

Malawi

Gender Equality Act

Chapter 25:06

Legislation as at 31 December 2014

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Gender Equality Act

Chapter 25:06

Commenced on 1 April 2014

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to promote gender equality, equal integration, influence, empowerment, dignity and opportunities, for men and women in all functions of society, to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment, to provide for public awareness on promotion of gender equality, and to provide for connected matters

Part I – Preliminary

1. Short title

This Act may be cited as the Gender Equality Act.

2. Scope of application

- (1) Except where it is otherwise expressly provided for by any written law, this Act applies to all persons and to all matters.
- (2) This Act binds the Government.

3. Interpretation

In this Act, unless the context otherwise requires—

“**appointing or recruiting authority**” means a public office in whose power the decision to appoint or recruit any person lies;

“**educational institution**” means a school, college, university or other institution at which education or training is provided;

“**harmful practice**” means a social, cultural, or religious practice which, on account of sex, gender or marital status, does or is likely to—

- (a) undermine the dignity, health or liberty of any person; or
- (b) result in physical, sexual, emotional, or psychological harm to any person; and

“**public institution**” means an institution that is part of the public service within the meaning of “public service” under the Public Service Act.

[Cap. 1:03]

Part II – Sex discrimination

4. Prohibition of sex discrimination

- (1) A person shall not—
 - (a) treat another person less favourably than he or she would treat a person of his or her own sex; or
 - (b) apply to the other person an exclusion, distinction or restriction which applies or would apply equally to both sexes but—
 - (i) which is such that the proportion of one sex who can comply with it is considerably smaller than the proportion of the opposite sex who can comply with it;
 - (ii) which he or she cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
 - (iii) which is to the detriment of the other person because he or she cannot comply with it,with the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of the rights and fundamental freedoms of that person.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine of K1,000,000 and to a term of imprisonment for five years.

5. Prohibition of harmful practices

- (1) A person shall not commit, engage in, subject another person to, or encourage the commission of any harmful practice.
- (2) Any person who contravenes this section commits an offence and is liable to a fine of K1,000,000 and to a term of imprisonment for five years.

6. Sexual harassment

- (1) A person commits an act of sexual harassment if he or she engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.
- (2) A person who sexually harasses another in terms of subsection (1) commits an offence and is liable to a fine of K1,000,000 and to a term of imprisonment for five years.

7. Workplace policy for sexual harassment

- (1) The Government shall take active measures to ensure that employers have developed and are implementing appropriate policy and procedures aimed at eliminating sexual harassment in the workplace which shall—
 - (a) entitle all persons who have been subjected to sexual harassment in the workplace to raise a grievance about its occurrence and be guaranteed that appropriate disciplinary action shall be taken against perpetrators;

- (b) entitle a non-employee who has been subjected to sexual harassment to lodge a grievance with the employer of the perpetrator where the conduct giving rise to the complaint has taken place at the work place or in the course of the perpetrator's employment;
- (c) entitle all employees, job applicants and other persons who have dealings with the workplace to be treated with dignity; and
- (d) oblige the person in charge of the work place to—
 - (i) implement the policy and procedures and impose disciplinary action against employees who do not comply;
 - (ii) deal seriously, expeditiously, sensitively and confidentially with all allegations of sexual harassment;
 - (iii) protect employees against victimization, retaliation for lodging grievances and from false accusations;
 - (iv) explain the procedure which shall be followed by persons who are victims of sexual harassment;
 - (v) communicate the sexual harassment policy and grievance procedures effectively to all employees; and
 - (vi) designate a person outside of line management whom a person who has been subjected to sexual harassment may approach for confidential advice and counselling.
- (2) A person who has been subjected to sexual harassment need not have exhausted internal sexual harassment procedures before prosecution of the offence can be commenced or civil proceedings can be instituted.

Part III – Enforcement

8. Enforcement by the Human Rights Commission

The Human Rights Commission, hereinafter called “the Commission”, shall be responsible for the enforcement of the provisions of this Act.

9. Powers of the Human Rights Commission in relation to gender equality

- (1) In addition to the powers conferred upon the Commission by the Constitution, the Human Rights Commission Act or any other written law, the Commission, shall protect and promote gender equality.
- (2) The Commission shall perform the following functions in the exercise of its powers in relation to this Act—
 - (a) monitor and evaluate the policies and practices of—
 - (i) Government organs, Government agencies and public bodies; and
 - (ii) the private sector, in order to promote gender equality and make any recommendations that the Commission deems necessary;
 - (b) carry out investigations and conduct searches in relation to any gender issues on receipt of a complaint or on its own accord;