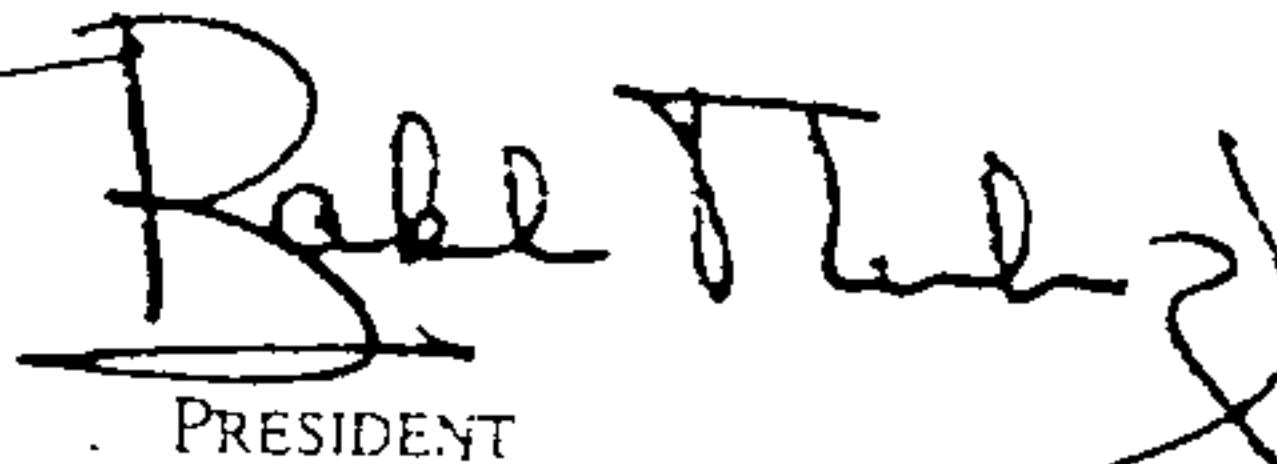


MALAWI GOVERNMENT

Act

No. 3 of 2001

I assent



PRESIDENT

ARRANGEMENT OF SECTIONS

27.01.01

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A BILL

entitled

An Act to provide for the rights and obligations of Non-Governmental Organisations in Malawi, to promote the development and values of a strong independent civil society, to provide for the establishment, functions and powers of the Non-Governmental Organisations Board of Malawi and the right of the public to access information with respect to registered organisations and to provide for matters incidental thereto or connected therewith

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title
and
commence-
ment

1. This Act may be cited as the Non-Governmental Organisations Act, 2000 and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

PART IX—FINANCIAL PROVISIONS

27.— (1) The funds of the Board shall consist of— Funding of the Board
 (a) any fees, fines and charges payable under this Act; and
 (b) such other moneys and assets as may accrue to or vest in the Board by way of donation, loan or otherwise received by the Board.

28. The Board shall have powers to borrow either temporarily, by way of overdraft or otherwise, such sums as it may require, for meeting its obligations or discharging its functions under this Act: Borrowing powers

Provided that any such borrowing shall subsequently be approved by the General Assembly.

29. The Board may invest any money in such a manner as the Board may deem expedient. Investment of surplus money

30. The financial year of the Board shall be a period of twelve months as the Board shall determine: Financial year

Provided that the first financial year of the Board may be such shorter or longer period than twelve months as the Board shall determine but being not less than six months nor more than eighteen months.

31.—(1) The Board shall keep proper accounts and other accounting records in accordance with the generally accepted accounting principles and practice. Accounts and audit

(2) The accounts of the Board shall be audited annually by independent auditors appointed by the Board and approved by the General Assembly.

32.—(1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to all members of the General Assembly and the Ministry responsible a report concerning its activities during that financial year. Annual reports

(2) The Report referred to in subsection (1) shall include information on the financial affairs of the Board, 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 Board may consider appropriate.

PART X—FUNDRAISING

33. Every NGO registered under this Act, including an exempt organisation which is registered, may solicit and accept funds and contributions and engage in public fundraising for the furtherance of its public benefit purposes as it may deem appropriate, subject to Fundraising by registered NGOs

(a) to enhance and improve operational environment within which NGOs function;

(b) to promote and facilitate coordination, collaboration and cooperation between the NGO community, the Government, the Donor Community and the commercial sector in Malawi;

(c) to further the standing of NGOs as competent, professional and suitable agents of development;

(d) to support NGOs to become institutionally strong; and

(e) to assist NGOs carry out their functions under this Act.

PART VIII—GENERAL ASSEMBLY

General
Assembly

26.—(1) For purposes of good administration and proper management, CONGOMA shall hold a General Assembly of the NGOs which shall be attended by the following—

(a) all members of the Board;

(b) all Board Members of CONGOMA; and

(c) all NGOs registered under this Act.

(2) The General Assembly of the NGOs shall be held once every year to transact the following business—

(a) receive a report concerning the activities of the Board during that financial year; and

(b) to deal with any matter which the Board desires to bring before it and any other matter or suggestion which the general membership may bring before it:

Provided that no such suggestions shall be considered by the General Assembly unless one week prior notice in writing is served on the members before the meeting is held.

(3) A notice convening the General Assembly shall be sent to members not less than fourteen days before the date of the meeting and the notice shall be accompanied by the agenda for the meeting.

(4) At the General Assembly the quorum shall be formed by fifty per cent of the membership.

(5) At the General Assembly voting shall be by secret ballot and in the event of an equality of votes the Chairperson shall have a casting vote in addition to his deliberative vote.

(6) The general public may attend the General Assembly as observers and shall not directly participate in the proceedings of the General Assembly but may make their observations in writing to the Chairperson.

(7) The Chairperson of the Board of CONGOMA shall preside at the General Assembly.

(iii) an annual return reflecting details of its trustees, directors, office bearers, auditors and such other information as may be prescribed; and

(iv) its source of funding;

(b) in the event of any amendment to its constitution or governing instrument, a certified copy of such amendment, within sixty days of such amendment being adopted; and

(c) any such further documentation or information regarding the officers and activities of a registered NGO which the Board may require.

23.—(1) The Board may order the Registrar to cancel or suspend the registration of an NGO if it is satisfied that the NGO—

Cancellation or suspension of registration

(a) has ceased to exist or function for the purposes for which it was constituted; or

(b) has failed or refused to comply with the provisions of this Act; or

(c) has been engaged in partisan politics.

(2) The NGO co-ordinating body may, where it has good and valid reasons, make recommendations to the Board for cancellation or suspension of the registration of an NGO.

(3) An order cancelling or suspending the registration of an NGO under subsection (1) shall not be issued, unless—

(a) the NGO concerned has been given at least thirty days prior written notice, sent to its last known address, of the Board's intention to impose such sanction; and

(b) the NGO has been given an opportunity to be heard either verbally or in writing as the Board may determine.

(4) Any NGO aggrieved by a decision of the Board made under this part may apply to the High Court for judicial review.

PART VII—THE DESIGNATED NGO CO-ORDINATING BODY

24.—(1) The General Assembly shall designate the Council for Non-Governmental Organisations in Malawi (in this Act otherwise referred to as "CONGOMA") as the designated NGO co-ordinating body for the purposes of this Act.

Designation of body

(2) As the designated NGO co-ordinating body, CONGOMA shall represent and promote the collective interests and concerns of NGOs in Malawi.

25. For the purposes of this Act, the functions of CONGOMA shall be—

Functions of CONGOMA

- (v) proof that the NGO is a member of CONGOMA;
 - (vi) a statement that the NGO shall not engage in partisan politics including electioneering and politicking; and
 - (vii) the source of funding for the NGO.
- (b) The form shall contain the following particulars of the NGO concerned—
- (i) name of the NGO;
 - (ii) physical and postal address;
 - (iii) telephone, facsimile and telex numbers, where applicable;
 - (iv) the full names, addresses, occupations and nationalities of all Trustees, Directors and other executive Board members;
 - (v) the name and address of the NGO's auditors, who are acceptable to the Board;
 - (vi) the latest available audited annual financial statements and annual report, in respect of existing NGOs.

(4)—(a) The Board shall accept or reject an application within a period of ninety days from the date the application was received by the Board or the date on which the applicant provides the information sought by the Board if that date is later.

(b) Where the Board rejects an application for registration by an NGO, the Board shall furnish in writing to the NGO concerned its reasons.

Certificate of
Registration

21.—(1) The Board shall issue a certificate of registration to every NGO registered under this Act.

(2) A certificate of registration shall constitute proof that the NGO concerned—

- (a) is a body corporate and separate from its members, with perpetual succession;
- (b) can engage in public interest activities and public fund-raising throughout Malawi;
- (c) is eligible for such fiscal or other benefits and privileges, as may be applicable to registered NGOs from time to time.

Reporting
requirements

22. Every registered NGO shall file with the Registrar's office the following documents and information which shall be part of the Registry accessible to the public under section 18 (2) (d)—

- (a) on an annual basis, and by such date as may be prescribed—
 - (i) its audited annual financial statements;
 - (ii) its annual report outlining the activities undertaken by the NGO in that year and such other information as may be prescribed;

(g) appoint a suitably qualified person as Registrar, and such other employees as it may deem necessary for the discharge of the duties and functions of Board; and

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

PART V.—MANAGEMENT OF THE BOARD

19.—(1) The Board shall appoint the Registrar who shall be the chief executive officer of the Board and Secretary to the Board.

Registrar
and other
employees

(2) The terms and conditions of service of the Registrar shall be subject to the approval of the Board.

(3) The Registrar shall establish and maintain the register, administer and implement this Act and perform such other duties as the Board may, from time to time assign to him.

(4) The Board may appoint, on such terms and conditions, such other employees subordinate to the Registrar as it may deem necessary for the carrying out the functions of the Board.

(5) The Board may delegate to the Registrar the appointment of employees of such ranks as the Board may specify.

PART VI—REGISTRATION OF NGOS

20.—(1) Every NGO established or operating in Malawi which is recognized as a legal person under the laws of Malawi, except the exempt organisations, shall register with the Board:

Registration

Provided that an NGO existing at the time of coming into force of this Act shall be required to register within a period of twelve months from the date this Act comes into force.

(2) No NGO shall be registered under this Act unless a minimum of two of its directors or trustees, as the case may be, are citizens of Malawi.

(3)—(a) An application for registration shall be in a prescribed form and accompanied by—

(i) a certified copy of the constitution or governing instrument of the NGO;

(ii) such registration fees as may be prescribed by the Board from time to time;

(iii) a plan of the activities which the NGO intends to undertake;

(iv) approval from the Ministry responsible for the activities to be undertaken by the NGO in the form of a memorandum of understanding or any other agreement between the Ministry and the NGO;

after the facts have come to the knowledge of the member, disclose this fact and the nature of the interest to the Board.

(2) After the disclosure, the remaining members shall discuss the matter and determine whether the member should be precluded from participating further in the meeting concerned and the decision taken by the remaining members regarding the matter shall be recorded in the minutes of the meeting.

(3) Subject to the provisions of subsection (2), a member who has an interest in a matter that is before the Board and who cannot therefore perform his functions in a fair, unbiased and proper manner shall not vote, participate in any other manner in the proceedings of a meeting of the Board or be present at the venue where such a meeting is being held.

(4) Where a member does not comply with the provisions of subsections (1) and (3) then the proceedings of such a meeting relating to the matter in which he has an interest shall be void.

PART IV—DUTIES, FUNCTIONS AND POWERS OF THE BOARD

Duties and
functions of
the Board

18.—(1) The Board shall register and regulate operations of NGOs in Malawi.

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

(a) establish and maintain the register of NGOs, incorporating a database and a public documentation centre in respect of NGOs incorporated or operating within Malawi, and such additional registers or sub-registers, including such as may relate to exempt organisations and international NGOs;

(b) consider and adjudicate upon applications for registration by NGOs and ensure due compliance by the NGOs with the prescribed reporting requirements;

(c) withhold, suspend or cancel registration of NGOs in the event of failure or refusal to comply with the provisions of this Act;

(d) provide free public access to the NGO register and database, including the records and returns of NGOs lodged in the public documentation centre;

(e) to 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;

(f) commission surveys, enquiries and research, with a view to advising the Government with regard to any matter affecting NGOs;

(b) if the holder of the office ceases to be a member of the Board; or

(c) if the Board so decides by a two-thirds majority vote.

(3) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

PART III—MEETINGS OF THE BOARD

15.—(1) The Board shall hold ordinary meetings for the dispatch of business at least once every three months in each year. Meetings of the Board

(2) No member of the Board shall attend the meetings of the Board by representation.

(3) An extraordinary meeting of the Board—

(a) may be convened by the Chairman within seven days after giving notice in writing to members of the Board;

(b) shall be convened by the Chairman within fourteen days of the receipt by him of a request in writing signed by not less than four members of the Board and specifying the purpose for which the meeting is convened; or

(c) if the Chairman does not convene the meeting requested, the members requesting such meeting may themselves convene the meeting.

(4) At any meeting of the Board—

(a) the Chairman or in his absence the Vice-Chairman shall preside;

(b) in the absence of both the Chairman and the Vice-Chairman the members present shall elect one of their number to preside;

(c) quorum shall be formed by any six members.

(5) At any meeting of the Board a decision on any matter shall be that of the majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board.

16. The Board may, for the better carrying into effect of its purposes and functions under this Act, establish such committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board may consider expedient. Establishment of committees

17.—(1) A member of the Board who has an interest directly or indirectly, in any matter to be considered by the Board shall, soon Disclosure of interest

Removal of
Board
members

9. Members of the Board, other than members *ex officio*, shall be subject to removal and substitution anytime, by a decision of the Minister in consultation with CONGOMA.

Tenure
of office

10.—(1) A member of the Board, other than a member *ex officio*, shall hold office for a period of three years and at the expiry of that period shall be eligible for re-appointment for one more similar term.

(2) The office of the member of the Board shall be vacated—

(a) upon his death;

(b) upon written resignation delivered to the Board;

(c) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as member;

(d) if he has been absent without valid excuse from three consecutive meetings of the Board of which he has had notice; or

(e) if he is incapable of efficiently performing his duties as a member of the Board.

Filling of
vacancies

11.—(1) On vacation of office by a member of the Board, the vacancy shall be filled by a person appointed in accordance with section 7.

(2) The membership of the Board as first and subsequently appointed and every change in the membership shall be published in the *Gazette*.

Invited
persons

12. The Board may invite any person, based on his experience and expertise, to attend any meeting of the Board and take part in the deliberations of the Board but such person shall not be entitled to vote at that meeting.

Allowances,
etc, of Board
members

13. Members of the Board shall be paid such honoraria as the Board may determine and the Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board in connexion with the business of the Board.

Chairman and
Vice-Chairmen

14.—(1) The Board shall elect both the Chairman and Vice-Chairman from among their number who shall, subject to subsection (2), hold office for the duration of their membership on the Board.

(2) The offices of the Chairman and Vice-Chairman shall become vacant—

(a) if the holder resigns his office by notice in writing to the Board;

(d) specially exempted, so that the Board has determined in its discretion that such organisation is to be exempted from all or some of the requirements of this Act.

PART II—ESTABLISHMENT OF THE NGO BOARD OF MALAWI

6.—(1) There is hereby established a Board to be known as the Non-Governmental Organisations Board of Malawi which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating moveable or immoveable property and, subject to the provisions of this Act, of performing all such acts as bodies corporate may by law, perform.

Establishment
of the Board

(2) The Board shall function without political or religious bias or interference by donors, the Government, an organ of the State or a political party.

7. The Board shall consist of ten members who shall be citizens of Malawi and appointed as follows—

Composition
of the Board

(a) seven members, at least three of whom shall be women, appointed by the Minister in consultation with CONGOMA; and

(b) the following members *ex officio*—

(i) the Secretary for Gender, Youth and Community Services;

(ii) the Secretary for Justice; and

(iii) the Secretary to the Treasury.

8. Any person who—

(a) is declared bankrupt under any law in force in Malawi;

(b) is, under any law in force in Malawi, adjudged or otherwise declared to be of unsound mind;

(c) has at any time been convicted of an offence involving theft, fraud, forgery, perjury or other dishonesty;

(d) has, within the past five years, been convicted of an offence under any written law punishable by a term of imprisonment of six months without the option of a fine;

(e) would for any other reason be disqualified by law from serving as a director of a company or a trustee of a trust within Malawi,

Disqualifica-
tion from
appointment
to the Board

shall be disqualified from being appointed as a member of the Board.

(d) to facilitate a relationship between NGOs and the Government involving constructive collaboration and partnership in furtherance of the public interest; and

(e) to affirm the human rights enshrined in the Constitution of the Republic of Malawi.

Application of
the Act

4. Save as otherwise provided in this Act, the provisions of this Act shall apply to an NGO within Malawi which fulfils the following conditions—

(a) it has a written constitution or a governing instrument;

(b) it is not established, administered or controlled directly or indirectly by the Government of Malawi, or any other Government;

(c) it applies all its funds and resources for public benefit purposes only;

(d) it does not transfer or distribute, whether directly or indirectly, any benefit to its members, donors, trustees, directors or other officers, or their associates or next of kin, except if such benefits represent—

(i) reasonable remuneration for services actually rendered;
or

(ii) benefits conferred, without favour or discrimination, by reason of the beneficiary being part of an eligible group or category entitled to benefit in accordance with the public benefit purposes of the organisation concerned;

(e) it is not for private profit or gain for the persons controlling or managing the affairs of the NGO without prejudice to the rights and privileges of employees;

(f) it is managed or controlled by a committee, Board or Trust;

(g) it serves all eligible people, regardless of age, gender, tribe, race, religion, creed, sex, political affiliation, nationality, region, disability or being a member of a minority group;

(h) it is not a church or religious organisation of a purely evangelistic or proselytizing nature;

(i) it is not a political party, trade union or a social club created to pursue the interests of its members;

Exempt
organisations

5. Subject to the provisions of section 20 (2), this Act shall not apply to an organisation which is—

(a) informal, and does not have a written constitution;

(b) excluded, so that it belongs to a category of organisations deemed not to fall within the ambit of this Act;

(c) established, administered or controlled by or on behalf of the Malawi Government or other government; or

2. In this Act, unless the content otherwise requires—

Interpretation

“Board” means the Non-Governmental Organisations Board of Malawi established under section 6;

“designated NGO Co-ordinating body” means an independent institution representing Non-Governmental Organisations in Malawi established under section 24;

“exempt organisation” means an NGO exempted from the provisions of this Act under section 5;

“international NGO” means an institution or organisation for public benefit purposes, established under the laws of a country other than Malawi, or established under a treaty or convention and conducting some or all of its activities in Malawi;

“NGO” means a Non-Governmental Organisation constituted for a public benefit purpose to which the provisions of this Act are applicable under section 4;

“public benefit purposes” mean organisational purposes involving developmental and charitable purposes including but not limited to, educational, health, welfare, advocacy, cultural, civic, social, recreational, scientific, environmental, or other similar objects for the benefit of the general public, a section thereof or members of the organisation but excluding involving the activities of a church or religion, trade union, employers organisation or political party;

“public fundraising” means the soliciting from the general public in Malawi, for public benefit purposes, of contributions of value, whether in cash or in kind, but for the avoidance of doubt does not include the kind of soliciting directed to members, office bearers or other persons who have a relationship with the organisation concerned;

“Registrar of NGOs” means the Registrar appointed under section 19.

3. The objects of this Act are—

Objects
of the Act

(a) to promote the development of a strong independent civil society in Malawi and to facilitate the formation and effective functioning of NGOs for public benefit purposes;

(b) to create a conducive environment for NGO development through Government provision of incentives;


(c) to promote donor and public confidence in the NGO sector, and to encourage the development of an NGO code of conduct, incorporating principles of fiduciary integrity, public accountability, democratic decision-making, developmental synergy, non-discrimination and beneficiary equity;

compliance with the reporting requirements prescribed under this Act, or any other written law.

PART XI—MISCELLANEOUS PROVISIONS

- Offence and penalty 34. An NGO which contravenes the provisions of the Act shall be guilty of an offence and liable on conviction to a fine of K50,000 or an amount equivalent to the financial gains generated by the offence, whichever is the greater.
- Regulations 35.—(1) The Minister may, on the advice of the Board, make regulations for carrying out or giving effect to the provisions of this Act and without prejudice to the generality of the foregoing such regulations may—
- (a) prescribe fees payable—
 - (i) upon application for registration;
 - (ii) for restoration to a register;
 - (iii) for any other matter under this Act; and
 - (b) prescribe the forms required to be prescribed under this Act.
- Cap. 1:01 (2) A regulation made under subsection (1) may, notwithstanding the provisions of General Interpretation Act prescribe penalties for any contravention of its provisions or failure to comply therewith, involving the imposition of a fine not exceeding K25,000.00.
- Savings 36. This Act shall not derogate from the terms of any agreement or similar arrangement concluded between the Government and any NGO prior to the coming into force of this Act with reference to the operations of any such NGO in Malawi.

Passed in Parliament this sixteenth day of January, two thousand and one.


Clerk of Parliament