

NON-GOVERNMENTAL ORGANIZATIONS (COMPLAINT HANDLING MECHANISM)
REGULATIONS, 2022

FIRST DRAFT

GOVERNMENT NOTICE NO.

NON-GOVERNMENTAL ORGANIZATIONS ACT (Cap. 5:05)

NON-GOVERNMENTAL ORGANIZATIONS (COMPLAINT HANDLING MECHANISM)
REGULATIONS, 2022

IN EXERCISE of the powers conferred by section 35 (1)(a)(iii) of the Non-Governmental Organizations Act, I, PATRICIA ANNIE KALIATI, Minister of Gender, Community Development and Social Welfare, in consultation with the NGO Authority of Malawi, make the following Regulations—

NON-GOVERNMENTAL ORGANIZATIONS (COMPLAINT HANDLING MECHANISM)
REGULATIONS, 2022

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FIRST DRAFT

PART I
PRELIMINARY

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| Citation | 1. These Regulations may be cited as the Non-Governmental Organizations (Complaint Handling Mechanism) Regulations, 2022. |
| Interpretation | <p>2. In these regulations, unless the context otherwise requires, —</p> <p>“mediator” means the Registrar of the Authority;</p> <p>“investigation” means the process intending to establish factual issues and analyze the legal issues with a view to determine whether there has been injustice or maladministration;</p> |
| Compliance with Regulations | 3. An NGO, established or operating in Malawi, defined under section 2 of the Act, shall comply with these Regulations. |

PART II
COMPLAINT HANDLING MECHANISM

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| Authority to handle complaints | <p>4.—(1) Where any person who has a complaint against an NGO, operating in Malawi, the person shall lay the complaint at the Authority for redress by completing form 1.</p> <p>(2) The Authority shall, where the complaint is made orally or by other electronic means, reduce the complaint in writing and confirm with the complainant the record of the complaint as recorded by the Authority.</p> |
| Principles of complaint handling | <p>5.—(1) In handling complaints made by a person against an NGO, under these Regulations, the Authority shall—</p> <p>(a) facilitate the early and fair resolution of disputes;</p> <p>(b) facilitate communication between or among the parties to the complaint in order to assist them in reaching a mutually acceptable resolution; and</p> <p>(c) Notwithstanding the details obtained under sub-regulation (1)(b), where the complainant may opt to remain anonymous, the Authority</p> |

shall proceed with the investigations, and at all times, inform the respondent.

(2) Without derogation from the generality of sub-regulation (1), the Authority—

- (a) shall do everything necessary, in an independent and impartial manner, to help the parties to address the complaint;
- (b) may, where necessary, conduct joint or separate meetings with the parties and may make recommendations to address the complaint;
- (c) may, where the services of an expert may be obtained at no cost or minimal cost, and if parties agree to pay the cost, obtain expert advice on a technical aspect of the complaint, which advice shall be given in an independent and impartial manner;
- (d) shall be guided by principles of objectivity, fairness and natural justice, and shall give consideration to, among other things—
 - (i) the rights and obligations of the parties; and
 - (ii) the circumstances surrounding the complaint, including any previous operational practices between the parties;
- (e) may, at any stage of handling the complaint and in a manner that the Authority considers appropriate, take into account, the wishes of the parties, including any request by either of the parties that the Authority should hear oral statements for a speedy address of the complaint; and
- (f) may, at any stage of addressing the complaint, make proposals for settlement.
- (g) May, at any stage of handling the case and in a manner that the Authority considers appropriate, as a criminal matter refer the case to other Authorities. Whose offence shall upon conviction, be liable to a fine of K5,000,000.00 or an amount equivalent to the financial gain generated or imprisonment for two years

(3) A request for the services of an expert under these Regulations may be made by the Authority or by any party with the consent of the other party or parties.

Designation of mediator

6.—(1) The Authority hereby designates the Registrar of the Authority as mediator for purposes of handling of complaints under these Regulations.

(2) The mediator shall receive and investigate any complaint by any person against an NGO.

Powers of mediator

7.—(1) For purposes of carrying out his functions, the mediator shall have power to—

- (a) upon receipt of a complaint, investigate any misconduct or offence so reported against an NGO;
- (b) investigate any matter referred to him by the Authority or any person established under a written law;
- (c) on his own initiative, to investigate any complaints against an NGO;
- (d) investigate any matter that has come to his attention from monitoring of NGO work or media reports;
- (e) seek and obtain information from any other person or authority as may be necessary for conducting an investigation under these Regulations;
- (f) obtain the cooperation of any person as may be necessary for the performance of his functions;
- (g) refer any matter that comes to his attention in the course of handling a complaint to an appropriate body or authority;
- (h) commence an investigation on any matter as specified in this subsection, notwithstanding that an investigation regarding the same matter has been submitted to any other authority for any purpose.

(2) The mediator shall—

- (a) make recommendations to the Authority or any other appropriate authority on any findings pursuant to an investigation he has conducted under these Regulations;
- (b) make recommendations to the Authority which he deems necessary regarding any matter investigated by it or relating to the performance of its functions.

No charge for laying a complaint

8. The Authority shall not charge any person for registering a complaint under these Regulations.

complaint
handled by the
Authority

9. The Authority shall investigate all cases committed by the NGOs or NGO employees in carrying out their work. The cases may include:

(a) abuse of power

Using NGO resources for personal benefit
Harassment of beneficiaries

(b) unfair practises

Collecting money from the public promising them charity
development

Procedure of
handling
complaint

10.—(1) The Authority shall, upon receiving and registering a complaint from any person, require the complainant to submit the following—

- (a) his personal details, including full names, postal or residential address, contact details and national registration details;
- (b) the interest of the complainant in the complaint or outcomes of the resolution of the complaint;
- (c) nature and particulars of complaint;
- (d) a statement of the desired outcomes of the complaint.

(2) Notwithstanding the details obtained under sub-regulation (1)(a), the complainant may opt to remain anonymous and the Authority shall, at all times, inform the complainant regarding this facility.

(3) the Authority shall, on receiving the case, assess the complaint for merit;

(4) The Authority shall, on registration of the complaint, assign a case number to the case and update the complainant within 5 days whether the complaint was accepted or needs referral.

(5) The Authority shall, within five days from the time the complaint is registered, inform the party complained against and may serve the party, a copy of the complaint as registered by the Authority.

(6) The Authority shall ensure that a party that has been informed of the complaint, file a reply to the complaint with the Authority within twenty-one days of receiving the complaint:

- (a) If the respondent has failed to file a reply, the Authority shall issue a first reminder for the party to respond within 14 days;
- (b) where the respondent fails to file a reply after the first reminder, the Authority shall issue a final reminder to the party within seven days;
- (c) if all reminders are concluded without reply from the respondent, the Authority shall commission on spot investigation;

(7) the Authority may share with the complainant the reply received from the respondent for comments within 21 days.

(8) The Authority shall issue a notice to the parties, advising the parties of

- (a) the date and time of the complaint handling session;
- (b) the venue of the complaint handling session; and
- (c) any other matter to be noted by the parties.

(9) parties shall be given a notice of fourteen days to prepare for the complaints handling session and bring all their supporting documentation and/or witnesses.

(10) A party who makes a complaint or reply under this regulation shall attach to it, any material which the party considers of central importance in the matter.

(11) Any party may request the other party to furnish that party with further and better particulars supporting the complaint or the reply, as the case may be.

Complaint
handling session

11.—(1) The complaint handling session shall, unless the context otherwise requires, be conducted in person before the mediator:

Provided that where physical presence may not be achieved due to factors beyond the control of the mediator, the mediator may suggest electronic means of holding the session.

(2) The parties may assign and invite representatives to attend the complaint handling session.

(3) legal personnel may also be involved in complex cases.

(4) the Authority shall produce a report of the complaints handling session which shall be shared with all parties to the case.

Power to
settle matter

12.—(1) A party to a complaint handling session shall have authority to settle a matter during the complaint handling session.

(2) A party who requires the approval of another person before agreeing to a settlement shall, before the complaint handling session, arrange to have ready means of communication to that other person throughout the session.

Non-attendance
without good
cause

13.—(1) Where it is not practical to conduct a scheduled complaint handling session because a party fails without good cause to attend within the time appointed for the commencement of the session, the Authority may—

(a) dismiss the claim, where the non-complying party is a claimant;

(b) strike out the reply, where the non-complying party is a respondent; or

(c) make any other order that is deemed just.

(2) A party whose case has been dismissed for non-attendance may request the Authority to restore the case.

Confidentiality

14.—(1) All documents, records, reports, settlement agreements and any other documents required or used in the course of addressing a complaint shall be confidential.

(2) The Authority shall not—

(a) disclose information given in the course of handling a complaint to a person who is not a party to the complaint handling session without the consent of the parties; or

(b) be a witness in a proceeding relating to the same matter; and

(c) a party involved in a complaint shall not rely on—

(i) the record of the Authority in addressing the complaint;

(ii) a statement made at a complaint handling session; or

(iii) any information obtained during the handling of a complaint,

as evidence in a proceeding or any other subsequent settlement initiative, except in relation to a proceeding brought by either party to vitiate the settlement agreement on the ground of fraud.

Settlement
agreement

15.—(1) Where it appears to the Authority that there exist elements of agreement on a settlement which may be acceptable to the parties, the Authority shall formulate the terms of a possible settlement and submit them to the parties for their consideration, and after receiving the observations of the parties, the Authority may reformulate the terms of a possible settlement in the light of those observations and resubmit them to the parties as it appears to him expedient.

(2) Where the parties reach agreement on handling of a complaint—

- (a) the Authority shall immediately thereafter draw up a settlement agreement in conjunction with the parties; and
- (b) the parties shall sign the settlement agreement in the presence of each other, and the Authority shall also sign the settlement agreement in the presence of the parties.

(3) The mediator shall furnish a copy of the signed settlement agreement to each of the parties and the agreement shall be deemed to be the outcome of the complaint handling session.

(4) An appeal shall not lie against a settlement agreement under sub-regulation (3).

Failure to
agree
settlement

16.—(1) Where upon the conclusion of complaint handling session, a settlement agreement is not reached, the mediator shall terminate the proceedings and advise the parties of their right to seek redress otherwise including litigation and laying a complaint before any other authority.

(2) Where there is no settlement agreement, the mediator shall make an order outlining the issues where the parties are in agreement and the issues where the parties are in disagreement.

Period of
complaint
handling

17.—(1) The period of a complaint handling shall not exceed a period of twelve months from the date of the laying of the complaint at the Authority.

(2) The Authority may extend the period of the complaint handling for a further period not exceeding six months from the date of expiry of the period.

(3) once a complaint is deemed urgent, the Authority shall determine what steps to follow for the complaint to be address within the shortest time possible.

Powers under
other written
laws

18. Nothing in this Part shall preclude any person or authority from exercising the rights, powers, functions or duties conferred on such person or authority by or under any written law in respect of any matter otherwise provided under these Regulations.

Closure of
complaint

19. (1) A complaint file shall be closed when—

- (a) the parties execute a settlement agreement;
- (b) the mediator cancels a complaint handling session for non-compliance on the part of any party; or
- (c) the mediator, after consultation with the parties, makes a declaration to the effect that further complaint handling is not worthwhile.

(2) the Authority shall communicate the decision to close the file to all parties involved in the matter.

(3) The Authority shall keep files of all case for a period of seven years.

Offences

20.—(1) Any person who interferes or fails to cooperate with, or otherwise obstructs, the mediator or any person in the service of the mediator in the discharge of his functions and powers commits an offence and shall, on conviction, be liable to a penalty not exceeding K1,000,000.00.

(2) Any NGO which contravenes the provisions of these Regulations, commits an offence, and shall, be liable to a penalty not exceeding K1,000,000.00.

PATRICIA ANNIE KALIATI

Ministry of Gender, Community Development and Social Welfare

(File No.)

FORM1

Complaint form

SECTION A: DETAILS OF COMPLAINANT

Title (Mr/Ms/Mrs/ Other):	
First Name:	Last Name:
Contact Address:	
Contact Number:	Email address:

SECTION C: DETAILS OF THE COMPLAINT

How did you hear about Office of the NGO Regulatory Authority (Radio, Newspaper, Friend, referred by another office):

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Have you reported this complaint anywhere else? (e.g. Court, Anti -Corruption Bureau, Human Rights Commission, Ombudsman)

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Which NGO is your complaint against?

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Brief Summary of Complaint:

Tell us what happened? Where did it happen? When did it happen? Who was involved? How were you affected? * **Please use a separate piece of paper if you need more space.**

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What do you want the NGO Regulatory Authority to do to put things right?

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*To support your complaint please attach **copies** of any letters and documents which you feel will assist in the investigation of your complaint.

Date:	Signature:
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