

POLITICAL PARTIES BILL, 2015

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MEMORANDUM

This Bill seeks to repeal the Political Parties (Registration and Regulation) Act (Cap. 2:07) and replace it with a new law which will address the challenges being faced when regulating the registration, financing and functioning of political parties.

The Bill is divided into eight parts.

Part I makes provision for preliminary matters, namely; short title, commencement, and interpretation of certain words and terms used in the Bill.

Part II contains general principles under which the establishment and operation of political parties in Malawi shall be founded.

Part III establishes the office of the Registrar of Political Parties (the “Registrar”), which shall be a public office. The Part also makes provision for the appointment of the Registrar and other officers in the Office of the Registrar, and for the independence of the Registrar when exercising his powers, functions and duties under the law.

Part IV deals with registration of political parties, and contains provisions relating to, among others, grounds for which the Registrar may refuse to register a political party, which include the following grounds-

(a) that the name of the party—

- (i) is identical to the name of a registered political party or a political party which has been deregistered under the law;
- (ii) confusingly resembles the name of a registered political party or a political party that has been deregistered under the law;
- (iii) denotes a religious faith or a regional or ethnic identity; or
- (iv) is provocative or offends against public decency and morals or is contrary to any other written law; and

- (b) that the symbol of the party confusingly resembles the symbol of a political party registered under the law or a political party that has been deregistered under the law.

The Part also contains provisions for deregistration of a political party, as well as appeal against deregistration or intended deregistration of a political party.

Part V makes provision for financing of political parties. The Part contains provisions relating to entitlement to State funding by political parties, uses of State funding, suspension of State funding, refunds by political parties which cease to qualify for State funding, closure of books and records of account upon dissolution of Parliament. The Part also provides for, among others, private funding and receipt of donations by political parties, the requirement to open a separate bank account for private funding, registration and declaration of assets, and members' access to financial records of their political party.

Part VI deals with rights and duties of political parties in elections, which include the right to participate in elections, and freedom of assembly.

Part VII contains miscellaneous provisions. These provisions deal with, among others, matters relating to inspection by the Registrar, access by members of the public to information received by the Registrar, the power of the Minister to make regulations, and repeal and savings.

Part VIII contains transitional provisions, which include provisions relating to the status of political parties registered under the Political Parties (Registration and Regulation) Act (Cap. 2:07), and saving of existing rights and powers of political parties registered under the Political Parties (Registration and Regulation) Act (Cap. 2:07).

POLITICAL PARTIES BILL, 2015

ARRANGEMENT OF SECTIONS

SECTION

PART I – PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II – GENERAL PRINCIPLES

3. General principles

PART III – ESTABLISHMENT OF THE OFFICE OF THE REGISTRAR

4. Establishment of the office of the Registrar
5. Appointment of the Registrar
6. Independence of the office of the Registrar
7. Register

PART IV – REGISTRATION AND DEREGISTRATION OF A POLITICAL PARTY

8. Application for registration of a political party
9. Certificate of registration and its effect
10. Refusal to register a political party
11. Appeal against refusal to register a political party
12. Deregistration of a political party
13. Appeal against deregistration or intended deregistration of a political party

14. Notice of change in registered particulars
15. Failure to notify changes
16. Refusal to register amendments

PART V– FINANCES OF POLITICAL PARTIES

17. Entitlement to State funding
18. Uses of State funding
19. Banking, accounts and audit
20. Suspension of State funding
21. Closure of books and records of account upon dissolution of Parliament
22. Power of Minister responsible for finance to give financial instructions
23. Private funding and receipt of donations
24. Separate bank account for private funding
25. Registration and declaration of assets
26. Members' access to financial records

PART VI – RIGHTS AND DUTIES OF POLITICAL PARTIES IN ELECTIONS

27. Right to participate in elections
28. Freedom of assembly
29. Freedom of expression

PART VII – MISCELLANEOUS PROVISIONS

30. Inspection by the Registrar
31. Access to information received by the Registrar
32. Onus of proof

33. Provision of false information to, obstruction of, etc., the Registrar
34. Unauthorized distribution of the constitution or rules
35. Regulations
36. Repeal and savings

PART VIII – TRANSITIONAL PROVISIONS

37. Status of political parties already registered
38. Saving of existing rights, powers, etc.
39. Compliance with this Act

A BILL

entitled

An Act to make provision for regulating the registration, financing and functioning of political parties; and to provide for matters incidental thereto and connected therewith

ENACTED by the Parliament of Malawi as follows—

PART I — PRELIMINARY

Short title and commencement

1. This Act may be cited as the Political Parties Act, 2015, and shall come into force on such date as the Minister shall appoint by notice published in the Gazette.

Interpretation

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

“member” means a person who is a resident of the Republic of Malawi eligible to vote and whose name,

address and signature are entered in a register of members kept and maintained by that political party;

“office bearer” means a member of a political party who holds a particular position at any level of the administrative structure of the party and includes the leader of a political party and all executive members of the party;

“political party” means a combination of persons who have constituted themselves for a political purpose;

“registered political party” means a political party registered under section 8; and

“Registrar” means the Registrar of Political Parties appointed under section 5.

PART II — GENERAL PRINCIPLES

General principles

3. — (1) The establishment and operation of political parties in Malawi shall be founded on the following principles—

- (a) all political parties shall be established and conduct their affairs in accordance with the Constitution of the Republic of Malawi and this Act;

(b) every person shall have the right to form a political party and to cease to be a member of a political party, and no person shall be compelled to belong to a political party; and

(c) every member of a political party shall have the right to enjoy the rights and privileges of membership of the party without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, property, birth or other status or condition.

(2) Subject to subsection (1), every political party shall have the right to regulate its own affairs and procedures.

(3) In the interpretation, application and enforcement of this Act, the relevant organs of State shall have due regard to the principles stated under this Part.

PART III — ESTABLISHMENT OF THE OFFICE OF THE REGISTRAR

Establishment
of the office
of the
Registrar

4. — (1) There shall be a Registrar of Political Parties whose office shall be a public office.

(2) In addition to the Registrar, there shall be appointed in the public service such other officers subordinate to the Registrar as are necessary for the proper performance of the functions of the Registrar.

(3) The office of the Registrar shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) capable of suing and being sued in its corporate name;
- (c) capable of acquiring and disposing of any moveable or immovable property; and
- (d) able, in the exercise of its powers, functions and duties, to do such acts and perform such things as bodies corporate may by law do or perform.

Appointment of
the Registrar

5. — (1) Nominations for appointment to the office of Registrar shall be received from the public by way of a public advertisement placed by the Clerk of Parliament and the successful candidate shall be appointed by the Public Appointments Committee of Parliament in accordance with this section.

- (2) The person to be appointed to the office of Registrar shall—
- (a) have sufficient knowledge of the law;
 - (b) have sufficient knowledge of political systems;
 - (c) within the last seven years, not have been convicted by a competent court of a crime involving dishonesty or moral turpitude;
 - (d) not have been declared bankrupt;
 - (e) be a holder of a degree from a recognized institution; and
 - (f) not hold any other public office.

Independence
of the office of
the Registrar

6. The Registrar shall, in the exercise of his powers, functions and duties, be independent of the interference or direction of any other person or authority.

Register

7. — (1) The Registrar shall keep a register in which shall be recorded such particulars relating to a registered political party as are prescribed in this Act.

(2) A copy of an entry in the register certified by the Registrar or a person authorized by the Registrar shall, for the purposes of any written law, be prima facie evidence of the facts stated in the certificate.

PART IV – REGISTRATION AND DERIGISTRATION OF A POLITICAL PARTY

Application for
registration of a
political party

8. — (1) A political party, consisting of not less than twenty persons in each of the districts of Malawi who are eligible to vote, may apply in writing to the Registrar for registration of the party under this Act.

(2) An application for registration shall be signed by the office bearers of the political party and shall—

- (a) specify the name of the party; and
- (b) be accompanied by—
 - (i) two copies of the constitution, rules and manifesto of the party, duly certified by the leader of the party;
 - (ii) the particulars of the registered office of the party;

- (iii) a list giving the names and postal and physical addresses of the leader and other office bearers of the party;
- (iv) a list giving the names, addresses and signatures of not less than twenty members of the party resident in each of the districts of Malawi; and
- (v) a graphic representation of the symbol of the party in the form prescribed by the Registrar.

(3) The list referred to in paragraph (b) (iv) shall be accompanied by a written confirmation from the District Commissioner of each district that the people mentioned in the list are residents of that district.

Certificate of registration and its effect

9— (1) Where the Registrar registers a political party, he shall issue the party with a certificate of registration, shall register, and stamp copies of the constitution, , rules and manifesto of the party submitted with the application and return a copy of each to the party.

(2) Where the Registrar issues a certificate of registration of a political party, the party shall become—

- (a) a body corporate with perpetual succession and a common seal;
- (b) capable of suing and being sued in its corporate name;
- (c) capable of acquiring and disposing of any moveable or immovable property; and
- (d) able, in the exercise of its powers, functions and duties, to do such acts and perform such things as bodies corporate may by law do or perform.

(3) A registered political party shall display its certificate of registration at a conspicuous place at its registered office.

(4) The Registrar shall, within thirty days, publish a notice of the registration of a political party in the Gazette.

Refusal to register a political party

10— (1) The Registrar may refuse to register a political party if he is satisfied that—

- (a) the application is not in conformity with the Constitution of the Republic of Malawi or this Act;
- (b) the name of the party—
 - (i) is identical to the name of a registered political party or a political party that has been deregistered under this Act:

Provided that where five years have elapsed since the deregistration is made, the application to register may be granted;

- (ii) is confusingly similar to a name of a registered political party or a political party whose registration has been cancelled under this Act:

Provided that where five years have elapsed since the deregistration is made, the application to register may be granted;

- (iii) denotes a religious faith or a regional or ethnic identity; or

- (iv) is provocative or offends against public decency and morals or is contrary to any other written law;

- (c) the symbol of the party is confusingly similar to a symbol of a political party registered under this Act or a political party whose registration has been cancelled under this Act;

Provided that where five years have elapsed since the deregistration is made, the application to register may be granted; or

- (d) the purpose or objects of the party are unlawful.

(2) A political party shall be deemed to have a purpose or objects which are unlawful for the purpose of this Act if—

- (a) it seeks, directly or indirectly, to further ethnical, racial or religious discrimination or discrimination on the grounds of colour;
- (b) its purpose, objects or membership are based on a religious faith;
- (c) it advocates or seeks to effect political change in the Republic through violence or unlawful means; or
- (d) it seeks to secede any part of the Republic from the Republic.

(3) For the purposes of determining whether a political party has an unlawful purpose or objects, the Registrar may consider any document issued or statement made by, or on behalf of, the party or by an office bearer of the party.

(4) Where the Registrar refuses to register a political party, he shall, within thirty days, serve upon the party a notice in writing to that effect and shall specify the grounds for his refusal.

Appeal against refusal to register a political party

11 A political party that is aggrieved by the decision of the Registrar made under section 10 may, within thirty days of receiving the notice of refusal, appeal to the High Court, through an office bearer, against

the decision of the Registrar, and the High court may make such order as it thinks fit.

Deregistration
of a political
party

12— (1) The Registrar may, on his own motion or upon application by a member of a political party, deregister a political party—

- (a) if he is satisfied that—
 - (i) the registration of the party was obtained by fraud or mistake;
 - (ii) the party has a purpose or objects which are unlawful;
 - (iii) the number of members of the party in any of the districts of Malawi has fallen below twenty;
 - (iv) the party has not held a convention for a period of at least five consecutive years from the date of its registration or the date the party held its last convention;
 - (v) the party has not fielded a minimum of twenty five per cent of candidates for parliamentary and local government elections in at least two consecutive general elections; or
 - (vi) the party has been dissolved in accordance with its constitution.

(b) if the party, after notice of the Registrar requiring the party to comply with this Act, fails to do so within thirty days; or

(c) if the Registrar is satisfied that the party has ceased to exist.

(2) The Registrar shall, twenty one days before deregistration of a political party under subsection (1), give notice in writing to the party of his intention to deregister and the grounds for the intended deregistration.

(3) The Registrar shall, within thirty days after deregistering a political party, publish a notice of the deregistration in the Gazette.

(4) For purposes of this section, “convention” means an assembly of delegates or representatives of a political party for purposes of nominating, appointing or electing candidates for office and adopting party policies or rules, and includes a national conference aimed at achieving the same purposes.

Appeal against
deregistration
or intended
deregistration
of a political
party

13— (1) A political party in respect of which the Registrar has issued a notice under section 12 (2) may, upon receipt of the notice and

before the period specified in the notice has elapsed, appeal to the High Court against the finding of the Registrar as contained in the notice of intended deregistration and the High Court may make such order as it thinks fit.

(2) Where a political party has been deregistered , , the party may, within fourteen days after the publication of the notice of deregistration in the Gazette, appeal to the High Court against the deregistration, and the High Court may make such order as it thinks fit.

Notice of
change in
registered
particulars

14 — (1) A registered political party shall, within fourteen days of any change in its registered particulars, notify the Registrar in writing of such change.

(2) A registered political party shall, within fourteen days of making an amendment to its constitution, rules or manifesto submit two copies of the amendment to the Registrar and the amendment shall not take effect until it has been registered by the Registrar.

(3) Where the Registrar registers an amendment submitted under subsection (2) he shall stamp the two copies of the amended constitution, rules or manifesto and return a copy of each to the political party.

Failure to
notify changes

15. A registered political party which fails to comply with section 14 commits an offence and is liable to a fine of K500, 000, and to a further fine of K50, 000 for each day that the offence continues.

Refusal to
register
amendments

16— (1) The Registrar may refuse to register an amendment submitted under section 14 (2) if it appears to the Registrar that, by reason of the amendment-

(a) the purpose or objects of the political party would be unlawful; or

(b) the amendment contravenes this Act.

(2) Where the Registrar refuses to register an amendment under subsection (1), he shall give notice in writing to the political party, informing the party of his refusal to register the amendment, and giving reasons for such refusal.

(3) Where the Registrar refuses to register an amendment under subsection (1), any office bearer of the political party may, within fourteen days of the date of the notice of refusal, appeal to the High Court and the High Court may make such order as it thinks fit.

Entitlement to State funding

17— (1) A political party which has secured more than one-tenth of the national vote in parliamentary elections shall be entitled to be provided with funds by the State to ensure that, during the life of any Parliament, the party has sufficient funds to continue to represent its constituency.

(2) The provision of funds to political parties by the State shall be made quarterly.

Uses of State funding

18. —(1) A political party shall use funds received from the State for any of the following purposes—

- (a) promoting the representation of the party in Parliament ;
- (b) promoting active participation of individual citizens in political life;
- (c) covering of the election expenses of a political party and the broadcasting of the policies of the political party;
- (d) the organization by the party of civic education in democracy and other political processes; and
- (e) administrative and staff expenses of the party.

(2) The funds received from the state shall not be used for personal gain.

Banking,
accounts and
audit

19. — (1) A political party which receives funding from the State shall—

- (a) keep, with a commercial bank in Malawi, a separate bank account into which funds provided to the party shall be deposited;
- (b) keep proper books and records of account in relation to the funds, and shall balance its accounts for that year and produce statements of final accounts within six months after the end of each financial year; and
- (c) submit the final accounts to the Registrar who shall forward a copy of the accounts to the Auditor General and the Speaker of the National Assembly.

(2) The accounts of a political party which receives funding from the State shall be audited by the Auditor General or an auditor appointed by Parliament.

(3) The Auditor General or the auditor appointed under subsection (2), shall present a report of the audited accounts to—

- (a) the Registrar;
- (b) the political party concerned; and
- (c) the National Assembly.

(4) After considering the report presented under subsection (3), the Registrar may recommend to the National Assembly to disallow any item of expenditure which is contrary to this Act.

- (5) The National Assembly shall have power to-
- (a) surcharge the amount of any expenditure disallowed on the party;
 - (b) surcharge any sum which has not been duly brought into account on the party;
 - (c) surcharge the amount of any loss or deficiency occasioned by the negligence or misconduct of any person on the party; or
 - (d) set off the amount irregularly spent against any allocation that may be or may become payable to the party.

(6) Any person aggrieved by a decision of the National Assembly may apply to the High Court for judicial review.

(7) Any sum surcharged on a party shall be payable to the Registrar within one month of the written notification of the surcharge to such party, or in the case of an application under subsection (6), within one month of the decision of the High Court if such decision confirms the surcharge and shall be recoverable as a debt to the Government.

Suspension of
State funding

20. — (1) The National Assembly may, on the recommendation of the Registrar, order that the allocation of funds to a political party be suspended if he is satisfied that the party has failed to comply with any requirement under this Part.

(2) Where the National Assembly intends to order the suspension of the provision of funds to a political party by the State, he shall—

- (a) by written notice inform the party of the intended suspension and the reasons for the suspension; and
- (b) request the party to give reasons in writing within a period specified in the notice why the provision of funds by the State should not be suspended.

Closure of
books and
records of
account upon
dissolution of
Parliament

21. Where Parliament is dissolved, a political party represented in Parliament shall—

- (a) close the party's books and records of account kept in terms of section 19 not later than twenty-one days before the date set for the general elections and shall within fourteen days thereafter submit an audited

statement in respect of those books and records of account to the Registrar; and

- (b) not later than the day immediately before the date set for the general elections, repay to the Registrar any unspent balances as at the date when the books and records of account were closed, of all funds that had been allocated to the party.

Power of Minister responsible for finance to give financial instructions

22. [The Minister responsible for finance] may issue written instructions for the better control and efficient management of funds provided to political parties under this Act.

Private funding and receipt of donations

23. — (1) A registered political party may receive membership fees from its members.

(2) A registered political party may, for the purposes of financing its activities, appeal for and receive donations from any individual or organisation, in or outside Malawi, provided that the source of every donation, exceeding K1, 000, 000 from an individual donor and K2, 000, 000 from an organization shall, within thirty days of its receipt, be declared to the Registrar by the political party concerned.

(3) Every asset that a political party receives as a donation whose value exceeds K1, 000, 000 from an individual donor and K2,

000, 000 from an organisation shall, within thirty days of its receipt, be declared to the Registrar.

(4) A President, Secretary General and the Treasurer General of a registered political party shall be responsible for declaring to the Registrar the source of any donation that requires disclosure under subsections (2) and (3).

(5) Any person who-

(a) fails to comply with subsections (2) or (3); or

(b) gives false information in relation to funds or assets received by a registered political party under subsections (2) or (3),

commits an offence and is liable to a fine equal to the amount of the funds or the value of the assets not declared or in relation to which false information was given, and to imprisonment for two years.

(6) Every registered political party may perform any lawful activities for the purpose of raising funds for the party.

(7) Any person who uses or threatens to use force or violence, injures, damages or harms any person who donates or intends to donate any funds to a candidate, or a member of his family or any of his undertakings, commits an offence and is liable to a fine of K500, 000 and imprisonment for five years.

Separate bank account for private funding

24. A registered political party shall ensure that all funding and donations received by the party under section 24 in the form of money are deposited in a separate bank account held in the name of the political party.

Registration and declaration of assets

25. — (1) A registered political party shall ensure that the ownership of all donations received by the party under section 24 in the form of assets are vested in the name of the party.

(2) A registered political party shall, on the date of its application for registration and thereafter after every five years, declare the assets owned by the political party to the Registrar in the prescribed form.

Members' access to financial records

26. A member of a registered political party shall be entitled to have reasonable access to all financial records of the party of which he is a member.

PART VI — RIGHTS AND DUTIES OF POLITICAL PARTIES IN ELECTIONS

Right to participate in elections

27. — (1) A registered political party shall have the right to nominate candidates to contest in presidential, parliamentary or local government elections and to campaign for any candidate in the elections.

(2) A political party shall not electioneer, or authorize any person to act on its behalf, in connection with an election in which political parties contest unless it is a registered political party.

(3) A person shall not act on behalf of, or represent himself as acting on behalf of, a political party in connection with or for the purpose of a specified election unless—

(a) the political party is a registered political party; or

(b) the person is a member of, and has been authorized in writing to act on behalf of, the registered political party.

(4) A person who, or political party that, contravenes this section commits an offence and shall be liable to a fine of K500, 000.

Freedom of
Assembly

28. Every registered political party shall have the right to organize and conduct public rallies without undue interference from the State, other political parties, or any person.

Freedom of
expression

29. — (1) A registered political party shall have the right to freely publish its election campaign materials and to be accorded adequate facilities for access to public information reasonably required for such publication.

(2) A registered political party shall have the right to equitable and balanced coverage during presidential, parliamentary and local government elections by the Malawi Broadcasting Corporation and every media organization funded by the State.

PART VII — MISCELLANEOUS PROVISIONS

Inspection by
the Registrar

30. The Registrar may, at any time after the registration of a political party, require the political party to submit to him any document issued or produced by it or in its name for any purpose and may at any reasonable time inspect and take or extract from copies of, or require an office bearer or employee of a registered political party to produce in readable form and provide him with, a copy of or extract from the record of the political party.

Access to
information
received by
the
Registrar

31. A person shall have the right of access to information received by the Registrar in the exercise of his functions under this Act.

Onus of
proof

32. Where a written law prohibits the doing of anything except by or restricts the doing of anything to, a registered political party, the onus of proving that—

- (a) a political party is registered under this Act shall be on the person who claims that it is so registered; and
- (b) a person is an office bearer or member of or has been authorized by the registered political party in respect of which he claims to be acting shall be on the person who claims to be an office

bearer or member of or to be authorized by the party.

Provision of false information to, obstruction of, etc., the Registrar

33. A person who—
- (a) for the purpose of obtaining the registration of a political party, wilfully—
 - (i) provides any false or misleading information to the Registrar or any person authorized by the Registrar;
 - (ii) makes any false declaration to the Registrar or any person authorized by the Registrar; or
 - (iii) forges or otherwise submits any document to the Registrar or any person authorized by the Registrar which he knows to be false or misleading, or
 - (b) obstructs the Registrar or any person authorized by the Registrar in the performance of his functions under this Act,

commits an offence and is liable to a fine of K500, 000 and imprisonment for twelve months.

Unauthorized
distribution of
the constitution
or rules

34. — (1) An office bearer of a registered political party shall not distribute to any person, other than the Registrar or a person authorized by the Registrar in connection with the performance of his functions under this Act or a police officer in connection with an offence under this Act or any other written law, a document which purports to be a copy of or a copy of a part of or an extract from the constitution or rules of the political party, unless the document is an exact copy of or an exact copy of the part of or exact extract from the latest registered copy of the constitution or rules of the political party.

(2) An office bearer of a registered political party who contravenes subsection (1) commits an offence and is liable to a fine of K200, 000 and imprisonment for six months.

Regulations

35. The Minister may make regulations for the better carrying into effect of the provisions of this Act.

Repeal and
savings
Cap. 2:07

36. — (1) The Political Parties (Registration and Regulation) Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

- (a) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and
- (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

PART VIII — TRANSITIONAL PROVISIONS

Status of political parties already registered
Cap 2:07

38. Any political party which, immediately prior to the commencement of this Act, was registered under the Political Parties (Registration and Regulation) Act repealed by section 37 shall be deemed to have been registered under this Act.

Saving of existing rights, powers, etc.
Cap. 2:07

38. Any act done, and any power exercised or right acquired by any political party pursuant to the Political Parties (Registration and Regulation) Act repealed by section 37 shall not be invalid by virtue of that repeal only.

Compliance with this Act

39. — (1) Any political party deemed to have been registered under this Act in accordance with section 38 shall, not later than one year, comply with this Act.

(2) The Registrar shall cancel the registration of any political party that fails to comply with subsection (1).

(3). The Registrar shall, thirty days before cancelling the registration of a political party under subsection (2), give notice in writing to the party of his intention to cancel its registration, giving reasons for the intended cancellation.

(4) Where the registration of a political party has been cancelled under subsection (2), the political party may, within thirty days after the cancellation, appeal to the High Court against the cancellation and the High Court may make such order as it thinks fit.

OBJECTS AND REASONS

The object of this Bill is to repeal the Political Parties (Registration and Regulation) Act (Cap. 2:07) and replace it with a new law which will address the challenges being faced when regulating the registration, financing and functioning of political parties.

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Attorney General