committee in its report.

These consultations are in accordance with Clause 69 paragraph 2 of the Standing Orders which states “A Committee to which a Bill is committed shall consider and take evidence on the provisions of the bill and report its opinion thereon to the Assembly.”

8. PROCEEDINGS

(8.1) WITNESSES

The following witnesses or stakeholders from government, non-government organisations and civil society participated in the consultation on the Women’s (Amendment) Bill, 2020.

1. Mrs. Rohey Bittaye-Darboe, Permanent Secretary Ministry of Women, Children and Social Welfare
2. Mr. Kissima Bittaye - State Counsel, Attorney General’s Chamber and Ministry of Justice
3. Mr. Omar Secka - Supreme Islamic Council
4. Mrs. Matilda Johnson - Christian Council
5. Father Jacob O. Cole - Christian Council
6. Mariama John - NGBV
7. Mr. Fallu Sowe - NGBV
8. Mrs. Fanta Jatta Sowe - AAITG
9. Mr. Ousman Ceesay - NGBV

(8.2) MEMBERS OF THE COMMITTEE IN ATTENDANCE

1. Hon. Ousman Sillah - Chairperson
1. Hon. Fatoumata Jawara - Member
2. Hon. Musa Amul Nyassi - Member
3. Hon. Amadou Camara - Member
4. Hon. Kaddy Camara - Member
5. Hon. Ndey Yassin Secka - Member
6. Hon. Sulayman Saho - Member
7. Hon. Bakary Camara - Member

(8.3) SCRUTINY, FINDINGS AND RECOMMENDATIONS

(i) ORAL AND WRITTEN EVIDENCES OF WITNESSES

- NETWORK AGAINST GENDER BASED VIOLENCE

The Network in its position paper agreed with the proposed amendment for the deletion of the words “feme sole” and “as if she were a feme sole” as these in their view are discriminatory.

It is also proposing that Section 10 Sub-Section 3 of the principal Act be simplified to make it clear that every woman should have right over her property whether she is living together with her husband or not.

This, they added, is meant to ease understanding and avoid misinterpretation by people, especially the advocates, who are not grounded in law.

The Network is also recommending that the Latin terms/words be replaced with simple and easy to understand by the drafters.

- GAMBIA CHRISTIAN COUNCIL (GCC)

The Gambia Christian Council in its position paper supports the proposed amendment.

It was recommended that the phrase “ANYOTHER PERSON” in Section 16 (1) to be replaced with word “**Husband**”.

Some witnesses wanted clarification as to why should Section 18 of the principal Act is maintained.

It was explained that section 18 of the Act is putting emphasis that the woman owning a property should assume the responsibility of taking care of her children and grandchildren.

(ii) FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

1. Short title

This Act may be cited as the Married Women’s Property (amendment) Act, 2020.

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with Clause 1 on the Short Title of the Bill

- Committee’s Recommendation

The Committee recommends that the Clause 1 on the Short Title stands part of the Bill.

2. Amendment of the Married Women’s Property Act 1885

The Married Women's Property Act (In this Act referred to as "the Principal Act") is amended as set out in this Act.

- Observation/Conclusion

The Committee observes that the witnesses are in agreement with Clause 2 to stand part of the Bill

- Committee's Recommendation

The Committee recommends that the Clause 2 should stand part of the Bill.

3. Amendment of the Whole Act

The Act is amended by deleting all references to the words "as a feme sole" and "as if she were a feme sole" wherever they occur in the Act.

Observations/Conclusion

The Committee observes that the witnesses are in agreement with the amendment of Clause 3 which states "The Act is amended by deleting all references to the words "as a feme sole" and "as if she were a feme sole" wherever they occur in the Act." The references are in sections 2, 3, 6, 7, 10 and 16 of the Married Women's Property Act

Recommendation

The Committee recommends that Clause 3 on the Amendment of the Whole Act stand part of the Bill.

The Committee is also proposing for the amendment of Section 16 of the Married Women's Property Act by replacing the phrase "without her husband" to "any other person".

OBJECTS AND REASONS

This amendment is the first of its kind in Africa for being the trail blazer for the recognition, observance and the domestication of international obligations and commitments relating to women's rights into domestic laws. Since the enactment of the Women's Act 2010, significant strides have been made to enforce the law and to protect women in line with the provisions of the Act. Section 25 of the Women's Act recognised the need for periodic review of legislation every ten years to ensure further compliance with our international obligations as enshrined in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Protocol to the African Charter on Human and People's Rights on The Rights of Women in Africa, (The Protocol). This amendment is intended to amend and repeal the provisions of this Act that are discriminatory against women as mandated by section 25 of the Women's Act.

- Observation/Conclusion

The Select Committee recommends for the Objects and Reasons to be redrafted in order for it to capture the specific nature of the issue the Bill is intended to address as required by Standing Order 64 (1) (a), which states:

“(1) Every Bill shall be accompanied by a memorandum signed by the person in charge of the bill containing a statement of the objects and reasons of the Bill, including

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(a) the nature of the issue the Bill is intended to address;”

It was agreed by the Joint Committee that this task of redrafting the Objects and Reasons to ensure that it is specific to the proposed amendment was assigned to the team of draftspersons/counsels from the Ministry of Justice.

9. ANNEXES

Minutes of Consultative Meetings on The Gambia Nationality and Citizenship (Amendment) Bill

MINUTES OF MEETING OF THE SELECT COMMITTEE ON HEALTH, WOMEN, CHILDREN, DISASTER, HUMANITARIAN RELIEF AND REFUGEE

Date: 07th October, 2020

Time: 11:00am

Venue: Committee Room 1

In Attendance:

Hon. Members of the Committee

- | | | |
|----------------------------|---|-------------|
| 2. Hon. Ousman Sillah | - | Chairperson |
| 8. Hon. Fatoumata Jawara | - | Member |
| 9. Hon. Musa Amul Nyassi | - | Member |
| 10. Hon. Amadou Camara | - | Member |
| 11. Hon. Kaddy Camara | - | Member |
| 12. Hon. Ndey Yassin Secka | - | Member |
| 13. Hon. Sulayman Saho | - | Member |
| 14. Hon. Bakary Camara | - | Member |

Subject Matter Specialist

- | | | |
|------------------------|---|-----|
| 1. Mr. Sekou O.M Dibba | - | SMS |
|------------------------|---|-----|

Secretaries

- | | | |
|-----------------------|---|-----------|
| 1. Mrs. Sarata Bojang | - | Secretary |
| 2. Ms. Isatou Sonko | - | Secretary |

Witnesses:

- | | | |
|-------------------------------|---|---------------------------|
| 1. Mrs. Rohey Bittaye Darboe- | - | PS (MOWCSW) |
| 1. Council Kissima Bittage | - | Ministry of Justice (MOJ) |
| 2. Mr. Omar Secka | - | Supreme Islamic Council |
| 3. Mr. Ousman Ceesay | - | NGBV |
| 4. Mrs. Matilda Johnson | - | Christian Council |
| 5. Father Jacob O. Cole | - | Christian Council |
| 6. Mariama John | - | NGBV |
| 7. Mr. Fallu Sowe | - | NGBV |
| 8. Mrs. Fanta Jatta Sowe | - | AAITG |

AGENDA

- 1. Prayer**
- 2. Introduction/Opening Remarks**
- 3. Review and Adoption of last Meeting**
- 4. Review of the Married Women (Amendment) Bill, 2020**
- 5. A. O. B**

Prayers:

The meeting was called to order by the Hon. Ousman Sillah, Chairperson of the Select Committee, and individual silent prayers were observed.

Introduction/Opening Remarks:

The Chairperson of the Committee welcomed everyone to the meeting and highlighted the purpose of the consultative meeting.

Dilating on the on the Bill, the Chairperson informed the meeting that this is one of the series of bills that were initially consolidated into one, and committed to the Health Committee for investigation and report to the plenary but later withdrawn by the then Minister of Justice (person in charge of the bill). Subsequently, he said, the Bill was later separated from the others and brought back to Parliament in June, 2020 for consideration.

According to the Chairperson, the Committee is mandated to make relevant amendments to the bill. Detailing the methodological approach of the Joint Committee in scrutinizing the Bills, the Chairperson argued that the Committee would garner evidences both oral and written from Witnesses to accord them the opportunity to act and make inform decisions.

He also the Chairperson reminded the meeting of the relevant Standing Orders 65, 66, 67, 68, 69 and 101 of the National Assembly which clearly state the powers and remits of Committees.

MARRIED WOMEN (AMENDMENT) BILL, 2020

Comments, Recommendations and Suggestions

Amendment of the whole Act

“The Act is amended by deleting all references to the words “as a feme sole” and “as if she were a feme sole” wherever they occur in the Act.

Page 3 Arrangement of Sections:

Section

It was agreed for the word feme sole to be deleted in sections 2, 3, 6 and 7.

Section 2 reads:

2. A married woman capable of holding property as a feme sole

“A married woman shall, in accordance with the provisions of this Act, be capable of acquiring holding, and disposing by will otherwise of any real or personal property as her separate property in the same manner as if she were a feme sole, without the intervention of any trustee”.

The word FEME SOLE is deleted in section 2

A married woman capable off contracting as a feme sole

A married woman shall be capable of catering into and rendering herself liable in respect of and to the content of her separate property on any contract, and of suing and being sued either in contract or in tort or otherwise in all respect as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her, and any damages or costs recovered by her in any such action or proceeding shall be her separate property and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property.

The word feme sole is also deleted in this section

6. Property of a woman married after this Act to be held by her as a feme sole

A woman who married after the passing of this Act shall be entitled to have and to hold as her separate property, and to dispose of as provided in section 2 of this Act, all real and personal property which shall belong to her at the time of her marriage or shall devolve upon or be acquired by her after marriage, including any wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engage or which she carried on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

The word feme sole is deleted

7. Property acquired after, by a woman married before, the Act, to be held by her as a feme sole

A woman married before the passing of this Act is entitled to have and to hold and to dispose of as provided in section 2 of this Act as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the passing of this Act, including any wages, earnings, money and property gained or acquired by her.

The word feme sole is deleted.

10. Remedies of a married woman for protection and security of separate property

(1) A woman whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also subject, as regards her husband, to the provisions of subsection (3) of this section, the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property as if such property belonged to her as a feme sole. The word feme sole is deleted

Additional Comments/ Suggestion/ Recommendations

The Committee want a clarification whether the married women property Act is referring to all married women.

It was recommended for the word **ANYOTHER PERSON** in Section 16(1) to be replaced with word **Husband**.

Also, many speakers asked why should section 18 be maintained.

Some of the speakers stated that section 18 is in the Act to put emphasis on the woman owning a property to take the responsibility of taking care of her Children and grandchildren.

The Committee also requested the Ministry of Justice to review the portion which reads, "if she would be if she was living" in section 19 and get back to the Committee.

For the purpose of this Act, the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities, and be subject to the same jurisdiction as she would be if she would be if she was living.

Council Bittaye further advised the Committee to consult the Act and Married Women's Act and not all women.

Signature.....

Hon. Ousman Sillah

Chairperson of Health

Signature.....

Sarata Bojang

Committee Clerk