

**MALAWI GOVERNMENT**

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**Act**

**No. 12 of 2019**

I assent

**PROF. ARTHUR PETER MUTHARIKA**

**PRESIDENT**

**28th April, 2019**

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**An Act to establish the National Children's Commission and to provide for matters incidental thereto and connected therewith**

ENACTED by the Parliament of Malawi as follows—

## PART I—PRELIMINARY

Short title  
and  
commence-  
ment

1. This Act may be cited as the National Children's Commission Act, 2019, and shall come into operation on a date appointed by the Minister, by notice published in the *Gazette*:

Provided that the date so appointed shall be within a period of six (6) months after the publication of this Act.

Interpretation

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

“Child” means any person below the age of eighteen (18);

“Commission” means the National Children's Commission established under section 3 of this Act;

“member” means a member of the Commission appointed under section 4 of this Act; and

“Public Appointments Committee” means the Public Appointments Committee of the National Assembly.

## PART II—THE NATIONAL CHILDREN'S COMMISSION

3.—(1) There is hereby established a Commission to be known as the National Children's Commission (in this Act otherwise referred to as the "Commission").

Establishment  
of the  
National  
Children's  
Commission

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and be capable of—

- (a) acquiring, holding or disposing of property;
- (b) suing and being sued in its own name; and
- (c) doing or performing all such acts and things as a body corporate may, by law, do or perform.

4.—(1) The Commission shall consist of—

Composition  
of the  
Commission

(a) five (5) members, at least two of whom shall be women, appointed by the President on the recommendation of the Public Appointments Committee, as follows—

- (i) two members nominated by non-governmental organizations engaged in Child affairs;
- (ii) one member from the private sector with demonstrated interest in, or working on, issues related to Child affairs, nominated by the Malawi Confederation of Chambers of Commerce and Industry; and
- (iii) two members nominated by umbrella religious bodies; and

(b) the following as *ex-officio* members—

- (i) the Solicitor General;
- (ii) the Secretary responsible for Children affairs;
- (iii) the Secretary responsible for Local Government;
- (iv) the Secretary to the Treasury; and
- (v) a senior level representative of the Human Rights Commission.

(2) A member of the Commission nominated under subsection (1) (a) shall be a person, who has passion for Children issues, is knowledgeable in Child related matters, and has actively contributed to the promotion of rights and welfare of Children.

(3) The President shall appoint members of the Commission in consultation with the organizations described in subsection (1).

Provided that each organization shall submit five names to the president for consideration and the appointment under this section

shall be subject to the confirmation of the Public Appointments Committee of Parliament.

(4) The Public Appointments Committee shall—

(a) assess the reputation of both the nominating organizations and the nominated person and may, for that purpose, seek further information pertaining to any nominated person before recommending for appointment any of the nominated persons; and

(b) according to their assessment under paragraph (a), keep a list of reserved names of nominated persons to be appointed to fill any casual vacancy for the remainder of the term of a member who vacates office before the expiry of the member's term of office.

(5) Notwithstanding the other provisions of this section, the Commission shall co-opt a Child to be a member of the Commission for a renewable one (1) year period, provided that person is below the age of eighteen (18).

Chairperson  
and Vice-  
Chairperson

5.— (1) The members shall, at their first meeting, elect a Chairperson and Vice-Chairperson from among their number, other than an *ex-officio* member.

(2) The Chairperson of the Commission shall be appointed by the President and the Commission shall elect one member of their numbers to be the vice chairperson.

(3) The Chairperson and the Vice-Chairperson may be removed from office by the Commission for good cause and upon the unanimous decision of the rest of the members of the Commission.

(4) The Vice-Chairperson shall exercise the functions of the Chairperson during any period that the Chairperson is unable to do so.

Eligibility for  
nomination or  
appointment

6. A person shall not be nominated or appointed as a member of the Commission if that person—

(a) is not a citizen of Malawi;

(b) is an employee of the Commission;

(c) is a Minister or Deputy Minister; or

(d) is a member of Parliament, or a person holding a public office.

Suspension  
from office

7.—(1) The President may suspend from office a member of the Commission against whom—

(a) criminal proceedings have been instituted for an offence involving dishonesty, moral turpitude or any offence relating to Children; or

(b) the Commission has instituted an inquiry into the member's conduct concerning Children.

(2) The President shall, before suspending a member from office in terms of subsection (1), notify the member, in writing, of the grounds on which the member is being suspended from office.

8.—(1) A member of the Commission, other than an *ex-officio* member, shall hold office for a period of five (5) years and shall be eligible for re-appointment for one further term. Tenure and vacancy of office

(2) A member may resign upon giving one (1) month's notice, in writing, to the Commission.

(3) The office of a member shall become vacant—

(a) if the member is absent, without reasonable excuse, from three consecutive meetings of the Commission of which the member has had notice;

(b) if the member becomes mentally or physically incapable of performing the duties of a member;

(c) if a member resigns in accordance with the provisions of subsection (2);

(d) upon the death of the member;

(e) in circumstances where the member is compromised to the extent that his or her ability to impartially exercise the duties of his or her office is seriously in question; or

(f) where any circumstances arise, which would disqualify the member from being nominated or appointed as a member of the Commission in accordance with section 6.

(4) The President may, where the office of a member becomes vacant before the expiry of the term of office, appoint another member, in accordance with section 4, to serve for the remainder of the term:

Provided that the President shall not appoint a person to fill a vacancy where the remainder of the term of office is less than six (6) months.

9. Members of the Commission shall be paid such allowances and other benefits as the Commission shall reasonably determine, subject to the approval of the Public Appointments Committee. Allowances and benefits

10.—(1) The Commission may, for the purpose of performing its functions under this Act, establish such number of committees as it deems appropriate. Committees of the Commission

(2) The Commission may appoint a member of the Commission or such other suitably qualified person to be a member of a committee established under subsection (1).

(3) The Commission shall appoint the Chairperson of each committee from amongst the members of the Commission, other than *ex-officio* members.

(4) The provisions of this Act relating to meetings of the Commission shall, with the necessary modifications, apply to the meetings of its committees.

(5) Every committee of the Commission shall act in accordance with any directions given to it in writing by the Commission.

### PART III—POWERS, FUNCTIONS AND MEETINGS OF THE COMMISSION

Functions of  
the  
Commission

#### 11. The Commission shall—

(a) advise the Government on matters relating to the rights and welfare of Children under this Act or any other law relating to Children;

(b) ensure multi-sectoral coordination and cooperation among stakeholders providing Child related services;

(c) advise on, and promote, policy or programmes formulation and implementation on Child related matters;

(d) provide to a structure and mechanism which will ensure proper coordination, monitoring and evaluation of all policies and programmes relating to Children;

(e) advise the Minister or any other appropriate institution on the need for law reform on any Child related matter;

(f) lobby for resources for Child based programmes including increased Government allocation to Children;

(g) monitor allocation of resources and implementation of Child sensitive budgets by Government Ministries, Departments and Agencies;

(h) monitor implementation of standards of service for Children including ensuring compliance and enforcement;

(i) promote fulfilment of treaty obligations as they relate to Children and monitor implementation of concluding observations;

(j) ensure that Government Ministries, Departments and Agencies account for the discharge of their mandate as they relate to Children;

(k) establish, maintain and enforce standards and guidelines for purposes of this Act; and

(l) perform all such functions as are connected with, or incidental to the functions of the Commission in this Act.

12. The Commission shall have powers to—

Powers of the  
Commission

(a) engage Government and private institutions or individuals on any Child related matters;

(b) conduct investigations on issues affecting Children as they relate to its mandate and make the necessary recommendations;

(c) direct any Government or private institution and any person providing Child related services or programmes to deliver the services or programmes in compliance with standards and guidelines established under this Act or any applicable standards;

(d) carry out or sanction research on Child related matters and to disseminate the findings of such research or any other research;

(e) require any Government or private institution and any person providing Child related services or programmes to produce or submit such information and records as may be necessary to enable the Commission to monitor the performance of the institution or person;

(f) inspect any premises to ensure compliance with this Act;

(g) oversee the implementation and successful operation of the policy and functions of the Commission;

(h) approve the annual budget and plans for the Commission;  
and

(i) establish and approve rules and procedures for the appointment, discipline, termination and terms and conditions of service of the staff of the Commission.

13. The Commission may delegate to any of its committees, the Chief Executive Officer or other employee any of its powers and functions.

Delegation

14.— (1) The Commission may, subject to the provisions of this Act, regulate its own procedure.

Meetings of  
the  
Commission

(2) The Commission shall meet to transact its business, at least once in every three (3) months, at such places and times as the Commission may determine.

(3) A meeting of the Commission—

(a) may be called by the Chairperson upon giving notice of not less than fourteen (14) days; and

(b) shall be called by the Chairperson if at least one-third of the members so request, in writing:

Provided that when there is an urgent matter, a special meeting may be called by giving a notice that is shorter than fourteen (14) days.

(4) The Chairperson shall take all reasonable steps to ensure that every member of the Commission is given due and adequate notice of every meeting.

(5) At every meeting of the Commission, at least six (6) members of the Commission shall constitute a quorum.

(6) The Chairperson shall preside at all meetings of the Commission, and in the absence of the Chairperson, the Vice Chairperson shall preside over the meeting, and in the absence of both the Chairperson and Vice Chairperson, members present and forming a quorum shall elect one of their number to preside over the meeting of the Commission.

(7) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and in the event of an equality of votes, the person presiding shall have a casting vote, in addition to his or her deliberative vote.

(8) The Commission may invite any person to attend and to participate in the deliberations of the Commission, but that person shall not have the right to vote on any matter requiring the decision of the Commission.

(9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by a vacancy in the membership of the Commission or by a defect in the appointment of a member, or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Chief Executive Officer or such other employee of the Commission as the Commission may designate or the Chief Executive Officer delegate, shall be the secretary to the Commission or at the meetings of any of its committees.

(11) Minutes of each meeting of the Commission or a committee of the Commission shall be kept by the Secretary and shall be confirmed at the subsequent meeting of the Commission or committee.

## PART IV—MANAGEMENT OF THE COMMISSION

15.— (1) The Commission shall have a Secretariat whose principal duty shall be to provide to the Commission such administrative and support services as may be necessary to facilitate the efficient operations of the Commission.

Secretariat of  
the  
Commission

(2) The Secretariat of the Commission shall consist of the Chief Executive Officer and other staff of the Commission, as the Commission may appoint in accordance with this Act.

16.— (1) The Commission shall appoint a Chief Executive Officer, upon such written terms and conditions as the Commission may, in its discretion, determine, who shall be responsible for the day to day administration of the Commission.

Chief  
Executive  
Officer

(2) A person shall not qualify for appointment as Chief Executive Officer, unless he has a record of high integrity and possesses suitable qualifications and experience necessary for the effective performance of the duties of that office.

(3) The minimum requirements for consideration for appointment to the Office of Chief Executive Officer shall be—

(a) sufficient knowledge of Child related matters;

(b) possession of a post graduate qualification in a field dealing with Child related issues; and

(c) a minimum of seven (7) years' experience, at least three (3) of which must be at management level.

(4) The Chief Executive Officer shall hold office for a period of five (5) years and shall be eligible for re-appointment.

(5) The Chief Executive Officer shall, in the performance of his functions and duties, be responsible and answerable only to, and shall be under the direction, supervision and control of, the Commission.

(6) Subject to the provisions of the Access to Information Act, the Chief Executive Officer shall not divulge any information to any person or accept or seek instructions from any person in relation to his functions and duties, or the functions or powers of the Commission.

Act No.13 of  
2017

17. — (1) The Commission shall appoint such other professional, technical and administrative officers and support staff as the Commission may deem necessary, subject to such terms and conditions as the Commission shall, in its discretion, determine.

Staff of the  
Commission

(2) The Commission shall pay, to every person in its service, such remuneration and allowance and grant to every such person benefits as it may deem appropriate.

(3) There may be seconded to the Commission such number of public officers as the Commission may arrange with the appropriate authority responsible for such public officers for such periods and on such terms and conditions as may be agreed between the Commission and the authority concerned.

(4) The Commission may delegate to the Chief Executive Officer, the appointment of such other junior members of staff, as the Commission may specify.

#### PART V—FINANCIAL PROVISION

Funds of the  
Commission

**18.—** (1) The funds of the Commission shall consist of—

(a) sums as shall be appropriated by Parliament for purposes of the Commission;

(b) sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(c) sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequest, donations, gifts from the Government or any other person;

(d) sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission; and

(e) sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or incorporate.

(2) For the purposes of this section, an “external body of persons” means any body of persons, corporate or incorporate, formed under or by virtue of the laws of any country other than Malawi.

(3) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission, and for no other purpose.

(4) The Commission shall not receive sums or assets which jeopardize or compromise the functioning, independence and impartiality of the Commission.

19.— (1) The Commission shall cause to be kept proper books and other records of its accounts, in respect of receipts and expenditures of the Commission, in accordance with acceptable principles of accounting.

Books,  
records of  
accounts,  
audit and  
other reports  
of the  
Commission

(2) The accounts of the Commission shall be audited annually by the Auditor General or by independent professional auditors appointed by the Commission, in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

(3) The Commission shall, as soon as practicable, but not later than six (6) months after the end of the financial year of the Commission, submit to Parliament and publish in the *Gazette*, an annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.

(4) The Commission shall, at all times, in the management of its resources, comply with the provisions of the Public Finance Management Act and Public Audit Act.

Cap. 37:02  
Cap. 37:01

20.— (1) All sums received for purposes of the Commission shall be paid into one or more banking accounts, at such bank or banks, as the Commission may determine, and no amount shall be withdrawn therefrom, except under the written authority of the Commission and by means of cheques signed by such persons as are authorized in that behalf by the Commission.

Holding of  
the funds of  
the  
Commission

(2) Any sums not immediately required for purposes of the Commission may be invested in such manner as the Commission may, in its discretion, determine.

21. The financial year of the Commission shall be the same as the Government financial year:

Financial year

Provided that the first financial year may be a period shorter or longer than twelve (12) months as the Commission shall determine, but in any case, not longer than eighteen (18) months.

#### PART VI—MISCELLENEOUS

22.— (1) Every relevant or competent public officer and public or private entity bears the duty to cooperate with the Commission in its activities and the exercise of any of its functions and powers under this Act.

Duty to  
cooperate  
with the  
Commission

(2) A person, or institution, that contravenes the provisions of subsection (1) commits an offence and shall, upon conviction, be liable—

(a) in case of an individual, to a fine of two million Kwacha (K2,000,000.00) and imprisonment for five (5) years; and

(b) in case of institutions, to a fine of five million Kwacha (K5,000,000.00)

Legal representation

**23.** The Commission may instruct the Attorney General or any legal practitioner to provide legal representation to the Commission in any court proceedings or matter, or to provide general legal advice to the Commission.

Exemption from personal liability

**24.** A person shall not, in his personal capacity, be liable in civil or criminal proceedings in respect of an act or omission done in good faith in the performance of duties and functions under this Act.

Confidentiality

**25.** A member of the Commission or a member of staff of the Commission or any other institution, or a person carrying out any work on behalf of the Commission, shall not, except in the course of official duty, disclose or publish any document, communication or information which has come to that person's knowledge in the course of duty.

Oath of secrecy

**26.** Every member of the Commission and every member of staff of the Secretariat of the Commission shall, before assuming the duties of his or her office take an oath of secrecy and such other oaths for the due performance of their respective duties as may be prescribed.

Penalty

**27.** A person who contravenes any provision of this Act commits an offence and shall, upon conviction, be liable to a fine of two million Kwacha (K2,000,000.00) and to imprisonment for five (5) years.

Regulations

**28.** The Minister may, on the recommendation of the Commission, make regulations for the better carrying out of the provisions of this Act.

Passed in Parliament this seventh day of March, two thousand and nineteen.

FIONA KALEMBA  
*Clerk of Parliament*