



In partnership with the
Republic of Malawi

“CHILUNGAMO II (Justice & Accountability) Programme
Lilongwe, Malawi”

Terms of Reference – Senior Non-Key Expert



This project is funded by
The European Union

TERMS OF REFERENCE FOR SENIOR NON-KEY EXPERT

SUMMARY

CATEGORY	SENIOR NON-KEY EXPERT
POSITION	Senior Legal Expert
OBJECTIVE/PURPOSE OF THE CONSULTANCY	Provide expert legal services to defend the Office of the Ombudsman in the High Court and Supreme Court, ensuring that the interests of the office are protected, and its mandate is upheld.
EXPECTED OUTPUTS/ DELIVERABLES	<ul style="list-style-type: none">• A comprehensive review and analysis of individual cases undergoing litigation vis-à-vis applicable laws and case law• A comprehensive legal strategy for individual Cases undergoing Litigation in the Courts• Comprehensive submissions on individual cases before the Courts• Legal representation on all matters before or proceeding to the High Court and Supreme Court of Appeal• A comprehensive report on the outcome of each case• Technical legal advice to the Ombudsman on all issues before the High Court and Supreme Court of Appeal• A final report on the consultancy, including recommendations for future legal work.
EXPECTED OUTCOME	<ul style="list-style-type: none">• Protect the mandate and authority of the Office of the Ombudsman, which is essential to ensure that the Ombudsman can operate freely and independently without facing challenges at every stage of investigations.• Increase access to administrative justice and improve governance by broadening the range of individuals who can submit complaints to the Ombudsman.• Enhance the rule of law and promote compliance with its principles among duty-bearers.
LOCATION	Lilongwe and Blantyre Malawi
INPUT	45 working days
TIMEFRAME	May 2025 – April 2026



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1. BACKGROUND

The European Union is funding the Technical Assistance Project to provide technical and administrative assistance to the Government of the Republic of Malawi in implementing the Chilungamo Programme II, which is continuity for the Chilungamo I, implemented between 2018 and 2022. The Chilungamo I Programmer’s main objective was to contribute to a dignified life through accountable Government, informed democratic choice, and humane and effective delivery of justice.

Chilungamo II builds on previous interventions in the justice sector and will continue to support justice reforms that aim at long-term and sustainable solutions to systemic issues with accessibility and effectiveness of key justice institutions. To this end, the project will support institutional capacity building, gradual decentralisation of services, and introducing and scaling up innovative solutions such as alternative sentencing and expanding paralegal and mediation services. Seven key justice institutions are to be supported under this project: The Ministry of Justice, the Judiciary, the Police, the Prisons, the Malawi Human Rights Commission, the Office of the Ombudsman and the Legal Aid Bureau.

2. CURRENT SITUATION OF THE JUSTICE SECTOR IN MALAWI

The Constitution of Malawi guarantees every person the right of access to justice, which entitles him or her to recognition before the law; access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues; and effective remedies by a court of law or tribunal for acts violating his or her rights and freedoms. Since adopting the current Constitution in 1994, the legal provisions that guarantee inclusive access to justice have been supported by the development and operation of a wide range of state and non-state institutions involved in delivering justice.

Despite the existence and operation of relevant legal standards and institutions, access to justice remains limited for most Malawians, especially women, the poor and other social groups whose access to justice remains disproportionately limited. Limitations in access to justice affect certain socio-demographic groups disproportionately, and vulnerable populations, including women and child victims of crime, have particular needs and face challenges when reporting sexual and other forms of violence to the police and during trials that make it difficult for them to participate fully during proceedings, leading to acquittals in many cases.

1. EUROPEAN UNION – MALAWI COOPERATION

The European Union is a longstanding leading development partner in Malawi's Democratic Governance Sector (DGS). The European Union's Multiannual Indicative Programme (MIP) includes Democratic and Economic Governance as a Priority Area.

2. OVERALL OBJECTIVE OF CHILUNGAMO II

The Overall Objective of Chilungamo II (Access to Justice) is to **improve the humane and effective delivery of justice for all, especially those living in marginalised and most vulnerable situations**. The programme also seeks to contribute to achieving the objectives of Malawi’s rule of law and justice reform agenda and Democratic Governance Sector Strategy and build on successes and lessons from previous programmes and strategies.



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To contribute to the Overall Objective of the Chilungamo II (Access to Justice), technical assistance should contribute to one of the following objectives.

- Specific Objective 1: Enhance effectiveness and legal and coordination frameworks of the key justice institutions.
- Specific Objective 2: Improve access to justice for all, especially for the population living in the most vulnerable situations and women

3. DESCRIPTION OF THE INSTITUTIONAL NEED FOR THIS CONSULTANCY

The Office of the Ombudsman currently has three matters adjudicated by the High Court of Malawi which it intends to appeal to the Supreme Court of Malawi. The Office of the Ombudsman therefore requires private Legal Practitioners with a minimum of 15 years of work experience and post admission to the bar with a good track record of appearances before the Supreme Court of Appeal.

The Office of the Ombudsman will benefit from the consultancy as we will get assistance and expertise to litigate the matter before the Supreme Court. What is at stake in all three of these matters are jurisdictional issues, and the scope of the mandate of the Ombudsman, locus standi before the Ombudsman, as well as issues of when a review of the Ombudsman’s decisions can be commenced in the Courts. The Supreme Court of Appeal will have to provide legal positions on these matters following recent rulings/judgments from lower courts.

4. THE OVERALL OBJECTIVE OF THE CONSULTANCY

- Provide expert legal services to the Office of the Ombudsman in litigation processes in the High Court and Supreme Court.

4.1. SPECIFIC OUTPUTS OF THE CONSULTANCY/DELIVERABLES

By the end of the consultancy assignment, the Expert will have delivered the following;

A thorough review and analysis of individual cases in litigation, considering applicable laws and relevant case law.

- A detailed legal strategy for individual cases in litigation before the courts.
- Comprehensive submissions for individual cases presented in court.
- Legal representation for all matters before or progressing to the High Court and the Supreme Court of Appeal.
- A detailed report on the outcome of each case.
- Technical legal advice provided to the Ombudsman regarding all matters before the High Court and the Supreme Court of Appeal.
- A final report on the consultancy, including recommendations for future legal work.



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4.2. SCOPE OF THE ACTIVITIES

The legal expert shall:

- Review High Court judgments, draft and file Supreme Court documents, and ensure the matter is presented before the Supreme Court in a timely manner.
- File and amend the notice of appeal, grounds of appeal, skeleton arguments, and supplementary arguments as needed.
- Prepare court briefs, including case summaries and legal arguments, as necessary. Attend court hearings, trials, and other proceedings as required.
- Represent the office in lawsuits and other legal challenges before the High Court and the Supreme Court of Appeal.
- Collaborate with the Ombudsman and office staff to gather evidence, including witness statements and expert opinions, and prepare for court hearings.
- Prepare and submit reports on the progress of litigation to the Ombudsman.

Scope of the assignment

This consultancy aims to provide expert legal representation for the Office of the Ombudsman in the Supreme Court, ensuring that the Office's interests are protected, and its mandate is upheld. The consultant's scope of work is comprehensive and includes the following tasks:

1. Reviewing case files, including all relevant documents, evidence, and witness statements.
2. Conducting legal research and analysis.
3. Preparing all necessary court documents, including pleadings, motions, and briefs.
4. Filing and amending the notice of appeal and the grounds of appeal.
5. Representing the Office of the Ombudsman in the Supreme Court and managing post-trial activities.

Timelines

The Consultancy will commence in May 2025 and end April 2025. The legal expert will submit the deliverables within the specified timelines.

4.3. METHODOLOGY TO BE USED

Initial Phase (Pre -trial Phase)

1. **Draft Inception Report:** Presentation of detailed approach, methodology, work plan and initial findings after the kick-off meeting.
2. **Review of existing documents and case files:** The legal expert will review relevant documents, including the Office's mandate, policies and procedures, evidence, and relevant statements.
3. **Stakeholder interviews:** The legal expert will interview key stakeholders, including the Ombudsman, senior staff, and other relevant officials.
4. **Legal Research:** The legal expert will conduct comprehensive legal research on the relevant laws, regulations and court decisions.
5. **Development of a case strategy:** The legal expert will develop a case strategy, including identifying the key issues, developing arguments, and identifying potential witnesses.
6. **Preparation of court documents:** The legal expert will prepare all necessary court documents, including pleadings, motions, and briefs.



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Trial Phase

1. **Representation in court:** The legal expert will represent the Office of the Ombudsman in court, presenting arguments, examining witnesses, and responding to questions from the judge.
2. **Cross-examination of witnesses:** The legal expert will cross-examine witnesses called by the opposing party, challenging their testimony and credibility.
3. **Presentation of evidence:** The legal expert will present evidence, including documents, records, and expert testimony, on behalf of the Office of the Ombudsman.

Post-Trial Phase

1. **Submission of post-trial briefs:** The legal expert will submit post-trial briefs, arguing the case and responding to the opposing party's arguments.
2. **Attendance at post-trial hearings:** The legal expert will attend post-trial hearings, responding to the judge's questions and arguing the case.
3. **Submission of final report** on the consultancy, including recommendations for future legal work.

4.3. TASKS TO BE CONDUCTED BY THE CONSULTANT

TASK	TIMELINES
1. Draft Inception Report: Presentation of detailed approach, methodology, work plan and initial findings after the kick-off meeting.	5 days
2. Review of existing documents, cases files and conduct legal research	15 days
3. Develop a case strategy and prepare court documents	15 days
4. Represent the office in court	5 days
5. Write the final report with all the annexes and tools.	5 days
Total days needed	45

4. NON-KEY EXPERT REPORTING REQUIREMENTS

The expert will report to the –Director of Legal and Advisory Services Ms. Chipiliro Leah Mangulama and the Team Leader for the Chilungamo II Programme.

For the contracting and overall supervision of the deliverable, the consultant shall report to the Team Leader of the Chilungamo Programme. The beneficiary institution and the team leader of Chilungamo II are responsible for providing the NKEs with the necessary background material.

Reports must be brief documents (less than 30 pages) explaining how the work was developed, the results, and how the activity was carried out. Furthermore, the reports must showcase the achievement of the specific objectives and expected results/outputs of the mission. All reports must have an Executive Summary. The different products established in the ToR will be presented as annexes and must be submitted in separate documents and in Word format.

1. The consultant must use the Template “NKE Reporting Activities”, which will be provided to the consultant by either the Project Manager (elisenda.comadran@dt-global.com) or Project Administrator (gnhlema.consultant@dt-global.com).



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At the beginning of each report, the following pages must be filled out:

- Cover page
 - Disclaimer
 - Author's name
 - Executive Summary
2. Indexes should be automatic.
 3. All documents, including annexes, must bear the DITISA logo and the contract number.
 4. Reports must have the pages numbered.
 5. Uniformity of the report in terms of font, size and spacing. The font must be either Cambria or Calibri
 - Title: Cambria or Calibri 14
 - Sub-Title: Cambria or Calibri 12
 - Report body: Cambria or Calibri 11
 - Line spacing: 1.15
 6. The headings of the different sections should be numbered.
 7. The annexes must be separated with the same headers and footers except for the ToR approved by the DUE.

5. USE OF INCIDENTAL FUNDS

The consultant is expected to present a work plan as part of the Inception Report. For the probable visits outside the Lilongwe, a car with a driver will be hired by Incidental funds.

6. SUPERVISION OF THE CONSULTANCY

The consultant must deliver all the results to the beneficiary institutions and get their approval of the quality. For the formal approval of the deliverables, the expert shall report to the Team Leader, who shall be responsible for the overall coordination of the Non-Key Expert (NKE) work. The beneficiary institutions and the Project team are responsible for providing the NKE with the necessary background material.

7. LOCATION AND DURATION OF THE ASSIGNMENT

This assignment will be implemented in Lilongwe, Malawi, with possible missions outside the assigned area. The duration of the assignment is 45 working days over 12 months.



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8. QUALIFICATIONS REQUIRED — DEMOCRATIC GOVERNANCE EXPERT

10.1. QUALIFICATIONS AND SKILLS:

- A master’s degree in law or a related field.
- A strong academic record, with a focus on constitutional law and administrative law.
- Admission to the bar with 15 years of experience in the relevant jurisdiction.
- Excellent analytical, interpersonal and communication skills.

10.2. GENERAL PROFESSIONAL EXPERIENCE:

- A minimum of 15 years’ professional experience, with proven experience in constitutional law, and administrative law.
- Proven track record of success in the Supreme Court or other high-level court.
- Experience in handling complex, high-profile cases with significant implications for the Office of the Ombudsman.
- Familiarity with the rules and procedures of the Supreme Court and other relevant courts.
- Strong knowledge and background of working with development partners such as European Union.

10.3. SPECIFIC PROFESSIONAL EXPERIENCE

- Proven experience in litigation with a focus on Constitutional law including cases related to, administrative law, and judicial review.
- Experience in working with government agencies or other organizations_ on legal matters related to the Office of the Ombudsman's mandate.
- Strong knowledge and background of working with development partners such as European Union.