

MALAWI GOVERNMENT

Act

No. 8 of 2012

I assent

MRS. JOYCE BANDA
PRESIDENT
10th July, 2012

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An Act to make provision for the equalization of opportunities for persons with disabilities through the promotion and protection of their rights; to provide for the establishment of a Disability Trust Fund; and to provide for matters connected with or incidental to the foregoing

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Disability Act, 2012, and shall come into operation on a date to be appointed by the Minister by notice published in the *Gazette*.

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

Interpretation

“accessibility” understood as universal design, means the design of products, programmes, the environment and services to be used by all persons to the greatest extent possible, without the need for adaptation and specialized design;

“assistive devices” means appropriate aids, appliances, technologies or other support systems that facilitate the better functioning of persons with disabilities;

“disability” means a long-term physical, mental, intellectual or sensory impairment, which, in interaction with various barriers, may hinder the full and effective participation in society of a person on equal basis with other persons;

“disability mainstreaming” means a strategy for making the needs, concerns and experiences of persons with disabilities an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in the political, economic and societal spheres to ensure that persons with disabilities benefit equally;

“Disability Trust Fund” means a fund to be established by the Minister pursuant to section 28;

“discrimination” means a distinction, exclusion or restriction on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, of any human rights or fundamental freedoms, in the political, economic, social, cultural, civil or other field;

“equalization of opportunities” means a process through which the various systems of society and the environment, including services, activities, information and documentation, are made available and accessible to persons with disabilities;

“impairment” means any loss or limitation of psychological, physiological or anatomical structure or function;

“inclusive education” means a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities and reducing exclusion from and within education;

“institution” means any building or other premises in which an organization carries on work for the empowerment of persons with disabilities, and includes premises where persons with disabilities live and are supported by such organization;

“National Advisory and Coordinating Committee on Disability Issues (NACCODI)” means a Committee to be established by the Minister pursuant to section 5 (2);

“reasonable accommodation” means necessary and appropriate modifications and adjustments that ensure that persons with disabilities enjoy or exercise all human rights and fundamental freedoms on equal basis with other persons, without imposing disproportionate or undue burden on the other persons; and

“rehabilitation” means a goal-oriented process aimed at enabling a person with a disability to reach an optimum mental, physical or social functional level, by providing such person with tools to improve his life.

PART II—ADOPTION OF POLICIES AND LEGISLATION

Adoption of policies and legislation on equalization of opportunities

3.—(1) The Government shall adopt policies and legislation on equalization of opportunities for persons with disabilities in order to—

(a) promote and protect the rights of persons with disabilities; and

(b) fully include them in all aspects of life, to enhance their dignity and well-being.

(2) The Government shall—

(a) recognize the role of the private sector and civil society organizations in promoting and protecting the rights of persons with disabilities; and

(b) encourage partnerships in programmes that address the needs and concerns of persons with disabilities by advocating removal of social, cultural, economic, environmental and attitudinal barriers and facilitating the inclusion of persons with disabilities.

PART III—ADMINISTRATION

Responsibilities of the Minister

4. The Minister shall be responsible for the proper administration of this Act, including—

(a) coordinating policy formulation and review;

(b) implementing, monitoring and evaluating programmes;

(c) promoting disability mainstreaming in all sectors;

(d) mobilizing resources, both from within and outside Malawi, for policy development and implementation; and

(e) strengthening the capacity of persons with disabilities as well as organizations of and organizations for persons with disabilities, in order to enhance advocacy and facilitate the effective and efficient implementation of policies, programmes and services.

5.—(1) The Minister shall have powers to establish institutions and committees for purposes of the proper and effective administration of this Act.

Powers of
the Minister

(2) Notwithstanding the generality of subsection (1), the Minister shall establish a National Advisory and Coordinating Committee on Disability Issues which shall—

(a) provide a forum for all key stakeholders on disability issues to receive, discuss and review reports from Government ministries and departments and other relevant stakeholders on disability mainstreaming;

(b) make recommendations to Government on best practices regarding the formulation of policies, legislation and programmes, with respect to disability; and

(c) oversee the implementation, monitoring and evaluation of disability-related programmes.

PART IV—RIGHTS OF PERSONS WITH DISABILITIES

6.—(1) The Government shall provide appropriate health care services to persons with disabilities, including prevention, early identification, intervention and other services designed to minimize and prevent the occurrence of more disabilities.

Health care
services

(2) The Government shall—

(a) undertake or initiate surveys, investigations and research concerning the cause and occurrence of disabilities;

(b) through the media, create awareness on the occurrence of disabilities and their preventive measures;

(c) provide persons with disabilities the same range, quality and standard of free or affordable health care services as provided to other persons, including sexual and reproductive health services and population based public health programmes;

(d) formulate and implement a programme to enable persons with disabilities have access to free medical rehabilitation services in Government hospitals and, where there is need for a referral to a private hospital, put mechanisms in place for the persons with disabilities to access the rehabilitation services;

(e) provide medical personnel specializing in the treatment and rehabilitation of persons with disabilities, to district hospitals and health centres; and

(f) develop national guidelines, minimum norms and standards for the provision of assistive devices and personal assistants to persons with disabilities.

Prohibition of discrimination in health care and rehabilitation services

7.—(1) No person shall be denied access to health care and rehabilitation services in any health establishment or be required to pay a higher fee for such services, on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K200,000 and imprisonment for two years; or

(b) in the case of a body corporate, a fine of K1,000,000.

Accessibility

8. The Government shall take appropriate measures to ensure that persons with disabilities have access to the physical environment, transportation, information and communications, including information and communication technologies and systems, and other facilities and services available or provided to the public by—

(a) developing, promulgating and monitoring the implementation of universal standards and guidelines for the accessibility of all facilities and services available or provided to the public;

(b) ensuring that private entities that offer facilities and services which are available or provided to the public, take into account all aspects of accessibility for persons with disabilities;

(c) raising awareness and providing appropriate training on accessibility issues facing persons with disabilities;

(d) ensuring the attainment of a barrier free environment that enables persons with disabilities to have access to public and private buildings and establishments and such other places in line with universal designs;

(e) certifying architectural drawings for public and institutional buildings to comply with the standards of universal designs; and

(f) developing a Malawi sign language as a national language for persons with hearing impairments and recognizing it as an official language.

Prohibition of discrimination in accessing premises and the provision of services or amenities

9.—(1) No person shall be denied access or admission to any premises or the provision of any service or amenity, on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

(3) Notwithstanding the provisions of subsection (2), a court may, in addition to any penalty imposed under the subsection, order the person or body corporate, to undertake reasonable accommodation to facilitate access for persons with disabilities to the premises or the provision of the service or amenity.

10. The Government shall recognize the rights of persons with disabilities to education on the basis of equal opportunity, and ensure an inclusive education system and lifelong learning by—

Education
and training

(a) ensuring that persons with disabilities are not excluded from the general education system at all levels and have access to quality primary education;

(b) taking into consideration the special requirements of persons with disabilities in the formulation of educational policies and programmes, including the provision of assistive devices, teaching aids and learning support assistants; and

(c) providing financial assistance to the less privileged and deserving students with disabilities who are pursuing secondary or tertiary education in public institutions, in the form of scholarship grants, student loan programmes, subsidies, and other incentives and ensure that a minimum of ten per cent of the allocation for students' financial assistance programmes as created by the local government is set aside for the students with disabilities.

11.—(1) No education or training institution shall—

Prohibition of
discrimination
in education
or training
institutions

(a) deny any person admission into or expel the person from the institution;

(b) discipline, segregate or deny the person participation in any event or activity; or

(c) deny any benefits or services to the person,
on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

12.—(1) The Government shall recognize the rights of persons with disabilities to work and employment, which rights shall include—

Work and
employment

(a) the right to gain a living through work that is freely chosen or accepted in a labour market; and

(b) a working environment that is open, inclusive and accessible to persons with disabilities.

(3) The Government shall safeguard and promote the realization of the right to work and employment by—

(a) prohibiting discrimination on the basis of disability, with regard to all matters concerning all forms of employment, including—

- (i) conditions of recruitment;
- (ii) hiring and restructuring of employment;
- (iii) continuation of employment;
- (iv) career advancement; and
- (v) safe and healthy working conditions;

(b) providing persons with disabilities access to just and favourable conditions of work, including—

- (i) equal opportunities and equal remuneration for work of equal value;
- (ii) safe and healthy working conditions;
- (iii) protection from harassment; and
- (iv) redress of grievances;

(c) providing persons with disabilities effective access to general, technical and vocational guidance programmes, placement services and vocational and continuing training;

(d) providing persons with disabilities employment opportunities and career advancement in the labour market, as well as assistance in finding, obtaining, maintaining and retaining employment;

(e) creating a conducive environment for persons with disabilities for self-employment, entrepreneurship, and the development of cooperatives; and

(f) promoting the employment of qualified persons with disabilities in the public and private sector, through appropriate policies and measures, which shall include affirmative action programmes and incentives.

Prohibition of discrimination in work and employment

13.—(1) No person shall be discriminated against on the basis of disability with regard to all matters concerning all forms of employment, including—

- (a) conditions of recruitment;
- (b) hiring and restructuring of employment;
- (c) continuation of employment;
- (d) career advancement; and

- (e) safe and healthy working conditions.
- (2) A person who contravenes subsection (1) commits an offence and is liable to—
- (a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or
- (b) in the case of a body corporate, a fine of K1,000,000.

14.—(1) The Government shall—

(a) recognize the right of persons with disabilities to adequate standards of living, for themselves and their families, including—

- (i) access to adequate food, clothing and housing; and
- (ii) the continuous improvement of living conditions; and

(b) take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

(2) The Government shall—

(a) ensure equal access by persons with disabilities to appropriate and affordable social services;

(b) ensure access by persons with disabilities to social support programmes; and

(c) develop national guidelines to enable persons with disabilities that are receiving social benefits to move into self or open labour market employment.

Social
protection

15.—(1) No person shall be discriminated against on the basis of disability with regard to all matters concerning social support, including access to appropriate and affordable social services.

Prohibition of
discrimination
in social
services

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

16. Every person with a disability shall have the right to—

(a) form and join any group or association of his choice; and

(b) be represented at any level in such group or association.

Right of
association
and
representation

17. The Government shall, through deliberate policies and measures, guarantee participation in political and public life by persons with disabilities, by—

Participation
in political
and public life

(a) creating a conducive environment for persons with disabilities to effectively and fully exercise their political rights, directly or through their freely chosen representatives, by—

(i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) protecting their right to freely vote by secret ballot in elections and public referendum;

(iii) ensuring that they stand for elections, effectively hold office and perform all public functions at all levels of government; and

(iv) guaranteeing the free expression of their will as voters and, where necessary and at their request, allowing a person of their own choice to assist them in voting;

(b) creating an environment and encouraging persons with disabilities to participate fully in the conduct of public affairs, by—

(i) having membership in non-governmental organizations, Boards of Statutory Corporations, diplomatic missions and other institutions concerned with the political and public life of the people of Malawi, and participation in the activities and administration of political parties; and

(ii) forming and joining organizations of persons with disabilities to represent them at local, regional and international levels; and

(c) providing opportunities to persons with disabilities to participate in the planning, organization, management, monitoring and evaluation of all development programmes and projects at the community and national levels.

Prohibition of
discrimination
in political
and public
life

18.—(1) No person shall be denied or prevented from participating in political and public life on the basis of disability.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

Cultural and
sporting
activities, and
recreational
services

19.—(1) The Government shall—

(a) recognize the rights of persons with disabilities to take part in cultural and sporting activities, and access recreational services; and

(b) take appropriate measures to ensure that persons with disabilities have access to—

(i) cultural materials available in television programmes, films, theatre and other cultural activities, in accessible formats;

(ii) places of cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, to monuments and sites of national and cultural importance; and

(iii) specific development programmes for sports, both in and out of school.

20.—(1) No person shall be denied participation in cultural or sporting activities or access to recreational services, on the basis of disability.

Prohibition of discrimination in cultural and sporting activities, and recreational services

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

21. The Government shall, in its National Housing Programmes, take into account the needs of persons with disabilities by—

Housing

(a) providing the persons with disabilities with equal access to secure land tenure, housing, financing, and property rights;

(b) facilitating access to housing by the persons with disabilities, through elimination of prejudice and discrimination in housing transactions and in the provision of services under any government schemes; and

(c) ensuring disability friendly institutional housing.

22.—(1) No person shall be denied access to land tenure, housing and property rights on the basis of disability.

Prohibition of discrimination in housing

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

23. The Government shall recognize the importance of empowering persons with disabilities economically, without any form of discrimination, and shall ensure that the persons with disabilities are able to access loans and credit facilities for purposes of carrying out income generating activities.

Economic empowerment

24.—(1) No person or institution shall—

Prohibition of disempowerment

(a) deny any person admission into or expel the person from any institution; or

(b) segregate or deny any benefits or services to the person, on the basis of disability.

(2) A person who, or an institution that, contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

Right to
information
and
communication
technologies

25. A person with disability shall have the right to access information and communication technologies at an affordable cost.

Research and
information
and communi-
cation
technologies

26.—(1) The Government shall recognize the importance of research and the role that information and communication technologies play in improving the quality of life of persons with disabilities.

(2) The Government shall—

(a) facilitate the development of national guidelines based on universal standards to ensure inclusive research on social, economic and participation issues affecting persons with disabilities and their families;

(b) promote regular and appropriate data collection on the living conditions of persons with disabilities in order to determine the amount of resources required to deal with those conditions;

(c) ensure integration of disability-focused and general research, through establishment of relevant fora for stakeholders to exchange information related to disability and research;

(d) network with local, regional and international research institutions, and promote development of appropriate rehabilitation technology; and

(e) promote the design, development, production and distribution of accessible information and communications technologies and systems, and ensure that the same are available to persons with disabilities at an affordable cost.

Prohibition of
participation
in research
without
consent

27.—(1) No person with disability shall be forced to participate in any research without his consent.

(2) A person who contravenes subsection (1) commits an offence and is liable to—

(a) in the case of a natural person, a fine of K500,000 and imprisonment for five years; or

(b) in the case of a body corporate, a fine of K1,000,000.

PART V—DISABILITY TRUST FUND

28. The Minister shall establish a trust fund to be known as the Disability Trust Fund which shall consist of such monies as may be given to the Fund by way of donations, contributions or grants.

Disability Trust Fund

29. The purpose of the Disability Trust Fund shall be to support the implementation of disability programmes and services.

Purpose of the Fund

PART VI—MISCELLANEOUS PROVISIONS

30. The Minister shall investigate any violation of this Act, and shall periodically review compliance with this Act by all the relevant authorities or institutions.

Investigations by the Minister

31.—(1) Where a person with a disability has reason to believe that any person or institution has violated any provision in Part III of this Act, the aggrieved person may commence legal action against that person or institution in any competent court of law.

Civil remedies

(2) In seeking a remedy for violation of any provision in Part III of this Act, the court may award the aggrieved person any of the following remedies—

- (a) equitable relief that the court may consider appropriate in accordance with the gravity of the violation;
- (b) the provision of auxiliary aid or services; or
- (c) any other relief that the court may consider appropriate, including monetary damages to the aggrieved person.

32.—(1) If the Minister is satisfied on reasonable grounds that a person or an institution has contravened this Act or any regulations made under it, he may impose administrative penalties on such person or institution by—

Administrative penalties

- (a) giving the person or institution a written warning; or
- (b) directing the person or institution to do a specified act, or refrain from doing a specified act, in order to—
 - (i) remedy the effects of the contravention;
 - (ii) compensate the person who has suffered loss because of the contravention; or
 - (iii) ensure that the person or institution does not commit further contraventions.

(2) The direction referred to in subsection (1) (b) may require the establishment of compliance programmes, corrective advertising, or, in the case of a direction to an institution, changes in the management of the institution.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the penalty, commits an offence and is liable to—

(a) in the case of a natural person, a fine of K100,000 and imprisonment for twelve months; or

(b) in the case of a body corporate, a fine of K1,000,000.

(4) Where the administrative penalty imposed under subsection (1) is a monetary penalty and the person on whom the penalty has been imposed does not pay the penalty for a period of more than thirty days from the date the penalty was imposed, the penalty shall be recoverable as a civil debt.

Regulations 33.—(1) The Minister may make regulations for the better carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may prescribe any matter which under this Act is required or permitted to be prescribed.

Passed in Parliament this twenty-fourth day of May, two thousand and twelve.

H. H. NJOLOMOLE
for: Clerk of Parliament