



POSITION OF HUMAN RIGHTS DEFENDERS COALITION (HRDC) FINANCIAL SERVICES ACT (AMENDMENT) BILL, No: 2 of 2018

1.0 Preamble

The **Human Rights Defenders Coalition** (HRDC) weigh-in in calling all relevant stakeholders especially the Malawi Parliament to accordingly amend the Financial Services Act as proposed by Hon Alexander Kusamba Dzodzi.

2.0 Background

Hon Alexander Kusamba Dzodzi, MP for Dowa West Constituency tabled a private members' Bill in Parliament on 13th December 2018. This was during the 4th Meeting of the 47th Session of Parliament. The Bill sought to amend the Financial Services Act by inserting in Part V a new Section 34A which would have made provisions for the following:

- (i) regulating interest rates;
- (ii) setting the maximum recovery from any loaned amount;
- (iii) setting policy rate;
- (iv) setting Treasury Bills rate;
- (v) improvement of non-performing loans and mopping-up excess liquidity into investible funds for small to medium enterprises;
- (vi) reduction of domestic public debt service costs by ensuring that the interest costs do not exceed the principal amount borrowed;
- (vii) Shrinking of the ever widening spread between the lending and the deposit interest rates.

We, Human Rights Defenders Coalition, entirely agree with the proponent of the Bill as we believe that by addressing the issues outlined above, Financial Institutions will be more inclined to fully exploit inflation declines for the benefit of Malawians. In addition we believe that banks will be prevented from making supernormal profits on depositors'

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funds who are paid unimaginably low deposit interest rates which are negative in real terms.

3.0 Facts on the ground

While banks argue that the interest **spread** (difference between deposit and lending interest rates) is substantial (over 700%:35%/5%) because of the heavy risk of lending, we have established that their assertion is incorrect.

We demonstrate that the higher than normal interest rates charged on loans have often resulted in banks earning supernormal profits. These abnormal profits earned by banks have been at the expense of poor Malawians as examples are awash of people who have lost their hard earned assets when their businesses get into trouble for various reasons and fail to service the loans in time. Often banks confiscate and sale such collateral assets for a song, way below their market value, not even enough to offset the un-serviced loans.

It is also worth noting that the exorbitant interest rates - which are one of the highest in the world -either prevent companies from borrowing funds to finance their expansion or if they borrow they end up failing to pay. This is because of the abnormal additional charges of above 15% of what banks call **Default Penalty Interest Charges** levied on top of normal lending interest rates (EDF a government entity charges 7.5% default interest charges). This makes gross interest charged on capital borrowed to accumulate to unmanageable levels sometimes to over 1,000% when business is in trouble.

On the other hand, it is disheartening to note that interest paid to the depositors still remains at below a meager 5% despite the banks charging these extra interest rates. To say the least banks are robbing Malawians of their hard earned funds. The Reserve Bank of Malawi which is by law mandated to regulate interest rates is toothless and let Malawians face the blunt on their own.

4.0 A simple look at Financial Reports

HRDC notes that banks in Malawi make exorbitant profits from “cheap” borrowed funds including customer deposits. The First Merchant Bank in 2017 report called these deposits“...**low cost current and savings account deposits...**” Such statements do not just demean Malawians’ humanity but also have a connotation of an exploitative banking culture by the banking sector. Below are some statistics of two of the Malawian banks as an example:

	Shareholder Funds			
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Bank	Profit after Tax (MK'billio n)	(Total Equity) MK'billio n	% Profit/Equity	Loans & Advances MK'billio n	Customer Deposits MK'billio n
FMB (2015)	3.913	21.468	18.22%	42.083	78.334
NB (2017)	19.147	82.213	23.29%	137.575	278.492

3.1 Further look into FMB Report (2015)

HRDC notes that Page 58 of the 2015 FMB Annual Report gives a breakdown of effective interest rate charged to its customers as follows:

- i. Funds lent to Government: 27%
- ii. Funds deposited with other banks: 20%
- iii. Loans & advances to customers: up to 35%
- iv. Customer deposits (current and savings accounts) were paid interest rate of between 0.15% and 20%. Note that savings for poor Malawians are paid interest of about 5% while deposits/savings by corporations are paid at around 20%.

3.2 Further Look into NB report (2017)

Page 121 and 134 of 2017 NB Annual Report gives the following breakdown of effective interest rates given to its customers as follows:

- i. Funds lent to Government: 18.15% to 20.10%
- ii. Loans & advances to customers: up to 35%
- iii. Customer deposits (current and savings accounts) were paid interest rate of 0.10% (current) and 5% (savings).

From the above table HRDC observes that funds loaned out were predominantly from savings and current accounts on which banks paid very little to no interest at all (low cost money they say). It is unimaginable that National Bank for example paid 5% interest on peoples' savings while they charged up to 25% interest (about 500% spread) on lending out of the peoples' money.

It is obscene that these banks can make net profits of about 18% (FMB) and 23% (NB) to owners' equity on borrowed funds from the depositors while an interest rate of below 5% was awarded to the depositors. We are dismayed that NB made 41 times and FDH made 33 times profits over their share capital. It is disheartening to note that these exorbitant profits are being made after taking into account all operating costs including debt write-offs, heavy staff emoluments and taxes.

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HRDC does not have kind words for these banks. It is interesting that National Bank actually declared a net profit of MK19billion (2017) out of owners Share Capital of only MK467million and FMB made MK3.9billion (2015) out of owners Share Capital of only MK117million. This level of profitability by Malawian Banks is what Hon Kusamba Dzonzi has been describing as KATAPILA or CHITAKA.

4.0 Our Position

It is a well known fact that growth of any industry requires funding. And low cost funding through loanable capital quadruples the results of such growth. Banking sector is therefore a key pillar in bringing about the growth of all productive sectors in Malawi. However instead of the banking sector playing a pivotal role in the expansion of businesses in the country, it has sadly helped in the closure of companies and untold suffering of Malawians when such companies close down. One recent case being Auction Holdings which would have substantially scaled down or closed down had government not come to its rescue. But the question is how many Malawians caught in similar scenarios can be redeemed by Government? And for how long will Government redeem its organizations crushed by these predatory interest rates charged on borrowed funds?

This “Economic Enslavement” that our people are being subjected to is being promoted and supported by the Reserve Bank of Malawi (RBM). The untold sufferings that Malawians have to endure due to high interest rates have resulted into the following:

- (1) Failure to access loans for their businesses because of exorbitant Interest Rates
- (2) Closure of their businesses due to heavy interest rates.
- (3) Payment of extremely low interest rates to depositors making Malawian depositors not to progress. Note that the banks pay as high as 20% in interest rates when corporations make deposits at the bank while our people and small businesses are paid below 5% on their savings.
- (4) Charging of Penalty Interest purportedly meant to discourage defaults has resulted in unspeakable losses to our people. This additional income has not been paid to the people whose money banks lend out.
- (5) Government has contributed to higher interest rates by offering higher rates on TB and Bonds. This has crowded out SMEs and also made borrowing by SMEs and individuals very unattainable. Government borrowing has also clouded out agricultural loan funding.

All the above matters are human rights infringement matters where Malawian depositors are abused by banks by underpaying them. In addition charging of penalty interest that doesn't benefit the Malawian Depositors is to say the least daylight robbery. Charging penalty interest is illegal in Malawi although RBM smiles at this act on Malawians.

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5.0 Our demands

Contrary to some opponents of the Interest Rates Capping Bill, over 20 countries in Africa have passed laws that regulate interest rates movements through interest capping registration.

We are surprised and cannot accept refusal by the Central and Commercial Banks to pass interest rates capping registration because obviously the banking sector and the Central Bank have acted irresponsibly and cannot be trusted to regulate interest rates that are in favour of the Lender, the Borrower, the Depositor and the country's economy as a whole.

In light of the matters raised above, the **Human Rights Defenders Coalition** herein give full support and backing to the proposals made in the Financial Services (Amendment) Bill, No 2 of 2018 presented in the 4th Meeting of the 47th Parliamentary Session.

We therefore make the following demands:

1. That the Bill be discussed by the **Special Committee of Parliament** assigned the task within January 2019 and the final draft be tabled in the 2018/19 Mid Term Budget Meeting of Parliament in February 2019;
2. That salient features of the Bill on the Ceilings and Floors of Interest rates be maintained as proposed;
3. That Reserve Bank of Malawi should issue a directive to all financial institutions that give out loans to **immediately** stop charging the **Default and Penalty interest charges** which is illegal under **Loans Recovery Act 1963**.
4. Reserve Bank of Malawi should **immediately** issue instruction to Financial Institutions restraining them from disposing any assets of the borrowers pledged as security due to default interest charges accumulation. Such instruction should be published in the national newspapers and major TV stations and Radios.
5. The Reserve Bank should issue instructions to Financial Institutions to **immediately REVERSE** all the illegal **Default and Penalty interests** charged on loan accounts.
6. That the Minister of Finance, Economic Planning & Development should not attempt to overrule one constitutional provision by using another because that is not the spirit of the Malawi Constitution. Any constitutional provisions that are conflicting with this Bill be amended to bring them in line with the spirit of the Bill.
7. That Parliament should work for and report to Malawians on this Bill and not to the Reserve Bank of Malawi.

6.0 Our next steps

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We the **Human Rights Defenders Coalition** will take **NEXT STEPS** including mobilizing people against the Banking Sector, RBM and Parliament should the Bill not be discussed by the **Special Committee of Parliament** within January 2019 and if not presented to Parliament in the February 2019 sitting of Parliament.

Name	Position	Name	Position
Timothy Mtambo	HRDC Chair	Gift Trapence	HRDC Vice Chair
Happy Mhango	Nothern Region HRDC Chair	Billy Mayaya	Central Region HRDC Chair
Masauko Thawe	Southern Region HRDC Chair	Madalitso Banda	Eastern Region HRDC Chair

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