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Act

No. 1 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
31st January, 2024

ARRANGEMENT OF SECTIONS

SECTION
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An Act to ammend the Ombudsman Act

ENACTED by the Parliament of Malawi as follows—

Short title

1. This Act may be cited as the Ombudsman (Amendment) Act, 2024.

Ammendment of s. 2 of Cap 3:07

2. The Ombudsman Act (hereinafter referred to as the "principal Act") is amended, in section 2, by—

(*a*) deleting the definition of "organ of Government" and substituting therefor a new definition as follows—

""organ of Government" includes—

(i) any of the three branches of Government, a local authority and a body or a committee established or instituted by, or under, any written law; and

(ii) a state-owned enterprise;"; and

(*b*) inserting, in the correct alphabetical order, new definitions as follows—

""controlling officer" means a person who is the head or principal officer in-charge of an organ of Government."

"Legal Affairs Committee" means the Legal Affairs Committee established under section 56 (7) of the Constitution;

"maladministration" means any action taken, or omitted to be taken, or any decision made, or omitted to be made, by an organ of Government in the performance of an administrative function, which is unfair, unreasonable, illegal or not compliant with the rules of natural justice;

"state-owned enterprise" means a corporation, body or institution where the Government, directly or indirectly, holds more than fifty per cent of the issued share capital or has controlling interest or power.".

Amendment of s. 5 of the principal Act

3. Section 5 of the principal Act is amended by deleting subsection (2) and substituting therefor a new subsection as follows—

"(2) Without derogation from section 123 of the Constitution, the Ombudsman may—

(*a*) where it appears to the Ombudsman that there is no remedy reasonably available by way of court proceedings or by way of appeal from a court decision or where there is no other practicable remedy, on a complaint lodged, inquire into and investigate—

(i) any case where it is alleged that a person has suffered injustice as a result of abuse of power, unfair treatment, oppressive or unfair conduct, by an organ of Government;

(ii) any allegation of maladministration, including delay, discourtesy, incompetence, misbehaviour, inefficiency, manifest injustice, lack of responsiveness, abuse of power, unfair treatment, ineptitude or any other conduct by an official in any organ of Government which would be regarded as unreasonable, oppressive or unfair in an open and democratic society; and

(iii) any conduct in State affairs, or any act or omission in public administration by any organ of Government or public officer which is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice.

(*b*) on his own initiative, in the public interest, inquire into and investigate any matter specified under paragraph (*a*);

(*c*) facilitate the setting up of, and build complaint handling capacity in organs of Government;

(*d*) work with organs of Government to promote alternative dispute resolution methods in the resolution of complaints relating to public administration;

(*e*) provide advisory opinions or proposals on the improvement of public administration, including, legal reforms, codes of conduct, processes and procedures;

(*f*) publish periodic reports on the status of administrative justice in Malawi;

(*g*) promote administrative justice through public awareness;

(*h*) take appropriate steps in conjunction with other organs of Government to promote and protect fundamental human rights and freedoms in public administration;

(*i*) work with the Human Rights Commission and other public institutions to promote efficiency, effectiveness and complementarity, and to establish mechanisms for referrals and collaboration; and

(*j*) perform such other functions as may be prescribed by any other written law.".

Amendment of s. 8 of the principal Act

4. Section 8 of the principal Act is amended—

(*a*) in subsection (1)(*b*), by—

(i) renumbering paragraph (iii) as paragraph (iv); and

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

"(iii) recommend compensation or any other appropriate remedy against an offending person or body;";

(*b*) by deleting subsection (2) and substituting therefor a new subsection as follows—

"(2) The Ombudsman may, but without derogating from any of the provisions of subsection 1(b), if he is of the opinion that any instance or matter inquired into or investigated by him under section 5 can be rectified or remedied in any lawful manner, submit his finding and directive, decision or recommendation to the controlling officer of the organ of Government concerned and a copy thereof to the Secretary to the President and Cabinet."; and

(*c*) by inserting new subsections (3), (4) and (5) as follows—

"(3) The Ombudsman may, require the controlling officer of the organ of Government to whom the finding and directive, decision or recommendation is submitted under subsection (2), to notify the Ombudsman, within a specified period not exceeding thirty days of receipt of the finding and directive, decision or recommendation, of any steps taken or proposed to be taken to give effect to the finding and directive, decision or recommendation.

(4) If, after the period specified in subsection (3), in the opinion of the Ombudsman, there is no action or the action taken by the controlling officer of the organ of Government is inadequate or inappropriate, the Ombudsman may submit a report on the matter to the Secretary to the President and Cabinet.

(5) Any person or organ of Government aggrieved by a finding, directive, decision or recommendation of the Ombudsman in respect of an inquiry or investigation in any instance or matter may, within thirty days after being notified of the decision in accordance with subsection (1)(*a*) or (2), apply to the High Court for a review of the finding directive, decision or recommendation.

Amendment of s. 9 of the principal Act

5. Section 9 of the principal Act is amended—

(*a*) in subsection (1), by deleting the words "the Cabinet and any other relevant organ of Government" and substituting therefor the words "the Secretary to the President and Cabinet and the controlling officer of the organ of Government concerned";

(*b*) by renumbering subsection (4) as subsection (6); and

(*c*) by inserting therein new subsections (4) and (5) as follows—

"(4) The Speaker of the National Assembly shall, in accordance with the Standing Orders of the National Assembly, refer a report submitted under subsection (1) and laid before the National Assembly in accordance with subsection (3), to the Legal Affairs Committee for its consideration.

(5) The controlling officer of the organ of Government shall submit a report in writing to the Legal Affairs Committee, in response to the report submitted by the Ombudsman under subsection (1), specifying the reasons for not rectifying or remedying the matter as contemplated in this Act to the satisfaction of the Ombudsman.".

6. The principal Act is amended by inserting, immediately after section 12, new sections 12A and 12B as follows— Insertion of new ss 12A and 12B into the principal Act

"Protection of whistle-blowers and other informers

12A—(1) Any person who believes that the public interest overrides the interest of—

(*a*) an organ of Government in, or under which, he serves or to which he is subject (hereinafter referred to as a "whistle-blower"); or

(*b*) a particular community, association or society to which he belongs or any other person whosoever (hereinafter referred to as an "informer"),

may inform the Ombudsman of an alleged or suspected maladministration or other malpractice connected therewith, which he knows or believes is being perpetrated by or in that organ of Government.

(2) Except as provided in subsections (3) and (4), no information relating to a whistle-blower or informer who has provided information to the Ombudsman pursuant to subsection (1) shall be admitted in evidence in any inquiry, and no witness shall be obliged or permitted to disclose the name or address of the whistle-blower or informer, or state any matter which might lead to the discovery of the whistle-blower or informer.

(3) If any document which is in evidence or liable to inspection in an inquiry, contains any entry in which the whistle-blower or informer is named or described or which might lead to the discovery of the whistle-blower or informer, the Ombudsman shall cause all such entries or passages in the document to be concealed from view or to be obliterated, so far as is necessary to protect the whistle-blower or informer from discovery, but no further.

(4) If, after an inquiry into any matter, the Ombudsman is of the opinion that the whistle-blower or informer wilfully provided information which he knew or believed to be false, or did not believe to the true, in material particular, and that justice cannot be done without the discovery of the whistle-blower or informer, the Ombudsman may require disclosure of the whistle-blower or informer, and, if the information was provided in writing, require the production of the document.

(5) Any person who, by himself or through another person, takes any action of any kind to punish or victimize a whistle-blower or informer in any way commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Evidence and procedure

12B.— (1) When conducting an inquiry or a hearing, the Ombudsman shall not be bound by rules or practice of evidence.

(2) The Ombudsman shall conduct a hearing with as little formality and technicality as possible.

(3) The Ombudsman shall conduct a hearing with as little emphasis on an adversarial approach as possible.

(4) A party to an inquiry or a hearing, may submit a written submission to the Ombudsman.".

Amendment of s. 13 of the principal Act

7. Section 13 of the principal Act is amended—

(*a*) in paragraph (*d*), by deleting the words "section 9(4)" and substituting therefor the words "section 9(5)"; and

(*b*) by deleting the words "K10,000" and substituting therefor the words "K20,000,000".

Passed in Parliament this seventh day of December, two thousand and twenty three.

FIONA KALEMBA
Clerk of Parliament