
CONSULTATIVE WORKSHOP ON THE NGO AMENDMENT
BILL

DRAFTING THE 2021 NGO BILL

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RREPORT ON THE TASKFORCE MEETING ON DRAFT NGO AMENDMENT BILL



Taskforce high table



CSO taskforce team



Government taskforce team

1.1 Introduction

The NGO Act is being amended to among other things promote freedom of association and accountability within the NGO Sector. On Friday, January 29th 2021, the NGO Board held a consultative workshop at the Lilongwe Capital hotel with key sector players which aimed at giving an update on the NGO amendment bill 2020 as well as giving an insight of what was learnt during the learning visits. At the meeting a task force was formed to review the consolidated input from stakeholders and address them in the Bill. The taskforce met at Sunbird Livingstonia Hotel, Salima, on 12th February 2021.

1.2 objectives

The overall objective of the meeting was to review the consolidated input from the stakeholders on the NGO Amendment Bill 2020. Specifically, the meeting sought to:

- a) isolate and agree on the common suggestions from the stakeholders; and
- b) review the NGO bill 2020 based on the input

1.3 Opening remarks

The meeting was officially opened by Mr. Isaac Katopola the Principal Secretary responsible for administration in the Ministry of Gender, Community development and Social Welfare. He thanked the task force members for the commitment in sparing their time to contribute to the discussions and review of the NGO Bill 2020. He further expressed vote of thanks to all key sector players who submitted their constructive input even though some of the issues raised were for the comprehensive review of the NGO law and not amendment. He expressed Government's commitment to ensuring that the issues raised are addressed either at amendment or during the comprehensive review of the NGO Law.

1.4 Consolidated Input

Tree PowerPoint presentation was made by the NGO Board which highlighted all the input consolidated from the submissions which were made by the sector players and other stakeholders. The task force members appreciated the input and most of them that were in attendance

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confirmed to have submitted the issues presented by the Ngo Board. However, there were some reservations in the way some of the issues were responded by Government and the meeting resolved to disregard the proposed positions by the Government but instead to consider the amended sections one by one whilst considering the input from the stakeholders.

1.5 Feedback from the Taskforce

The team reviewed all the proposed changes in the NGO Act and made necessary corrections or adjustment based on the submissions made by the stakeholders that were in attendance and those that had just submitted their proposals. Table 1 below gives a summary of the feedback made by the taskforce members. Annexed to the report is the consolidated input form the UN and Government feedback on the issues raised.

Table 1: COMMENTS FROM THE DRAFT TEAM		
Section	Suggestions by the Team	Way Forward
Section 2: (a) deleting the definition of “Board” and replacing it with “Authority”	<ul style="list-style-type: none"> ▪ Use commission than Authority so that it doesn’t have too much powers ▪ Adopt the new name since what matters are the functions and roles of the institution 	It was agreed that the section will be amended and the name will change to NGO Regulatory Authority
Section 2: (b) deleting the definition of “designated body” (c) Replacing the words “NGO Coordinating body” anywhere they appear in the Act with the word “Authority”	<ul style="list-style-type: none"> ▪ CONGOMA agreed on replacing the word NGO Coordinating Body with Authority however, they requested that only part VII should remain in the Act since they will still be the ones coordinating NGOs 	It was agreed that the Act will be amended in all the Sections except for Part VII. Part of it will read as follows: “The minister shall designate CONGOMA as the Coordinating body of the NGOs”
Section 2: (d) deleting the definition of “NGO” and replacing it with the following definition “NGO” means Non-Governmental Organization constituted for the purpose of a public benefit to which the provision of the Act are applicable under section 4.	<ul style="list-style-type: none"> ▪ The definition being provided for should reflect on section 4 and if we are to keep faith based then we need to redefine it. ▪ Section 4 should not be changed the only change will be made on “FBOs” 	Government should consult PAC on the definition of FBO (the consultation is restricted only on the definition) otherwise FBOs should not be mentioned in the definition

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<p>Replacement of s.7 of the principle Act: Composition of the Board</p>	<ul style="list-style-type: none"> ▪ Ombudsman should be considered as an ex-official of the Board ▪ We can't include the coordinating body in 7 as it has been agreed that the coordinating body should be replaced with Authority in the Act ▪ CONGOMA should provide 5 names for the board, it wouldn't be right to make NGOs a minority in the Board ▪ There is no need to mention the professional bodies and they should be called only when they are needed as stated in s.12 	<p>The composition of the Board should be stated as follows: Chair of the Board, 4 ex-officials, 4 nominated by CONGOMA and 2 from professional bodies as recommended by the Authority in consultation with CONGOMA</p>
<p>Amendment of s.18 (2) duties and functions of the authority</p>	<p>The powers and the functions of the Authority are the same, as such the powers should be deleted</p>	<p>There is a lot of duplications on powers and functions of the Authority, as such its best to combine the 2</p>
<p>Replacement of s.34</p>	<ul style="list-style-type: none"> ▪ Fine should be MK1m not MK10 m ▪ The statement “and to be on the schedule depending on office to be excluded 	<p>The statement will read “An NGO which contravenes the provisions of this Act commits an offence and is liable on conviction, to a fine of MK1million or an amount equivalent to the financial gains generated by the defense whichever is the greater”.</p>

1.6 Closing remarks

In closing, the Principal Secretary for Administration in the Ministry of Gender expressed profound gratitude to the taskforce members for their constructive discussion and contribution which shaped the NGO Bill. He assured members present that the Bill will be revised taking into account the issued agreed upon at the meeting and the revised version will be submitted to Ministry of Justice for refinement and onward submission to other relevant authorities for consideration.

1.7 Action Taken

The Government through an independent consultant incorporated the comments and suggestions from not only the taskforce members but also the input from other stakeholders including the Development Partners (UN members). In summary the following are the changes to the 2020 Bill:

- a. FBOs are no longer part of the definition since by the NGO has been defined in a manner that includes them by their nature;
- b. CONGOMA has still been retained as an NGO Coordinating Body but its functions and a section on General assembly (Part VII) has been repealed;
- c. NGO Board has been renamed to NGO Regulatory Authority as agreed and in line with the NGO Policy;
- d. A section on the grounds for the removal of Board members has been enriched as learnt from other Laws such as NCIC and PPDA and Audit Act
- e. Fines have been reduced from MK10 m to MK1 m as recommended by stakeholders;
- f. Professional bodies to be consulted on the nomination of Board members have been duly mentioned in the revised Bill as learnt from PPDA

Annex 2: Joint UN Malawi and International Development Partners Comments on the NGO Act 2001 and NGO (Amendment) Bill 2020 as at 28 January 2021

NGO Act 2001	NGO (Amendment) Act 2020	Comments	Feedback from the Government
Overall Principles supported by the UN and International Development Partners		<ol style="list-style-type: none"> 1. As international development partners we support a vibrant and healthy civic space in Malawi where NGOs are able to freely form, assemble and express their opinions so that diverse voices of Malawians are engaged in the national, regional and local governance systems. We see this to be an essential part of democracy, human rights and ensuring the accountability of government to the diverse peoples living in Malawi. 2. This goal is reflected in international human rights laws (particularly ICCPR Articles 19, 21, 22), as well as in the Constitution of Malawi, which is founded on the values that underlie an open and democratic society (Articles 11(2), 32, 34, 35,38). 3. Ensuring a legal framework for the financial accountability of NGOs is important, but this framework should be clear, transparent and not be open to abuse. There should be legal assurances that NGO regulation is not misused to stifle the freedoms of speech, opinion, expression, association and assembly through intimidation, harassment or other forms of undue control. 	<p>✚ The revised Bill seeks to promote freedom of Association and promote one registration in an effort to simplify the registration process</p> <p>✚ The amendment has not brought it any changes that will stifle civic space. In fact, the overall purpose of the amending the Act is to promote freedom of association by ensuring that we have one registration regime and that we have improved accountability within the NGO Sector</p>
Relationship between the Financial Accountability and Taxation Laws, and the NGO Act		As one of the primary objectives of the NGO Act is to ensure financial accountability of NGOs receiving and disbursing funds, we request greater clarification on the relationship between financial accountability laws	✚ The amendment has made reference to the Public Finance Management Act but the comprehensive review of the NGO

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		and the NGO Act. These include the Public Financial Management Act, tax laws, laws and procedures around financial fraud and criminal investigations relating to such fraud. It is unclear why a separate financial accountability regime is required for NGOs or the efficacy of this separate regime.	Law will consider making reference to other relevant Law on the issues raised
s.2; 9	s.2; 5	We agree with the removal of mandatory membership with CONGOMA as set out in the Amendment Act	✚ CONGOMA has been retained in the NGO Law as an NGO Coordinating body. It will continue to represent and promote the collective interests and concerns of NGOs. However, registration/membership to CONGOMA will not be mandatory
S.2	s.2	Definitions of organisations covered by the Act: the removal of community-based organisations from the scope of the Act is a positive step. However, the terms “Non-Governmental Organisation” and “Faith Based Organisation” are not defined. We are concerned this might create uncertainty about the law’s scope and make it difficult for organizations to discern their legal obligations and act accordingly. This could also lead to broad interpretations from relevant administrative and judicial bodies, giving them wide discretionary powers to apply the law and impose burdensome requirements on a diverse group of community and informal associations that are currently excluded from regulation. Specific definitions will provide clarity and prevent manipulation of the provisions.	✚ CBOs will indeed no longer be subjected to the NGO law. An NGO will now be defined as any organization constituted for purpose of a public benefit to which the provisions of the Act are applicable under section 4
s.3 (1)	s.3 (1)	We support the deletion of proposed s 3(1) “the authority to operate NGOs derives from the people of Malawi”, which is vague and serves no purpose. Instead, we suggest that reference be made to the authority transferred by articles 11(2), 32, 34, 35,38) the Constitution of Malawi	✚ The phrase has been scrapped off from the 2021 Bill

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s.3	s.3 (2)	<p>The Amendment Bill duplicates the language of s.3 in the original Act. However, in line with the overall principles set out above, we propose the following changes to the Act:</p> <p>s. 3(2) (c):</p> <ul style="list-style-type: none"> • We would like further information on how the NGO Act links to other laws that seek fiduciary integrity and public accountability. • Elements of this section may be seen as restricting the freedoms of association and expression enshrined in the Constitution including encouraging “developmental synergy” and “beneficiary equity”. In addition, these two terms are vague and are therefore open to exploitation. <p>s. 3(2)(d): this section is problematic in that it imposes on an NGO a legal obligation to facilitate a relationship with the government. This may not be the aim of an individual NGO, and may be contrary to the principle of freedom of association and expression enshrined in the Constitution.</p> <p>s.3(2)(e): to ensure legal clarity, we suggest this section be amended by expanding the text with the following text in italics: affirm the human rights enshrined in the Constitution <i>in particular the rights to freedom of association, assembly and expression that underpin a democratic society as set out in articles 11(2), 32, 34, 35 and 38.</i></p>	<ul style="list-style-type: none"> ✚ Observations have been noted but they were not part of the amendment hence to be deferred until the review of the Act is done ✚ The Bill recognises Public Finance management Act as a reference legal instrument on such matters ✚ Observations and recommendations on sections 3(2 d and e) have been noted and these sections will be thoroughly interrogated during the comprehensive review of the Act since they were not subjected to the amendment
s.7	s.4	<p>Composition of the NGO Board:</p> <ul style="list-style-type: none"> • We welcome the removal of the secretary responsible for internal security as an ex-officio member; 	<ul style="list-style-type: none"> ✚ Secretary for Homeland security is no longer an ex-officio member ✚ Position has been maintained in the revised Bill

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		<ul style="list-style-type: none"> • We welcome the amendment that increases the number of female members from at least three to at least five and the requirement for the Minister to take into account the provisions of the disability Act in making the appointments; • An important part of an NGO regulatory framework is assuring an active and independent participatory role for NGOs. However, the role of NGOs in the appointment of members is unclear, “appointments made by the Minister in consultation with relevant professional and other bodies” is vague and may be interpreted to place the appointment of the members at the full discretion of government authorities. Given the significant statutory powers that this Board will hold under the law, we consider that there are insufficient guarantees in the law to ensure that this appointment process will select NGO members who are representative, independent and apolitical. • The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has stressed that the “composition of the supervisory body also needs to be independent from the executive power to ensure its decisions are not arbitrary” (A/HRC/23/39, para 38). Similarly, the African Commission on Human and People’ Rights Guidelines on Freedom of Association and Assembly in Africa state that “matters relating to the oversight of associations shall be overseen, where necessary, by a single body that conducts its functions impartially and fairly”. 	<ul style="list-style-type: none"> ✚ Professional bodies to be consulted have been duly mentioned in the Bill and they include: Economic Association of Malawi (ECAM); Institute of Chartered Accountants in Malawi (ICAM); Malawi Law Society (MLS); CONGOMA and Public Universities. CONGOMA shall nominate at least five and the Minister will appoint three members from the submission ✚ The revised Bill promotes appointment of Board members from professional bodies with diverse skills and knowledge to exercise full independence from both the Government and the NGOs
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<p>S.9</p>		<p>The power of the Minster to remove and substitute members of the NGO Board at any time puts it at risk of politicization. We recommend that consideration be given to integrating guarantees of independence, as we refer to above in relation to section 7 of the NGO Act 2001.</p>	<ul style="list-style-type: none"> ✚ Grounds for removal of a board member have now been provided for in the revised Bill
<p>s.18(1)</p>		<p>Section 18(1) is one of the principle sections of the Act and states “The Board shall register and regulate operations of NGOs in Malawi.” We note that this provision must operate within the boundaries set by the Constitutional rights of freedom of association including the freedom to form associations (article 32); the freedom of opinion (article 34); the freedom of expression (article 35) and the freedom of assembly (article 38). In this regard, we recommend that the Act integrate guarantees that the powers under s.18 of the Act are conducted in an independent, transparent and apolitical manner as well as avenues of recourse in the event that the powers under the Act are exercised in an arbitrary, partial and unfair manner. Furthermore, in light of the freedoms guaranteed in the Constitution of Malawi, we recommend that consideration be given to the types of NGOs that could be exempt from registration, for example, NGOs that do not receive or disburse funds.</p> <p>We acknowledge that s.5 of the NGO Act provides that organisations can be “exempt” or “excluded” from the Act but does not define them, nor provide details on how such power can be exercised or made public. We recommend that this section be subject to greater clarity and transparency.</p>	<ul style="list-style-type: none"> ✚ Independence of the Board is provided for under Section 6 (2). Noting that this section was not subjected to the amendment, further interrogation on the same shall be done during the comprehensive review of the Law to be undertake by the Law Commission ✚ The section will be scrutinized in detail during the comprehensive review of the NGO Act since it has not been amended

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<p>s.18(2)</p>	<p>s.7</p>	<ul style="list-style-type: none"> • We welcome the changes made to the NGO (Amendment) Bill 2018 to remove broad ranging but vaguely defined powers set out in sections 7(2) (h), (i), (j) and (k). • We recommend greater clarity in defining powers proposed under: <ul style="list-style-type: none"> ○ <u>Proposed section 18(2)(d)</u> “promote transparency and accountability for NGOs to the beneficiaries and the Authority”: “beneficiaries” is not defined in the Act or the Bill, making this power vague and unclear. The powers granted give broad discretion without sufficient limits. In this form, they can be used as a way of intimidation and harassment. ○ <u>S.18(2)(f)</u> - The power to “inspect NGOs for compliance” also grants broad discretionary powers to the regulatory authority. The ACHPR Guidelines on Freedom of Association and Assembly in Africa¹ state that inspections by oversight bodies shall only be permitted following a “judicial order in which clear legal and factual grounds justifying the need for inspection are presented” and “where there is a well-founded evidence-based allegation of a serious legal violation”. The Guidelines also indicate that “regulations on inspections shall clearly define the powers of inspecting officers, ensure respect for privacy, and provide redress for 	<ul style="list-style-type: none"> ✚ All the sections in questions have been deleted form the revised Bill ✚ The term beneficiaries meant Malawians being reached by the work NGOs. However, the term has been deleted and the section now reads ‘Ensure transparency and accountability for NGOs’ ✚ The section now reads ‘Monitoring the work of NGOs for compliance with this Act and any other written laws’
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¹ Guidelines on Freedom of Association and Assembly of the African Commission on Human and Peoples’ Rights (African Commission), adopted at the Commission’s 60th Ordinary Session in Niger May 2017 further to Resolution 319 (LVII) 2015: available at [guidelines_foaa_eng.pdf \(achpr.org\)](https://www.achpr.org/wp-content/uploads/2017/05/guidelines_foaa_eng.pdf)

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		<p>any violations committed through the inspection process.” The current law and amendment bill do not provide objective criteria or grounds on which an inspection can be authorized nor any procedures and safeguards that can protect NGOs from unfair treatment and harassment.</p> <ul style="list-style-type: none"> ○ <u>Proposed section 18(2)(g)</u>: “issue or revoke certificates issued under this Act”: it is unclear why this section has been added when existing section 18(2)(c) provides adequate powers to “withhold, suspend or cancel registration of an NGO in the event of failure or refusal to comply with the provision of this Act”. The proposed section grants a very broad power without boundaries and may therefore be subject to abuse. We propose that this be removed. 	<ul style="list-style-type: none"> ✚ The section has been deleted from the Bill
s.18	s.7	<p>Proposed sections 18(2)(o) and 18(3)(g) are very broad and could be subject to abuse. We propose these be defined within proper legal boundaries and in a clearer manner.</p>	<ul style="list-style-type: none"> ✚ The two sections have been deleted from the Bill
s.22	s.9	<p>Proposed section 22(2) provides broad powers to “impose <u>any measures it deems fit</u> where the Authority is of the view that an NGO fails or refuses to comply with (the) section”. We consider this to be vague and can lead to an abuse of power. We recommend this be clarified and detailed. In the event that the NGO Board suspects that criminal acts such as fraud have been committed, we recommend that criminal authorities be engaged.</p>	<ul style="list-style-type: none"> ✚ The phrase ‘it deems fit’ has been deleted in the Bill but the rest remains the same

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s.23(1)(c)		<p>This section of the original NGO Act (2001) states that the NGO Board has the authority to cancel or suspend the registration of an NGO if it is satisfied that the NGO “has been engaged in partisan politics.” We propose that this section be reviewed for clarity and purpose by the Law Commissioner/MHRC, with regard to the rights of freedom of expression and opinion. We are concerned that this section is unclear and may be subject to misuse.</p>	<ul style="list-style-type: none"> ✚ Observations and recommendations have been noted. Further interrogation on the same shall be done during the comprehensive review of the NGO Act since the issue in question was not part of the amendment
Part VIII	s.11	<p>The NGO Amendment Act repeals the role of COMGOMA as the coordinating body and therefore also the obligation for an annual General Assembly attended by CONGOMA, all NGOs registered under the Act and the regulatory authority “for purposes of good administration and proper management.” During the General Assembly, NGOs receive the regulatory authority’s annual report and discuss any relevant matter concerning the sector. We suggest that this annual meeting was a good mechanism for transparency, coordination and accountability. We suggest that an alternative annual event be considered in the amendment bill to ensure transparency and accountability.</p>	<ul style="list-style-type: none"> ✚ The General Assembly will still be convened by CONGOMA as per its statutes but the Government shall not make it mandatory. The sector should be free to exercise their freedom of assembly and hence part VIII of the Principal Law has been scrapped off in the Bill. ✚ The Authority will be reporting to Parliament through the Minister responsible but such reports will be accessed and shared by stakeholders including CONGOMA
s.34	s.16	<p>We support the amendment in the 2020 Bill that removes criminal sanctions for violating the Act. However, we feel that the increase in the amount of the fine from MWK 25,000 to MWK 10,000,000 is excessive. We are also concerned by the reference to an unspecified “schedule depending on offence.” We reiterate our earlier concerns that vague provisions allowing for unspecified and discretionary power may be subject to abuse, and recommend any proposed schedule be clearly specified.</p>	<ul style="list-style-type: none"> ✚ Imprisonment has been scrapped off from the Bill and penalties/fines reduced from MK10 million to MK1 million (a further reduction of 90%) ✚ Schedule for penalties and their corresponding fines and penalties will be developed during the Comprehensive review of the NGO Act as it requires further consultations

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<p>Other concerns – compulsory registration of NGOs under the Act</p>	<p>There are provisions under the current NGO Act that do not comply with international norms and standards but have not been identified for revision in the Amendment Bill 2018 or 2010. In particular, the Amendment Bill retains a registration requirement for NGOs to operate in Malawi. Under international standards, the right to freedom of association equally protects associations that are not registered, particularly when the procedure to establish an association is burdensome and subject to administrative discretion. In this regard, we draw your attention to information on systems in force in other countries as described in the Special Procedures Joint Communication of 24 December 2018 (Annex 6 to this letter). This may be relevant to NGOs that do not fundraise and provide services, but exist to facilitate the freedoms of opinion and expression, and the right to take part in the conduct of public affairs. In this context, the promotion of civil society is important to promote accountability in governance and democratic openness.</p>	
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Annex 2: List of Attendees

	INSTITUTION	POSITION	NAME	EMAIL	PHONE
1	National Advocacy Platform (NAP)	Chairperson	Benedicto Kondowe	bkondowe@gmail.com	0888613751
2	Council for NGO in Malawi (CONGOMA)	Executive Director	Ronald Mtonga	ronald_mtonga@yahoo.com	0888868744
3	Council for NGO in Malawi (CONGOMA)	Chairperson	Kossam Munthali	kmunthali@focusmalawi.org	0888510259
4	Malawi Human Rights Commission (MHRC)	Chairperson	McDonald Sembereka	mmsembereka@gmail.com	0995494445
5	Human Rights Defender Coalition (HRDC)	Deputy Executive Secretary	Winston Mwafulirwa	winston.mwafulirwa@mhrmw.org	0882703400
6	Story Workshop	Executive Director	Kent Mphepo	kentmphepo@storyworkshop.org	0888435629
7	INGO forum	Co-Chairs	Jeannette Winjnants	jeannette.wijnants@trocaire.org	0992574000
8	Ministry of Justice	Chief Legislative Counsel	Rumbani Jere		0998199596

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9	Financial Intelligence Authority (FIA)	Manager	Maureen Mwalabu	mmwalabu@fia.gov.mw	0998401139
10	Human Rights Consultative Committee (HRCC)	Chairperson	Robert Mkwezalamba	chairpersonhrcc@gmail.com	099950524
11	Malawi Law Society	Chairperson	Edwin Mtonga	edmamtonga@gmail.com	0996234954
12	NGO BOARD	CEO	Voice Mhone	ceo@ngoboard.mw	0888858278
13	NGO BOARD	DCS	Linda Njikho	lnjikho@ngoboard.mw	0999227152
14	NGO BOARD	DEMS	Geoffrey Chimwala	geochimwala@ngoboard.mw	0991973150
15	NGO BOARD	FINANCE MANAGER	Winston Harawa	wnharawa@ngoboard.mw	0888367208
16	NGO BOARD	DATA MANAGER	Patrick Mwale	pmwale@ngoboard.mw	
17	WILLIAM FAULKNER	SENIOR COUNSEL	Allan Chinula	achinula@williamfaulknermw.com	0888841626
18	MOGCDSW	PS	Isaac Katopola	katopolaisaac@gmail.com	0994625626
19	NGO BOARD	BOARD CHAIR	Shadreck Malenga	smalenga2018@gmail.com	0888958707
20	NGO BOARD	VICE CHAIR	Nina Ghambi	ninaghambi997@gmail.com	09999879909

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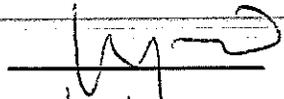
21	PARLIAMENT	CHAIRPERSON SOCIAL & COMMUNITY AFFAIRS COMMITTEE	Hon. Savel Kafwafwa	savelkafwafwa@yahoo.com	0996380997
22	MALAWI LAW COMMISSION	LAW COMMISSIONER	Rose Kanyuka	kumutsonyor@yahoo.co.uk	0992423454
23	NATIONAL ADVOCACY PLATFORM (NAP)	VICE CHAIRPERSON	Edward Chileka	edwardchilekabanda@gmail.com	0999110606
24	MINISTRY OF FINANCE	DIRECTOR	Monalisa Mhango	mhangomona@gmail.com	0999464553

Signed by: Secretary

Name: Linda B. Njikhoo

Position: Director Corporate Services

Signature:



Date:

4/3/2021

Signed by: Chairperson

Name: Mr. Isaac Katopola

Position: PS - MoGCDSW

Signature:



Date:

4/3/2021