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DRAFT NON-GOVERMENTAL ORGANIZATIONS (AMENDMEND) BILL, REVISED 2020

NON-GOVERMENTAL ORGANISATIONS (AMENDMEND) BILL, 2020

MEMORUNDUM

This Bill seeks to amend the Non-Governmental Organizations Act (Cap. 5:05) by modernizing the Act in order to comply with constitutional standards, improving efficiencies in the operations of the responsible institution and strengthen the role that the institution plays in regulating Non-Governmental Organizations in Malawi.

The Bill seeks to achieve this by removing the reference to a non-statutory established institution, the Council for Non-Governmental Organization in Malawi (CONGOMA) and allowing the membership of that Organization to become voluntary.

In order to entrench the role that the Boar undertakes in regulating the NGO sector, the Bill proposes that the Board should be renamed. "Regulatory Authority".

The Bill further enhances the penalties that were last decided upon the time of enacting the Bill in 2001.

NON-GOVERMENTAL ORGANIZATIONS (AMENDMEND) BILL, 2020

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 2 of Cap. 5:05
3. Replacement of s. 7 of the principal Act
4. Amendment of s. 9 of the principal Act
5. Amendment of s.14 of the principal Act
6. Amendment of s.18 of the principal Act
7. Repeal of s. 20 of the principal Act
8. Amendment of s. 22 of the principal Act
9. Repeal of Part VII of the principal Act
10. Repeal of Part VIII of the principal Act
11. Replacement of s. 27 of the principal Act
12. Amendment of s. 28 of the principal Act
13. Amendment of s. 31 of the principal Act
14. Amendment of s. 32 of the principal Act
15. Amendment of s. 34 of the principal Act
16. Amendment of s. 35 of the principal Act.

A BILL
entitled

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 Non-Governmental Organizations (Amendment) Act, 2020

Amendment of
s. 2 of Cap. 5:05

2. Section 2 of the Non-Governmental Organizations Act (hereinafter referred as the “principal Act”) is amended by –

(a) deleting the definition of “Board” and replacing it with the following new definition –

“Authority” means the Non-Governmental Organizations Regulatory Authority established under section 6; and replacing the word “Board” anywhere it appears in the Act with the word, “Authority”;

(b) deleting the definition of “designated NGO Coordinating body”;

(c) replacing the words, “NGO Coordinating Body”; anywhere they appear in the Act with the word, “Authority”; and

(d) deleting the definition of “NGO” and replacing it with the following new definition –

“NGO” means Non-Governmental Organization or a Faith Based Organization constituted for the purpose of a public benefit to which the provisions of the Act are applicable under section 4.

Replacement of s.7
of the principal Act

3. Section 7 of the principal Act is repealed and replaced with the following new section –

“Composition of 7 – (1) The Authority shall consist of eleven members who shall be citizens of Malawi and appointed by the Minister, as follows -

(a) a chairperson and five other members, nominated by relevant professional and other bodies;

Provided that two members shall be nominated by an NGO Coordinating with membership open at national level as long as the two members are not in active service in any institution regulated under this Act.

(b) the following ex officio members –

- (i) the Secretary responsible for socio welfare;
- (ii) the Solicitor General;
- (iii) the Secretary to the Treasury; and
- (iv) the Secretary responsible for Local Government.

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

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

(4) A member of the Authority, other than an ex-officio member, shall not be qualified for appointment as a member of the Authority, if he –

- (a) does not possess –
 - (i) a minimum educational of a bachelor's degree or its equivalent obtained from a reputable educational institution recognized or accredited under the National Council of Higher Education Act; and
 - (ii) expertise and experience in a field relevant to the functions and responsibilities of the Authority;
- (b) holds a political office or is an active politician or is an active member of a political party;
- (c) is an officer, member or employee in a public service.

(5) In making appointments under this section, the Minister shall –

- (a) ensure that at least half of the appointees are women; and
- (b) take into account the provisions of the Disability Act".

Amendment of s.9 of the principal Act

4. The principal Act is amended in section 9 by deleting the words, "in consultation with CONGOMA" and replacing them with the word, "in accordance with this Act".

Amendment of s.14 of the principal Act

5. Section 14 of the principal Act is amended by repealing subsection (1) and re-numbering the the remaining subsections in their numerical order.

Amendment of s.18 of the principal Act

6. The principal Act is amended in section 18 by

repealing of section 18(2) of the principal Act and replacing it with the following new subsections as subsections 18(2) and 18(3), respectively-

“(2) Without derogating from generality of subsection (1), the Authority shall-

- (a) register NGOs incorporating a database and a public documentation center in respect of NGOs incorporated or operating within Malawi, and maintain registers, including any as may relate to exempt organizations and international NGOs;
- (b) consider and adjudicate upon applications for registration by NGOs and ensure due compliance by the NGOs with the prescriptions under this Act;
- (c) withhold, suspend or cancel registration of an NGO in the event of failure or refusal to comply with the provisions of this Act;
- (d) promote transparency and accountability for NGOs to the beneficiaries and the Authority;
- (e) provide free access to the NGO register, database, records and returns of NGOs lodged in public documentation center;
- (f) inspect NGOs for compliance with this Act and any other written law;
- (g) issue or revoke certificates issued under this Act;
- (h) 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;
- (i) commission surveys, enquiries and research, with a view to advising the Government with regard to any matter affecting NGOs;
- (j) appoint a suitably qualified person as Registrar and any other members of staff as it may deem necessary for the discharge of the duties and functions of the Authority; and

(k) do all such things as are necessary or incidental or conducive to be the better carrying out of the objects and functions of the Authority specified in this Act.

(3) The authority shall have powers to –

- (a) withhold, suspend or cancel registration of an NGO in the event of failure or refusal to comply with the provisions of this Act;
- (b) inspect NGOs for compliance with this Act and any other written laws;
- (c) issue or revoke certificate of registration;
- (d) commission surveys, enquiries and research, with a view to advising the Government with regard to any matter affecting NGOs;
- (e) appoint a suitably qualified person as Registrar and other members of staff as it may deem necessary for the discharge of duties and functions of the authority;
- (f) impose administrative penalties on the organizations regulated under this Act; and
- (g) exercise such powers as are necessary or incidental or conducive to the better carrying out of the objects and functions of the Authority specified in this Act.”.

Repeal of s.20 of the principal Act

7. Section 20(3) (a)(v) of the Act is hereby repealed.

Amendment of s.22 of the principal Act

8. The principal Act is amended in section 22 as follows-

(a) by inserting the words, “- (1)“ before the words, “Every registered NGO” at the beginning in the section; and

(b) inserting a new subsection (2) as follows –

“(2) The Authority shall have power to verify information submitted in accordance with subsection (1) and impose any measures it deems fit where the authority is of the view that an NGO fails or refuses to comply with this section”.

Repeal of Part VII of the principal Act

9. Part VII of the principal Act is hereby repealed.

Repeal of Part VIII of the principal Act

10. Part VIII of the principal is hereby repealed.

Replacement of s. 27 of the principal Act

11. Section 27 of the principal is repealed and replaced with the following new section -

“27. The funds of the Authority shall consist of –

- (a) sums of money appropriated by Parliament for the purposes of the Authority;
- (b) all fees, charges or penalties imposed under this Act;
- (c) interest on money invested by the Authority;
- (d) donations and grants of funds, materials and any other resources for the purposes of its functions, powers and duties;
- (e) funds derived from the sale of any property by or on behalf of the Authority; and
- (f) any other income authorized under this Act or income recognized as such by accounting standards and practices collected by the Authority.”

Amendment of s. 28 of the Principal Act

12. Section 28 of the principal Act is amended in the proviso, by deleting the words “subsequently be approved by the General Assembly” and substituting therefor with the

words “comply with the Public Finance Management Act”.

Amendment of s. 31 of
The principal Act

13. Section 31 of the principal Act is amended as follows-

- (a) in subsection (2), by deleting the subsection and substituting therefor the following new subsection (2) -

“(2) The accounts of the Authority shall be audited annually by professional auditors appointed by the Authority in liaison with the Auditor General.”

- (b) by inserting new subsections as follows-

“(3) The expenses of, and incidental to, any audit shall be payable out of the funds of the Authority.

(4) The Authority shall as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister, an annual report of its work, operations and audited accounts who shall lay the report in the National Assembly.”

Amendment of s. 32 of
principal Act

14. Section 32 of the principal Act is amended, in subsection (1) by deleting the words “all members of the General Assembly and”.

Replacement of
s. 34 of the principal
Act

15. Section 34 of the principal Act is repealed and replaced with the following new section –

“34. An NGO which contravenes the provisions of this Act commits an offence and is liable, on conviction, to a fine of K10,000,000.00 or an amount equivalent to the financial gains generated by the offence, whichever is the greater; and to be on schedule depending on offence.”

Amendment of s. 35
of the principal Act

16. Section 35 of the principal Act is amended in subsection (2) by deleting the words “K25,000” and substituting therefor with the words “K10,000,000”.

OBJECTS AND REASONS

This Bill seeks to amend the Non-Governmental Organizations Act by promoting freedom of association as enshrined in section 32 of the Constitution; removing the requirement for mandatory double registration and enhancing the role of the NGO Board in the oversight and regulation of NGOs in Malawi.

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