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Act

No. 19 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
12th May, 2022

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An Act to amend the Non-Governmental Organizations Act

ENACTED by the Parliament of Malawi as follows—

Short title

1. This Act may be cited as the Non-Governmental Organizations (Amendment) Act, 2022.

Amendment of long title of Cap. 5:05

2. The Non-Governmental Organizations Act (hereinafter referred to as the "principal Act") is amended in the long title by deleting the words "Non-Governmental Organizations Board of Malaŵi" and substituting therefor the words "Non-Governmental Organizations Regulatory Authority".

Amendment of s.2 of the

3. The principal Act is amended in section 2—

(*a*) by deleting the definition of the word "Board";

(*b*) by inserting, in the correct alphabetical order, the following definition—

"Authority" means the Non-Governmental Organizations Regulatory Authority established under section 6";

(*c*) in the definition of the words "designated NGO coordinating body", by deleting the word "established" immediately after the word "Malawi" and substituting therefor the word "designated"; and

(*d*) in the definition of the word "NGO", by deleting the words "a Non-Governmental Organization" immediately after the word "means" and substituting therefor the words "an organization".

4. The principal Act is amended in section 5 (*d*) by deleting the word "Board" and substituting therefor the word "Authority". Amendment of s.5 of the

5. The principal Act is amended by deleting the words "PART II— ESTABLISHMENT OF THE NGO BOARD OF MALAŴI" and substituting therefor the words "PART II— ESTABLISHMENT OF THE NON-GOVERNMENTAL ORGANIZATIONS REGULATORY AUTHORITY". Amendment of Part II of the principal Act

6. The principal Act is amended in section 6 by deleting— Amendment of s. 6 of the principal Act

(*a*) the words "a Board to be known as the Non-Governmental Organizations Board of Malaŵi" in subsection (1) and substituting therefor the words "the Non-Governmental Organizations Regulatory Authority; and

(*b*) the word "Board" in subsection (2) and substituting therefor the word "Authority".

7. The principal Act is amended by repealing section 7 and substituting therefor the following new section— Substitution of s. 7 of the principal Act

"Composition of the Authority

7.—(1) The Authority shall consist of eleven members who shall be citizens of Malawi and appointed by the Minister as follows—

(*a*) three members nominated by the Council for Non-Governmental Organizations in Malawi;

(*b*) one member nominated by the Malawi Law Society;

(*c*) one member nominated by an association of economists in Malawi;

(*d*) one traditional leader nominated by the Secretary responsible for Local Government;

(*e*) one religious leader nominated by an association of religious organizations;

(*f*) the following members *ex officio*—

(i) the Secretary responsible for social welfare;

(ii) the Solicitor General;

(iii) the Secretary to the Treasury; and

(iv) the Secretary responsible for Local Government.

(2) A person shall not be qualified for appointment as a member of the Authority unless he—

(*a*) possesses a minimum education qualification of a bachelor's degree obtained from an institution recognized or accredited under the National Council for Higher Education Act; and

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(*b*) has at least five years' post qualification work experience.

(3) A member of the Authority, other than a member *ex-officio*, shall not, by reason only of his appointment as a member of the Authority, be deemed to be an employee in the public service.

(4) The Minister shall, in making appointments under subsection (1) (*a*), (*b*), (*c*), (*d*) and (*e*)—

(*a*) take into account the provisions of the Disability Act and the Gender Equality Act; and

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(*b*) have regard to the need for continuity in the membership of the Authority so that at least two members of the immediate past Authority shall be retained.

(5) The Minister shall publish, in the *Gazette*, names of all members of the Authority as first constituted and every change in the membership.".

Amendment of s. 8 of the principal Act

8. The principal Act is amended in section 8 by deleting the word "Board" and substituting therefor the word "Authority".

Substitution of s. 9 of the principal Act

9. The principal Act is amended by repealing section 9 and substituting therefor the following new section—

"Removal of members

9.— (1) The Minister may remove from office a member of the Authority, except a member *ex-officio*, on any of the following grounds—

(*a*) misconduct or misbehaviour that brings the Authority or office of the member into disrepute;

(*b*) incompetence in the execution of the functions of the office of the member;

(*c*) failure to declare a conflict of interest relating to any matter under consideration by the Authority;

(*d*) publishing or disclosing, without lawful authority, to any person or entity, other than in the course of duty, any confidential information of the Authority or any other information of the Authority obtained by the member in the course of duty; or

(*e*) being compromised to the extent that his ability to impartially and effectively exercise the duties of his office is seriously in question.

(2) A member shall not be removed from office under subsection (1) except after due inquiry and consulting the nominating body."

10. The principal Act is amended in Section 10 by— Amendment of s. 10 of the principal Act

(*a*) deleting the word "Board" wherever it appears and substituting therefor the word "Authority"; and

(*b*) repealing subsection (2) (*e*) and inserting thereto new paragraphs (*e*), (*f*), (*g*), (*h*) and (i) as follows—

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(*e*) if he is declared insolvent under the Insolvency Act;

(*f*) if he ceases to be a member of the organization that nominated him;

(*g*) if he is convicted and sentenced to a term of imprisonment under this Act or any other written law;

(*h*) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member; and

(*i*) upon expiry of the term of his appointment.".

11. The principal Act is amended in section 11 by— Amendment of s. 11 of the principal Act

(*a*) deleting the word "Board" in subsection (1) and substituting therefor the word "Authority"; and

(*b*) repealing subsection (2) and inserting thereto new subsections (2), (3) and (4) as follows—

"(2) A person appointed to fill a vacancy under subsection (1), shall serve for the remainder of the term of office but no person may be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(3) The period served by a member appointed under subsection (2) shall not be regarded as a term for the purposes of section 10 (1).

(4) Subject to section 15 (4) (*c*), a vacancy in the membership of the Authority shall not affect its decisions, the performance of its functions or the exercise of its powers under this Act or any other written law.".

Amendment of s. 12 of the principal Act

12. The principal Act is amended in Section 12 by deleting the word "Board" wherever it appears and substituting therefor the word "Authority".

Amendment of s. 13 of the principal Act

13. The principal Act is amended in Section 13 by deleting the word "Board" wherever it appears and substituting therefor the word "Authority".

Amendment of s. 14 of the principal Act

14. The principal Act is amended in Section 14 by deleting the word "Board" wherever it appears and substituting therefor the word "Authority".

Amendment of Part III of the principal Act

15. The principal Act is amended by deleting the words "PART III— MEETINGS OF THE BOARD" and substituting therefor the words "PART III- MEETINGS OF THE AUTHORITY".

Amendment of s. 15 of the principal Act

16. The principal Act is amended in Section 15 by deleting the word "Board" wherever it appears and substituting therefor the word "Authority".

Amendment of s. 16 of the principal Act

17. The principal Act is amended in Section 16 by deleting the word "Board" wherever it appears and substituting therefor the word "Authority".

Amendment of s. 17 of the principal Act

18. The principal Act is amended in section 17 by—

(*a*) deleting the word "Board" wherever it appears in subsection (1) and substituting therefor the word "Authority"; and

(*b*) repealing subsections (2), (3) and (4) and substituting therefor the following new subsections (2), (3) (4) and (5)—

"(2) A member who declares interest in any matter under subsection (1) shall recuse himself from discussion of the agenda item in which he has interest and shall not take part in any consideration or discussion of, or vote on, any question touching on such matter at that meeting and any subsequent meeting.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A member who recuses himself from discussion of any matter under subsection (2) shall not subsequently be entitled to receive any documents relating to the matter.

(5) Where a member or a person invited to attend a meeting under section 12 fails to comply with subsection (1) and the Authority makes a decision which benefits him directly or indirectly, the decision shall, to the extent that it benefits him, be null and void.".

Amendment of Part IV of the principal Act

19. The principal Act is amended by deleting the words "PART IV— DUTIES, FUNCTIONS AND POWERS OF THE BOARD" and substituting therefor the words "PART IV—DUTIES, FUNCTIONS AND POWERS OF THE AUTHORITY".

Amendment of s. 18 of the principal Act

20. The principal Act is amended in Section 18 by—

(*a*) deleting the word "Board" in subsection (1) and substituting therefor the word "Authority"; and

(*b*) repealing subsection (2) and substituting therefor the following new subsection—

"(2) Without derogating from the generality of subsection (1), the Authority shall—

(*a*) register NGOs and maintain a register incorporating a database in respect of NGOs operating in Malawi, and maintain registers or sub-registers, including any as may relate to exempt organizations and international NGOs;

(*b*) operate a public documentation center where members of the public may freely access the NGO register and data-base, including records and returns of NGOs lodged in the public documentation centre;

(*c*) monitor compliance by NGOs with the provisions of this Act or any other written law;

(*d*) withhold, suspend or cancel registration of an NGO in the event of failure or refusal to comply with the provisions of this Act;

(*e*) review implementation and financial reports submitted by NGOs to ensure transparency and accountability;

(*f*) determine, from time to time, the incentives applicable to NGOs under this Act or any other written law and make the necessary recommendations to the Minister;

(*g*) commission surveys, enquiries and research, with a view to advising the Minister with regard to any matter affecting NGOs in the country;

(*h*) receive, investigate and determine complaints against NGOs;

(*i*) register and resolve, through mediation or conciliation, disputes between NGOs or between NGOs and other persons; and

(*j*) do all such other things as are necessary, incidental or conductive to the better carrying out of the objects and functions of the Authority specified in this Act."

Amendment of Part V of the principal Act

21. The principal Act is amended by deleting the words "PART V—MANAGEMENT OF THE BOARD" and substituting therefor the words "PART V— MANAGEMENT OF THE AUTHORITY".

Amendment of s. 19 of the principal Act

22. The principal Act is amended in Section 19 by deleting the word "Board" wherever it appears and substituting therefor the word "Authority".

Amendment of s. 20 of the principal Act

23. The principal Act is amended in section 20 by—

(*a*) repealing subsection (1) and substituting therefor the following new subsection—

"(1) An organization shall not operate as an NGO in Malawi unless the organization is registered under this Act.";

(*b*) deleting the word "Board" in subsection (3)(*a*)(ii) and (*b*)(v);

(*c*) repealing subsection (3)(*a*)(v) and (vi) and substituting there for a new subparagraph (v) as follows—

"(v) a declaration that management and staff of the NGO shall not engage in partisan politics, including electioneering and politicking; and";

(*d*) renumbering the current subparagraph (vii) of subsection (3)(*a*) as subparagraph (vi); and

(*e*) deleting the word "Board" wherever it appears in subsection 4 and substituting therefor the word "Authority".

Amendment of s.21 of the principal Act

24. The principal Act is amended in section 21 by deleting the word "Board" in subsection (1) and substituting therefor the word "Authority".

Amendment of s. 22 of the principal Act

25. The principal Act is amended in section 22 by—

(*a*) inserting the words, "—(1)" before the word "Every" at the beginning;

(*b*) deleting the word "Board" in paragraph (*c*) and substituting therefor the word "Authority"; and

(*c*) inserting a new subsection (2) as follows—

"(2) The Authority may verify information filed under subsection (1) and impose any penalty prescribed by regulations made by the Minister under this Act where the Authority is satisfied that an NGO has failed or refused to comply with subsection (1)".

Amendment of s.23 of the principal Act

26. The principal Act is amended in section 23 by—

(*a*) deleting the word "Board" wherever it appears and substituting therefor the word "Authority"; and

(*b*) inserting the word "designated" immediately before the words "NGO coordinating body" in subsection (2).

Amendment of s. 24 of the principal Act

27. The principal Act is amended in section 24 by deleting the words "General Assembly" at the beginning and substituting therefor the word "Minister".

Repeal of s. 25 of the principal Act

28. The principal Act is amended by repealing section 25.

Repeal of Part VIII of the principal

29. The principal Act is amended by repealing Part VIII.

Substitution of s. 27 of the principal Act

30. The principal Act is amended by repealing section 27 and substituting therefor the following new section—

Authority

27. —(1) The funds of the Authority shall consist of—

(*a*) such sums of money as may, from time to time, be appropriated to the Authority by the National Assembly;

(*b*) any fees, charges or penalties payable under this Act;

(*c*) any levies and other moneys payable to the Authority under this Act;

(*d*) any donations and grant of funds made to the Authority;

(*e*) proceeds from the sale of any asset or property by or on behalf of the Authority; and

(*f*) loans contracted by the Authority."

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(2) The Authority shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.".

Substitution of s. 28 of the

31. The principal Act is amended by repealing section 28 and substituting therefor a new section as follows—

"Borrowing powers

28. Subject to the Public Finance Management Act, the Authority may borrow, either temporarily by way of overdraft or otherwise, such sums as it may require to meet its obligations or discharge its functions under this Act.".

Substitution of s. 29 of the

32. The principal Act is amended by repealing section 29 and substituting therefor a new section as follows—

"Investment of surplus money

29. Subject to the Public Finance Management Act, the Authority may invest any surplus money in such a manner as the Authority may deem expedient.".

Substitution of s. 30 of the principal Act

33. The principal Act is amended by repealing section 30 and substituting therefor the following new section——

"Financial

30. The financial year of the Authority shall be the period of twelve months in line with the Government financial year.".

Amendment of s. 31 of the

34. The principal Act is amended in section 31 by——

(*a*) deleting the word "Board" in subsection (1) and substituting therefor the word "Authority";

(*b*) repealing subsection (2) and inserting thereto new subsections (2), (3) and (4) as follows——

"(2) The accounts of the Authority shall be audited annually by independent auditors appointed by the Authority after consulting the Auditor General.

(3) The expenses of the audit shall be payable out of the funds of the Authority.".

Substitution of s. 32 of the principal Act

35. The principal Act is amended by repealing section 32 and substituting therefor a new section as follows——

"Financial year

32.——(1) The Authority shall, as soon as is practicable, but not later than four months after the end of each financial year, submit to the Minister an annual report of its work, operations and audited accounts.

(2) The Report submitted under subsection (1) shall include information on the financial affairs of the Authority, and there shall be appended to the report—

(*a*) an audited balance sheet;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Authority may consider appropriate.

(3) The Minister shall, as soon as practicable, but not later than six months after the end of the financial year, lay before the National Assembly a copy of the annual report.".

Substitution of s. 34 of the principal Act

36. The principal Act is amended by repealing section 34 and substituting therefor the following new section—

"Offence and penalty

34.—(1) An NGO which contravenes a provision of this Act commits an offence and shall, upon conviction, be liable to a fine of K5,000,000.00 or an amount equivalent to the financial gain generated by the offence, whichever is the greater.

(2) Where an NGO commits an offence under this Act, every trustee, chief executive officer, manager or any person purporting to act in any such capacity, commits the same offence and shall, upon conviction, be liable to the same fine as the NGO or imprisonment for two years, unless he satisfies the Court that—

(*a*) the offence was committed without his knowledge or consent;

(*b*) the offence was not committed through his gross negligence; or

(*c*) he took all reasonable steps to prevent the commission of the offence.".

Amendment of s. 35 of the principal Act

37. The principal Act is amended in section 35 by—

(*a*) in subsection (1)—

(i) deleting the word "Board" and substituting therefor the word "Authority";

(ii) inserting a new paragraph (a) as follows—

"(*a*) make provision for the operations of international NGOs in Malawi;"; and

(iii) renumbering paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and

(*b*) in subsection (2), deleting the words "K25,000" and substituting therefor the words "K1,000,000.00".

Passed in Parliament this twenty second day of March, two thousand and twenty two.

FIONA KALEMBA
Clerk of Parliament