

The Malawi Gazette Supplement, dated 26th June, 2009, containing Bills.

NOTICE

The following Bills, for introduction in Parliament, are published for general information.

LILONGWE. 26th June, 2009.

M. M. KATOPO I.A Clerk of Parliament

POLICE BILL, 2009

Health And Civic Research Initiative (HACRI) Limited

MEMORANDUM

This Bill proposes to repeal the Police Act (Cap. 13:01), and in its place introduce new legislation to comprehensively codify the law that regulates the Police Service so that its operations are in line with the Constitution.

This Bill is a product of the work of a special Law Commission appointed under section 133 of the Constitution (the "Commission") to comprehensively review the Police Act and related legislation. The Commission was set up following receipt in 1999 by the Law Commission of two submissions; the first one was from the Ministry of Home Affairs requesting the Law Commission to draft Rules to allow lay persons in local communities to visit police cells to observe and to comment and report on conditions under which persons are detained at police stations and the second submission was from the Inspector General of Police recommending the review of all legislation relating to policing.

The membership of the Commission included representation from the Police, the Ministry of Home Affairs, the Judiciary, the Ministry of Justice, the Malawi Law Society and retired police officers.

In reviewing the Act, the Commission was mindful of the fact that the principal objective of policing and law enforcement is to provide security. In this regard, the Commission recognized that the governing legislation on the organization and functioning of the Police namely the Police Act, which was enacted in 1946, was obsolete. On attaining independence, in 1964, Malawi adopted the colonial Act wholesale, save only for omission of references to colonial terminologies.

The Commission concluded that in its present framework the Act is ill-equipped to enable the Police to effectively prevent, control and combat crime in a democratic society that Malawi is at present. In particular, the present Act has been overtaken by the recent constitutional developments in Malawi with the adoption of the new Constitution in 1994 which enshrines democratic governance. Issues of transparency, accountability and the respect

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for, and promotion and protection of, human rights are absent from our present Police Act. Thus, in recent times the general public was questioning the position of the Police in the new democratic Malawi. On some occasions the Police have also been accused of resorting to brutality as a means of law enforcement. The expectation is that reforms to police law may therefore contribute to a change of attitudes and forms of behaviour of police officers and this development is expected to have a positive impact on the whole criminal justice systems and on society's perception of the policing system.

The new Constitution has established the Police Service Commission and has assigned specific powers and duties to this body in relation to the appointment, promotion and disciplinary control of police officers. This calls for a re-look at the organizational structure of the police service and at the powers presently assigned to various authorities in relation to matters of appointment and discipline of police officers as these are now within the purview of the Police Service Commission.

In arriving at these findings, the Commission undertook a programme of public consultations to have wider input into its work. This was done through convening of meetings with various stakeholders and through invitations of submissions on the provisions of the Act. These invitations were issued by means of notices that were published in the local press and in the Gazette. Further, members of the Commission drew lessons from within the Region. All submissions and comments that were received by the Commission were considered and debated and, in some instances, have been adopted in drafting the Bill.

As part of the national consultative process, the Commission also convened a workshop in October 2001, to subject its findings and recommendations on the Act to the scrutiny of a wider section of society with a view to enhance participation in the law reform process.

The Bill endeavours to, among other things—

- (a) portray the Police as a "Service" rather than a Force to emphasize that policing duties are actually a service to citizens;
- (b) incorporate constitutional and applicable international norms relating to modern policing methods;
- (c) enhance transparency and accountability of the Police as a State Organization;
- (d) enhance respect for human rights within the Police Service;
- (e) create certain bodies, institutions and mechanisms which will make the Police transparent and accountable service organization and improve its functioning;
- (f) introduce provisions which specifically outlaw, and create penalties, for the use of unconventional and international prescribed policing methods; and

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(g) create an elaborate disciplinary regime within the Police Service capable of dealing with transgressions by police officers swiftly and fairly through a process which creates confidence in the public.

The Bill further seeks to reform the police to become an open and accountable institution that is service-driven. It requires the police to respect and protect rights of persons, including detained persons. The Bill has moved away from the concept of having the Police as an armed force since the Constitution has given such mandate exclusively to the Defence Force.

The Bill also makes provision for the new organizational structure of the Police and introduces the Police Service Commission under police law as a distinct body with specific powers and functions in relation to the Police Service with particular reference to the appointment, promotion and disciplinary control of police officers.

Another important feature of the Bill is that it proposes a new approach to the regulation of the assemblies and processions, including public demonstrations. It provides that convening or scheduling of certain assemblies and demonstrations should be done through the District Commissioner. In this respect, the Bill requires the District Commissioner to consult with the Police only in relation to matters of safety and security of participants.

The Bill has retained the idea of reservists to be called up in case of emergency but has opted for a new part to introduce a Police Reserve created to ensure the existence of a properly regulated reserve of police officers. Thus, the Part provides for eligibility, mode of appointment and the terms and conditions applicable to officers who are to serve as members of a Police Reserve.

In addition the Bill introduces a number of other new areas that are aimed at enhancing efficiency, accountability and transparency in the exercise of police powers and the performance of police functions. Among the new areas introduced are the following—

- (a) a lay visitors scheme to allow designated members of the community to visit police holding cells to assess the treatment and conditions under which detained persons are kept;
- (b) provisions to regulate community policing which would formalize the creation of Community Police Forums to enable the police to collaborate with local communities in efforts to arrest and detect crime;
- (c) provisions to create an Independent Police Complaints Commission to enable the public to lodge complaints against inappropriate conduct of police officers in order to enhance police accountability and eradicate any perception of impunity among police officers; and
- (d) provisions to regulate public order at football matches in order to control and minimize instances of football hooliganisms and also to provide for effective policing methods in cases of violence at football matches. Provision has been made to apply the same measure to other sports gatherings.

POLICE BILL, 2009
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A BILL

entitled

An Act to provide for the organisation, administration and the general powers, duties and functions of the Malawi Police Service; to make provision for the functioning of the Police Service Commission and for the recruitment, appointment, promotion and discipline of police officers; to establish an Independent Complaints Commission as a specialized body to receive and hear complaints by the public against police officers and make recommendations thereon; to make provision for the regulation of public order in relation to public assemblies, processions and demonstrations and at football matches; to make provision for community policing; to provide for a lay visitors scheme to enable lay persons in the community make inspection visits to police stations to check conditions of persons there detained; and further to provide for connected and ancillary matters

PART 1-PRELIMINARY

1. This Act may be cited as the Police Act 2009, and shall come into operation on such date as the Minister shall appoint by notice in the Gazette.

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

"assistant commissioner" includes a senior assistant commissioner of police;

"Code" or "Disciplinary Code" means the Disciplinary Code of Conduct established by section 52 and set out in the Schedule:

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"community police forum" means a community policing forum established under Part XI, and includes any sub-forum thereof;

"criminal offence", in relation to matters of disciplinary control of police officers, means any offence, triable by a court of criminal jurisdiction prescribed under any written law, including this Act;

"Inspector General" means the Inspector General of Police appointed under section 154 of the Constitution;

"Independent Complaints Commission" means the body established under Part XIII;

"Independent Complaints Commissioner" means the public officer appointed under section 132;

"junior rank" means the rank of a police officer of or below sub-inspector, and "junior police officer" shall be construed accordingly;

"Lay visitors scheme" means the lay visitors scheme established under Part XII;

"National Police Disciplinary Committee" means the National Police Disciplinary Committee established under section 55;

"offence against discipline" means a disciplinary offence prescribed in the Code of Conduct or otherwise prescribed in this Act;

"officer in-charge of police" means a police officer appointed by the Inspector General to be in-charge of the police stationed in any area;

"the Police", "the Police Service" or "the Service" means the Malawi Police Service established under Chapter XV of the Constitution;

"police disciplinary committee" includes the National Police Disciplinary Committee and a subordinate police disciplinary committee;

"police officer" means any member of the Police Service:

"Police Reserve" means the Malawi Police Service Reserve established under Part VIII;

"Police Rewards and Fines Fund" means the fund established under Part VII;

"Police Service Commission" means the body by that name established under section 155 of the Constitution and provided for under Part III of this Act;

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"police station" means any place appointed by the Inspector General to be a police station and, where appropriate, includes the police formation constituting the national headquarters or a regional headquarters of the Police;

"public place" or "place of public resort" includes any premises or place to which, at the material time, the public have, or are permitted to have, access, whether upon a payment or otherwise;

"region" means any part of Malawi designated under section 11 to constitute a region for the purposes of the administration of the Police Service;

"senior rank" means the rank of a police officer of or above inspector, and "senior police officer" shall be construed accordingly;

"service", in relation to service in the Malawi Police Service, does not include service as a member or an officer of the Police Service Commission or the Independent Complaints Commission or as a member of a community police forum or as a lay visitor under the lay visitors scheme, except for a police officer who is a member thereof;

"subordinate police disciplinary committee" means a police disciplinary committee established under section 55, subordinate to the National Police Disciplinary Committee:

"superintendent" includes a senior superintendent and an assistant superintendent;

"superior police officer" means any police officer of or above the rank of assistant superintendent;

PART II-CONSTITUTION AND ADMINISTRATION OF THE MALAWI POLICE SERVICE

3. The Malawi Police Service established under Chapter XV of the Constitution shall operate and function in accordance with the provisions of this Act, in addition to the provisions of that Chapter.

4,— (1) The Police Service shall be employed in and throughout Malawi for —

(a) the prevention, investigation and detection of crime; (b) the apprehension and prosecution of offenders;

(c) the preservation of law and order;

(d) the protection of life, property, fundamental freedoms and rights of individuals;

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(e) the due enforcement of all laws with which the Police are directly charged;
(f) the exercise or performance of such other powers, functions and duties as are conferred on the Police by or under this Act or any other written law or as may by law be exercised, performed or otherwise discharged by the Police.

(2) For the performance of any of the functions under subsection (1), the Police shall be entitled to carry and to use arms, but shall so use such arms only as authorized by this Act or by any other law.

5. The Police Service shall comprise the Inspector General, any Deputy Inspector General, Commissioners, Deputy Commissioners, Senior Assistant Commissioners, Assistant Commissioners, Senior Superintendents, Superintendents, Assistant Superintendents, Inspectors, Sub-Inspectors, Sergeants and Constables.

6. — (1) The ranks of the Police Service shall have precedence and command in the order set out in section 5, with the rank of Inspector General as the most senior.

(2) Police officers holding the same rank shall stand in order of precedence and command according to their seniority reckoned by the date of appointment to that rank in the Service or, where the date of appointment to that rank in the Service is the same, by the date of their enlistment or, where the date of enlistment is the same, by their service number.

(3) Where a police officer, other than a superior police officer, has been seconded to any branch, the word denoting the designation of the branch shall precede the title of the rank held, but the seniority of such police officer shall be the same as if he had not been so seconded.

7. The Inspector General shall, subject to the general directions of the Minister, have the command, superintendence and direction of the Police Service, and may, subject to this Act and to any regulations or rules made thereunder, make such appointments, promotions, and reductions in ranks and grades, other than those of superior police officers and police officers of the rank of inspector, as may be delegated by the Police Service Commission in accordance with this Act.

8.-- (1) The Inspector General may, subject to this Act and to the general directions of the Minister, from time to time, make standing orders for observance by all police officers.

(2) Any police standing orders in force at the commencement of this Act shall be deemed to have been made under subsection (1) and shall continue to apply until revoked or amended or replaced by any other standing orders made under subsection (1).

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9. (1) There shall be a High Command of the Police Service which shall comprise the Inspector General, who shall be the head and chairperson of the High Command, every Deputy Inspector General and officers of the rank of Commissioner.

(2) The functions and duties of the High Command shall be the formulation of organizational policy and the development of strategic and operational directives for the Police Service.

(3) The High Command shall have power to determine its own procedure for the conduct of its proceedings.

10. The Inspector General may delegate his powers under this Act to a Deputy Inspector General, Commissioner, Deputy Commissioner, Senior Assistant Commissioner or an Assistant Commissioner except the power granted under section 8 to make standing orders.

11.—(1) The Minister may, on the recommendation of the Inspector General, designate any part of Malawi as constituting a region of Malawi for the purposes of the administration of the Police Service and shall give notification of such designation in the Gazette.

(2) The Command of the Police in any region shall be vested in such police officer as may be appointed by the Inspector General to be in charge of the region and such officer shall carry out the orders of the Inspector General in all matters connected with the duties, discipline, interior economy and training of the officers under him.

(3) The control of the police in any area or place within a region shall be vested in such police officer as may be appointed by the Inspector General to be in charge of the area or place and such officer shall, subject to the orders and directions of the Inspector General, carry out the orders of the officer in-charge of the region in all matters connected with the duties, discipline, interior economy and training of the officers under him.

12.—(1) livery officer in-charge of a police station shall keep a general diary or an occurrence book and such other books and records, and shall render such returns as the Inspector General may, from time to time direct.

(2) Every officer in-charge of a police station shall be responsible for all public stores and public moneys issued and delivered for the use of the detachment under his command and shall account for such public stores and public moneys to the Inspector General.

PART III — POLICE SERVICE COMMISSION

13. The Police Service Commission established by section 155 of the Constitution shall have, in addition to the functions conferred on it by the Constitution, the following functions ---

(n) to formulate schemes of recruitment in the Police Service;

(b) to provide for and determine the principles to be followed in making promotions in the Police Service for the purpose of ensuring uniformity of treatment of, and the standards to be attained by, police officers of each rank to qualify for promotion;

(c) to provide for all matters relating to the procedure for the exercise, and the delegation, of its powers of appointment, dismissal and disciplinary control of police officers;

(d) to adopt general measures necessary to guarantee efficiency and transparency in relation to appointments, promotions and disciplinary control in the Police Service; and

(e) to do or perform such other functions as are conferred on it by or under this Act or any other written law.

14. The Police Service Commission shall have power—

(a) as conferred on it by the Constitution, to—

- (i) appoint persons to hold or act in offices in the Police Service other than that of Inspector General;
 - (ii) confirm appointments and remove from office any persons so appointed;
 - (iii) exercise disciplinary control in accordance with this Act over persons so appointed;
 - (b) by notice in the Gazette, to declare any additional ranks in the Police Service, fix the precedence of such ranks and declare that any such additional rank shall be deemed to be included in any existing rank for the purposes of the interpretation of this Act;
 - (c) to delegate by directions in writing any of its powers conferred by the Constitution or by this Act or by any other written law, to any member of the Commission or to any public officer or public body being part of the Malawi Police Service;
 - (d) to hear such complaints or appeals from aggrieved police officers relating to the exercise of powers delegated under this section; and
 - (e) to do and perform all such acts or things as are necessary or expedient for the performance or exercise of its functions and powers.
15. Every member of the Police Service Commission shall have such protection and privilege, in case of any action or suit brought

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against him for any act done or attempted to be done in the bona fide execution of his duties, as is by law given in respect of acts done or words spoken by a judge of the High Court in the exercise of his judicial office.

16. The Police Service Commission may require any person to attend and give evidence before it concerning any matter which it may properly consider in the exercise of its functions and powers and may require the production of any documents relating to any such matter by any person attending before it.

17. Any person, other than a person who is notified to appear before the Police Service Commission solely in connection with his application for appointment to a post in the Police Service, who without reasonable cause fails to appear before the Commission when notified to do so by the Commission, or who willfully fails to produce any document in his possession when requested to do so by the Commission, commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

18. -(1) No member of the Police Service Commission or any member of the staff of the Commission shall publish or disclose to any person, otherwise than in the exercise of his official functions, the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties.

(2) Any person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

19.-(1) Any person who directly or indirectly, otherwise than in the course of his duties, by himself or by any other person in any manner whatsoever attempts to improperly influence the Police Service Commission in the exercise of its functions or powers commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

(2) Any person who, in connection with the exercise by the Police Service Commission of its functions and powers, willfully gives to the Commission any

information which he knows to be false or does not believe to be true or which he knows to be false by reason of the omission of any material particular commits an offence and shall, upon conviction, be liable to a Hue of K20,000 and to imprisonment for six months.

(3) For the purposes of subsections (1) and (2). "Commission" includes the Commission, any member of the Commission, any member of the staff of the Commission or any person or body of persons appointed or engaged to assist the Commission in the exercise of its functions and powers.

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20.-(1) The Police Service Commission shall appoint a Secretary to the Police Service Commission who shall be a public officer and the chief executive officer of the Police Service Commission.

(2) The Police Service Commission shall appoint such other staff as it may, from time to time, consider necessary and who shall be public officers.

(3) The Secretary and other staff of the Police Service Commission shall be subject to the direction of the Police Service Commission.

(4) The Police Service Commission may be served by officers in the public service in common with other public service commissions established under the Constitution or under an Act of Parliament, and such officers shall be deemed to have been duly appointed for the purposes of this section.

21.—(1) The Police Service Commission shall meet as often as business requires and, in any event, at least three times a year.

(2) A quorum for meetings of the Police Service Commission shall be formed by the presence of any three members.

(3) Meetings of the Police Service Commission shall be presided over by the Chairman or, in his absence, by a member elected in that behalf by the members attending the meeting.

(4) The Police Service Commission shall have power, subject to this Act, to determine its own procedures for the conduct of its business.

22.—(1) Subject to subsection (2), at every meeting of the Police Service Commission decisions of the Police Service Commission shall be determined by the majority of the members present and voting at the meeting.

(2) The Police Service Commission may make decisions without a meeting by the circulation of the relevant papers among the members and the expression of their views in writing, and if there is any disagreement as to the decision to be made, or if any member expresses a desire for the decision to be deferred, the matter shall be considered at a meeting of the Police Service Commission.

23. Any member of the Police Service Commission shall be entitled to dissent from a decision of the Commission and to have his dissent and his reasons therefore recorded in the minutes of the Police Service Commission.

24. The Secretary shall keep minutes of every meeting of the Police Service Commission, which shall include a record of the members present.

25. Any person attending before the Police Service Commission at the request of the Police Service Commission, other than a public officer or a person who is applying for appointment to

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the Police Service, shall be entitled to be paid by the Police Service Commission expenses and allowances as may be determined by the Minister, from time to time, on the recommendation of the Police Service Commission.

26. At the request of the Inspector General to be heard personally, the Police Service Commission shall hear him or his designated representative personally in connexion with any recommendation made by the Inspector General to the Police Service Commission.

27. In carrying out its functions and duties under the Constitution, this Act and regulations made under this Act, the Police Service Commission shall not take into account any representations made to it otherwise than in accordance with the Constitution, the Act or such Regulations.

28.- (1) Every member of the Police Service Commission, and the Secretary of the Police Service Commission and such other members of staff of the Police Service Commission as the Police Service Commission may require, shall, on appointment, take an oath of office in the prescribed form.

(2) A person who is required under subsection (1) to take an oath may instead make a solemn affirmation in the prescribed form for the due performance of the duties of his office.

(3) An oath or affirmation taken by a member of the Police Service Commission shall be administered by the Chief Justice, and every oath or affirmation taken by the Secretary or any other member of the staff of the Police Service Commission shall be administered by the Chairman of the Police Service Commission.

29. For the avoidance of doubt, the fundamental principles contained in the Public Service Act, for the better administration of the public service shall be applied to the management and administration of the Police Service.

30. The Minister may, on the recommendation of the Police Service Commission, make regulations for the better carrying out of the provisions of this Part, and regulations made under this section shall be cited as the Police Service Commission Regulations.

PART IV- APPOINTMENT AND TERMINATION OF APPOINTMENT OF POLICE OFFICERS

31.- (1) Police officers of or above the rank of inspector, other than the Inspector General, shall be appointed by the Police Service Commission.

(2) Police officers below the rank of inspector shall be appointed by the Inspector General in such manner as the Police Service Commission may direct and subject to such conditions as the Commission may prescribe.

32.- (1) When a police officer ceases to belong to the Police Service, he shall forthwith deliver up to the person appointed by the Inspector General for that purpose, or to the officer in-charge of police at the place at which he was last stationed, all arms, ammunition, accoutrements, uniforms and other appointments which have been supplied to him and which are the property of the Government.

(2) Any police officer who, having ceased to belong to the Police Service, fails to deliver up any such arms, ammunition, accoutrements, uniforms or other appointments as required by subsection (1) commits an offence and shall, on conviction, be liable to a fine of K10,000 and to imprisonment for three months, and the court may issue a warrant to search for and to seize all such arms, ammunition, accoutrements, uniforms and other appointments which shall not have been so delivered up.

33. No police officer shall, without the consent of the Inspector General, engage in any employment or office other than in accordance with his duties under this Act.

PART V—POWERS, DUTIES AND PRIVILEGES of POLICE OFFICERS

34.—(1) Every police officer shall exercise such powers and perform such duties as are conferred or imposed on a police officer by or under this Act or any other written law and as are by law conferred or imposed on police officers.

(2) Every police officer shall—

(a) obey all lawful directions in respect of the execution of his office which he may from time to time receive from any competent authority;

(b) serve, and be willing to serve, at any station to which he may be assigned; and

(c) promptly obey and execute all orders and warrants lawfully issued by a competent authority.

(3) It shall be the duty of every police officer to—

(a) collect and communicate intelligence affecting the functions, powers and duties of the Police;

(b) prevent the commission of offences and public nuisances;

(c) detect crime and bring offenders to justice; and

(d) apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient grounds exist.

(4) Every police officer shall be deemed to be on duty at all times and may at any time be detailed for duty in any part of Malawi.

(5) A police officer may, without warrant, enter at any hour of the day or night any premises licensed under the Liquor Act or any place in which he has reasonable grounds to suspect that illegal drinking or illegal gambling is taking place or to which dissolute or disorderly persons are resorting.

(6) A police officer may, for the purposes of his duties under this section, without a warrant, enter at any hour of the day or night any premises or place in which he has reasonable grounds to suspect that an illegal act is taking place.

(7) Except as otherwise provided by this Act or by the Criminal Procedure and Evidence Code, every police officer shall have all such rights, powers, authorities,

privileges and immunities, and shall be liable to all such duties and responsibilities as any police officer of or below the rank of sub-inspector duly appointed has or is subject or liable to, either by common law or by virtue of any law in force in Malawi.

35.—(1) Where a police officer of or above the rank of sub-inspector has reasonable grounds for believing that any thing necessary for purposes of an investigation into an offence which he is authorized to investigate may be found in any place and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as is possible, the thing for which search is to be made, search without a warrant, or cause search without a warrant to be made, for such thing in any place and, if such thing be found, seize it and carry it before the nearest magistrate empowered to take cognizance of the offence to be dealt with according to law.

(2) A police officer proceeding under subsection (1) shall, if practicable, conduct the search in person.

(3) If a police officer of the rank referred to in subsection (1) is unable to conduct a search in person as required by subsection (2), and there is no other competent officer present to make the search at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him not below the rank of sergeant to make the search; and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and, in so far as it is possible, the thing for which search is to be made, and such subordinate officer may thereupon search for such thing in such place without a warrant.

(4) Except as otherwise provided in this section, the provisions of the Criminal Procedure and Evidence Code as to search warrants shall, so far as may be, apply to a search made under this section.

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(5) Copies of any record made under subsection (1) or subsection (3) shall forthwith be sent to the nearest magistrate empowered to take cognizance of the offence and to the owner or occupier of the place searched.

(6) The occupier of the place searched, or some other person in his behalf, shall, in every instance, be permitted to attend during the search.

(7) A search under this section shall be conducted in a humane manner and unnecessary damage or destruction to property and humiliation or any harassment of individuals shall be avoided.

36.—(1) Any police officer in-charge of a police station may take, or cause to be taken, in his presence, for the purposes of records and identification, the measurements, photographs, footprints and casts thereof of any person in lawful custody or who is subject to police supervision for any offence punishable by imprisonment without the option of a fine, whether as an accused or a convicted person.

(2) In the case of footprints, they shall be taken on a prescribed form, which shall contain directions for taking footprints, and the police officer taking such footprints shall certify on such form that such footprints have been taken by him or caused to be taken in his presence in accordance with the directions contained on such form,

and that the particulars entered on the form are to the best of his knowledge and belief accurate and true.

(3) Where a person whose measurements, photographs, footprints and casts thereof have been taken under subsection (1) is not charged with an offence punishable by imprisonment or is discharged or acquitted by a court, and has not previously been convicted of an offence so punishable, all records of such measurements, photographs, footprints and casts thereof, and any negatives and copies thereof, shall forthwith be destroyed or handed over to such person.

(4) If any person, when required to do so by a police officer refuses to permit his measurements, photographs, footprints and casts thereof to be taken under subsection (1), reasonable force may be used by the police to enable such measurements, photographs, footprints and casts thereof to be taken.

(5) Any person who refuses to permit his measurements, photographs, footprints and casts to be taken under subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for one month.

37. Any police officer may lay information before a magistrate and may apply for a summons, a warrant or other legal process as may by law issue against any person.

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38. Notwithstanding any other written law or any rule to the contrary, no fee or duty shall be chargeable upon bonds in criminal cases recognizances to prosecute or give evidence or recognizances for personal appearance or otherwise issued or taken by a police officer, nor shall such bonds or recognizances require to be sealed.

39.—(1) Any police officer may—

(a) stop and detain any person whom he —

(i) sees doing any act or thing;

(ii) sees in possession of any thing; or

(iii) suspects of doing any act or thing or of being in possession of any thing, for which a licence, permit or other authorization is required under any Act and may require such person to produce such licence, permit or authorization; or

(b) stop, search and inspect any vehicle which the police officer has reasonable grounds for suspecting—

(i) is being used in the commission of any offence against any Act; or

(ii) to have been stolen, whether in Malawi or outside Malawi and whether such vehicle may be with the person suspected to have stolen it or with any other person.

(2) Any person who fails to produce a licence, permit or other authorization when called upon to do so by a police officer may be arrested without a warrant, unless he gives his name and address to the police officer and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him.

(3) Any person who fails to obey any reasonable signal of a police officer, requiring such person to stop any vehicle or who obstructs any police officer in the execution of his duty being exercised under this section commits an offence and shall, upon

conviction, be liable to a fine of K20,000 and to imprisonment for six months; and any police officer may arrest such person without a warrant, unless he gives his name and address to the police officer and otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him.

(4) Any police officer may cause any vehicle found or suspected on reasonable grounds -

(a) to have been used for the commission of an offence against any Act; or

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(b) to have been stolen whether in Malawi or outside Malawi, to be moved to the nearest police station and there to be detained until released by the officer in-charge of such police station.

40.—(1) Subject to this Act, it shall be the duty of the Police to regulate and control traffic and to divert all or any particular kind of traffic when, in the opinion of an officer in-charge of police, it is in the public interest to do so.

(2) In pursuance of the duty conferred under subsection (1) but without prejudice to the generality of that duty, the police may —

(a) stop, direct or otherwise regulate the course of traffic;

(b) close any street in the vicinity of the National Assembly or the High Court or any other court for purposes of preventing the interruption of the proceedings of the Assembly, the High Court or such other court by the noise of the street traffic;

(c) keep order on public roads, streets, thoroughfares, airports, aerodromes and other landing places and at other places of public resort:

(d) prevent obstructions on the occasion of public assemblies, processions or demonstrations on the public roads and streets, or in the neighbourhood of places of public worship during the time of worship and in any case when any road, street, thoroughfare, airport or aerodrome or other landing place may be thronged or may be liable to be obstructed.

(3) Any person who opposes or disobeys any lawful order given by a police officer in the performance of his duty under this section commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months.

(4) Any person who opposes or disobeys any lawful order given by a police officer in the performance of his duty under this section may be arrested without a warrant unless he gives his name and address or otherwise satisfies the police officer or the officer in-charge of the nearest police station that he will duly answer any summons or other proceedings which may be taken against him.

41 —(1) Notwithstanding any other law in force in Malawi, any superior police officer or any police officer of the rank of inspectors stationed in any area may, if on reasonable grounds he considers it necessary so to do for the maintenance and preservation of law and order or for the prevention or detection of crime or for the protection of the rights and freedoms of individuals—

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(a) erect or place barriers, or cause barriers to be erected or placed or a cordon to be formed, in or across any road, street or any other public place within Malawi in such manner as he may think fit;

(b) cause a cordon to be formed in, across or around any private property in such manner as he may think fit, and for that purpose it shall be lawful for the members forming the cordon, without the consent of any person, to enter upon any property and do any act or thing necessary for the effective formation of the cordon.

(2) Any police officer may take all reasonable steps to prevent any vehicle being driven past any barrier or cordon erected, placed or formed under subsection (1) and any driver of any vehicle who fails to comply with any reasonable signal of a police officer, requiring such person to stop such vehicle before reaching any such barrier or cordon, shall be guilty of an offence and shall be liable to a fine of K50,000 and to imprisonment for twelve months.

(3) No police officer shall be liable for any loss or damage resulting to any vehicle or property or for any injury to the driver or any other occupant of such vehicle or to any other persons as a result of the driver of such vehicle failing to obey any police officer acting under subsection (2).

42.—(1) Notwithstanding any other law in force in Malawi, the Inspector General may, if on reasonable grounds he considers it necessary so to do for the maintenance and preservation of law and order, or for the prevention or detection of crime, or for the protection of rights and freedoms of individuals, by order published in the Gazette, prohibit or restrict the driving or use of motor vehicles or any class of motor vehicles on specified roads or specified parts of roads or in any specified areas either generally or in such circumstances or subject to such conditions as may be specified.

(2) Any order made under subsection (1) may—

(a) make different provision for different roads or parts of roads and for different areas and for different days or hours;

(b) provide for the issue by the Inspector General, or by any person authorized by him, of a written permit exempting any motor vehicle or class of motor vehicles or any person or class of persons from the order or any part thereof either generally or in such circumstances or subject to such conditions as may be specified in any such permit.

(3) Any order made under this section may be revoked, modified or rescinded by any subsequent order made under this section and shall have effect, after publication in the Gazette, from such date and for such period or periods as may be specified in the order.

(4) Any person who drives or knowingly uses, or causes or permits to be driven or used, any motor vehicle in contravention of the terms or conditions of any order made under this section commits an offence and may be arrested without a warrant and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

(5) For the purposes of this section the expressions "motor vehicle" and "road" shall have the meanings assigned to them in the Road Traffic Act.

43. (1) The Minister may, if on reasonable grounds he considers it expedient so to do in the interests of tranquility or of the preservation and maintenance of law and order, at any time, by order published in the Gazette, or in such other manner as he may consider sufficient to bring the order to the knowledge of the general public in the

area to which it relates, direct that no person in the area or areas specified in the order shall be out of doors between such hours as may be prescribed by the order except under the authority of a written permit granted by an officer in-charge of police.

Provided that the Minister may—

(a) exempt from the order such persons or class or classes of persons as may be specified in the order:

(b) authorize any person specified in the order to suspend the operation of the order in any specified area, or in any part thereof, and similarly to terminate such suspension and to declare the order to be in operation.

(3) Any person who contravenes any of the provisions of an order made under subsection (1) commits an offence and may be arrested without a warrant and shall, upon conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

44. — (1) Subject to subsection (2), any police officer may use any firearm against—

(a) any person in lawful custody charged with or convicted of a felony when such person is escaping or attempting to escape;

(b) any person who by force rescues or attempts to rescue any other person from lawful custody; or

(c) any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person.

(2) For the purposes of subsection (1) —

(a) resort shall not be had to any firearm as authorized under paragraph (a) of that subsection unless the police officer has reasonable ground to believe that he cannot otherwise prevent the escape and unless he has given warning to such person that he is about to use such firearm against the person and such warning is unheeded;

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(b) resort shall not be had to any firearms as authorized under paragraphs (b) and (c) of that subsection unless the police officer has reasonable ground to believe that he or any other person is in danger of grievous bodily harm and that he cannot otherwise effect such arrest or prevent such rescue:

(c) no police officer shall, in the presence of his superior officer, use such firearms as authorized by that subsection against any person except under the orders of such superior officer and

(d) the use of firearms as authorised under subsection (1) shall as far as possible be to disable and not to kill.

(3) The authority vested in a police officer by subsection (1) shall be in addition to and not in substitution for any authority to use firearms vested in a police officer by any other law.

(4) Any police officer, after using any firearm, shall make a report in writing or in the prescribed form to the officer in-charge of his police station.

45-(1) Any police officer may seize and destroy any weapon carried by any person in public without lawful authority or excuse, or with lawful authority or excuse but in such manner as to cause or be likely to cause terror to any person.

(2) Where the weapon seized is a firearm, it shall be handed over to the officer in-charge of the nearest police station.

(3) for the purposes of this section, "weapon" means any weapon or other thing which is calculated or is likely to cause harm to any person.

46-(1) Any officer in-charge of a police station carrying out an investigation into any offence may, in writing, require the attendance before himself of any person who he has reason to believe has any knowledge which will assist in such investigation, and such attendance may be required at any police station situate within the District in which that person resides or, for the time being, is or is found.

(2) Any person who has been notified to attend, as provided in subsection (1), who fails to attend as required, or who, having attended, refuses to give his correct name and address or to answer truly all questions that may be lawfully put to him, commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months:

Provided that no person may be required to answer any question. the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

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(3) Any police officer may record any statement made to him by any person under this section, whether such person is suspected of having committed an offence against any law in force in Malawi or not, but before recording any statement from a person whom such police officer has decided to charge, or who has been charged with committing any such offence, such police officer shall warn such person that any statement which may be recorded may be used in evidence:

Provided that any such statement shall, whenever possible, be recorded in writing and signed by the person making it after it has been read to him in a language which he understands and if he has been invited to make any correction he may wish.

47.—(1) It shall be the duty of every police officer to take charge of unclaimed movable property handed to him by any other person (hereinafter in this section referred to as the "finder") or found by such police officer to be unclaimed, and deliver the property to the officer in-charge of the nearest police station (hereinafter in this section referred to as the officer in-charge).

(2) Where the finder is not a police officer, the police officer to whom he hands the property shall ask him whether, in the event of no right to the property being established superior to his right as finder, he himself claims it and his claim, or his refusal or failure to claim, as the case may be, shall be recorded by the police officer and reported by such officer to the officer in-charge at the time of the delivery of the property.

(3) Subject to subsection (4), the officer in-charge shall detain the property and cause a notice to be posted in a conspicuous place at the police station specifying such property and calling upon any person who may have any claim thereto to appear and establish his claim within six months of such notice.

(4) If the property is of a perishable nature or its immediate sale would, in the opinion of such officer, be for the benefit of the owner, he may cause it to be sold forthwith; and the proceeds of such sale, after deduction of any expenses reasonably incurred, shall be dealt with in the same manner as unsold property is to be dealt with under the

provisions hereinafter in this section set forth, pending which they shall be deposited in such place and manner as the Inspector General may direct.

(5) The officer in-charge shall forward a copy of the notice under subsection (3) to the Inspector General who shall cause particulars thereof to be communicated to police officers in Malawi generally.

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(6) If, within six months of the posting of the notice under subsection (3), any person establishes to the reasonable satisfaction of the Inspector General a claim superior to that of the finder and such person is willing and able to take delivery of the property at such reasonable place and time as the Inspector General may decide, it shall be delivered to him,

(7) If, within six months of the posting of the notice under subsection (3), no person establishes a superior claim to that of the finder or, having so established a claim, does not take delivery as specified in subsection (6), the right to take proceedings for the recovery of such property shall cease and the property shall be delivered to the finder, if he then confirms his claim and is willing and able to take delivery of the property at such reasonable place and time as the Inspector General may decide.

(8) If the finder does not so claim any such property or does not take delivery thereof as specified, the property may, if not already in monetary form, be sold, destroyed or otherwise disposed of in such manner as the Inspector General may direct.

(9) If the property is sold, the proceeds of any such sale shall, after deduction of any expenses reasonably incurred in such sale, be apportioned in the following manner

(a) one half shall be paid into the Police Rewards and fines Fund;

(b) such proportion of the remaining one half as the magistrate may direct shall be paid to the finder of the property; and

(c) the balance shall be paid into the Consolidated Fund.

(10) Where the unclaimed movable property consists of money, it shall be dealt with in all respects as if it were the proceeds of sale under subsection (9).

(11) Any police officer who purchases any property sold under this section shall be deemed to have committed an offence against discipline of conduct prejudicial to the good order of the Service.

(12) In this section, "movable property" does not include any property which is of such a nature that—

(a) a police officer cannot transport it manually;

(b) it is valueless.

48.—(1) Where the defence to any suit instituted against a police officer is that the act complained of was done in obedience to a warrant purporting to be issued by a judge or magistrate, the court shall, upon production of the warrant containing the signature of the judge or magistrate and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such police officer.

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(2) No proof of the signature of such judge or magistrate as mentioned in subsection (1) shall be required unless the court has reason to doubt the genuineness thereof; but where it shall be proved that such signature is not genuine, judgment shall nevertheless be given in favour of the police officer if it is proved that at the time the act complained of was committed, he believed on reasonable grounds that such signature was genuine.

49. (1) No action shall be commenced or prosecution instituted against any police officer in respect of any thing done or purported to be done by him under this Act, unless notice in writing of such action or prosecution, and particulars thereof, shall have been given to such police officer, and to the officer in-charge of police in the place where the act complained of was committed, at least one month before the commencement of such action or the institution of such action.

(2) No police officer shall be made a defendant in any civil suit in respect of any act for which he has been convicted.

50. No salary, benefit or allowance payable to any police officer shall, by a court order, be liable to be attached, sequestered or money levied in respect of any debt or claim for any money borrowed by him or by any person on his behalf, or any goods supplied to him or to any person on his behalf, unless such court order is made pursuant to any written law authorizing the attachment, sequestration or levy on a person's salary or other employment benefit or allowance.

PART VI—DISCIPLINE:

51. (1) Any police officer who-

- (a) being cognizant of any mutiny or sedition amongst the police, does not use his utmost endeavours to suppress such mutiny or sedition;
- (b) being cognizant of any intended mutiny or sedition amongst the police, does not give information thereof to his superior officer without delay;
- (c) being present at any assemblage tending to riot, does not use his utmost endeavours to suppress such assemblage;
- (d) deserts, as defined in subsection (2);
- (e) persuades, procures, assists or attempts to persuade, procure or assist any police officer to desert;
- (f) knowing that any police officer has deserted or intends to desert, does not, without delay, give information to his superior officer; or
- (g) strikes, or offers violence to, superior officer, commits an offence and shall, upon conviction, be liable to imprisonment for twelve months.

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(2) A police officer deserts if—

- (a) he absents himself without authority from his police station or from the place where his duty requires him to be with the intention of not returning to that police station or place;
- (b) while absent with authority from his police station or the place where his duty requires him to be, he does or omits to do an act the natural and probable consequence of doing or omitting to do such act is to preclude his return to that police station or place

at the time required; or

(c) he is absent without authority for a continuous period of twenty-one days or more.

(3) No police officer shall be found guilty of the offence of desertion unless the court is satisfied that there was an intention on the part of such officer not to return to the Service.

(4) Upon reasonable suspicion that any person is a deserter any police officer may, notwithstanding subsection (1) of section 66 (requiring the arrest of a police officer without a warrant to be effected by a superior officer, apprehend such person without a warrant and forthwith bring him before a court having jurisdiction in the place where he was found, and such court may deal with the suspected deserter or remit him to a court having jurisdiction in the place in which he deserted.

52.-(1) The Disciplinary Code of Conduct set out in the Schedule, prescribing offences against discipline by police officers, shall apply for the regulation and control of disciplinary conduct of all police officers and other persons employed in the Police Service in addition to other provisions of this Act.

(2) The acts and other forms of conduct, behaviour or demeanour specified in the Code shall constitute offences against discipline by police officers.

(3) The Minister may, on the recommendation of the Inspector General, by order published in the Gazette, amend the Disciplinary Code of Conduct.

53. (1) The power to discipline any police officer, other than the Inspector General, for an offence against discipline shall-

(b) in the case of a superior police officer and a police officer of or above the rank of inspector, be exercised by the Police Service Commission;

(c) in the case of a police officer of or the rank of sub-inspector and any other person who accepts to perform duties in the Police Service as a police officer, be exercised by the Inspector General acting through police disciplinary committees.

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(2) Nothing in subsection (1) shall prevent the Police Service Commission from directly exercising disciplinary powers over any police officer other than the Inspector General.

54.—(1) An offence against discipline committed by a police officer shall be inquired into, tried and determined through disciplinary proceedings before the Police Service Commission or before a police disciplinary committee, as the case may be, in accordance with this Act and with the Police Service Commission Regulations made under section 30.

(2) It shall be the duty of the Inspector General to investigate a superior police officer or a police officer of the rank of inspector for, and to charge such officer with, any offence against discipline for the purpose of forwarding such charge to the Police Service Commission for disciplinary proceedings.

(3) It shall be the duty of the officer in-charge or the relevant superior police officer to investigate a police officer of or below the rank of sub-inspector for and to charge such officer with, any offence against discipline for the purpose of forwarding such charge to the relevant police disciplinary committee for disciplinary proceedings.

55.—(1) There shall be established —

- (a) a standing National Police Disciplinary Committee; and
 - (b) other police disciplinary committees, subordinate to the National Police Disciplinary Committee.
- (2) A subordinate police disciplinary committee may be appointed whenever a breach of discipline occurs at any place and time within the jurisdiction of the following formations—
- (a) regional police headquarters;
 - (b) district police stations;
 - (c) police stations or substations or detach; or
 - (d) National Police Headquarters.

56.—(1) The functions of the National Police Disciplinary Committee shall be—

- (a) to hear and determine appeals against decisions of a subordinate police disciplinary committee;
- (b) generally to review decisions of subordinate disciplinary committees; and
- (c) to do or perform such functions relating to the disciplinary conduct of police officers as are conferred on it by or under this Act.

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- (2) The National Police Disciplinary Committee shall consist of
- (a) a presiding Chairperson who shall be a police officer of or above the rank of Commissioner of Police;
 - (b) one senior police officer;
 - (c) a police legal officer;
 - (d) the police chaplain or his representative; and
 - (e) one junior police officer.

(3) Members of the National Police Disciplinary Committee shall be appointed by the inspector General with the approval of the Police Service Commission.

(4) The quorum of the National Police Disciplinary Committee shall be three members including the Chairperson.

(5) In conducting its proceedings, the National Police Disciplinary Committee may sit at any time or place within Malawi as it considers appropriate.

(6) The National Police Disciplinary Committee, on its own motion or on application by the police officer charged or by the police prosecutor, may direct that any person subject to a disciplinary process by the Committee should be tried by the Police Service Commission.

(7) The National Police Disciplinary Committee shall have power, subject to the provisions of this Act or regulations or rules made under this Act, to determine its own procedure for the conduct of its proceedings.

57.—(1) A subordinate police disciplinary committee shall hear and determine any disciplinary matter involving—

- (a) officers of or below the rank of inspector;
- (b) a member of the Police Reserve; or
- (c) any other person who accepts to perform duties in the Police Service as a police officer, but not otherwise.

- (2) A subordinate police disciplinary committee shall consist of—
- (a) presiding Chairperson who shall be a police officer of or above the rank of inspector;
 - (b) three other officers above the rank held by the police officer who is charged;
 - (c) one officer of the rank held by the police officer who is charged.

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(3) Members of a subordinate disciplinary committee shall be appointed by the officer in-charge of (he relevant police station or other police formation.

(4) The quorum of a subordinate disciplinary committee shall be three, including the Chairperson.

(5) A subordinate disciplinary committee shall have power, subject to the provisions of this Act, to determine its own procedure for the conduct of its proceedings.

58. -(1) Members of any police disciplinary committee and all persons participating in the hearing of disciplinary matters shall exercise their duties, functions and powers impartially and independent of the interference or directions of any person or body.

(2) No member of a disciplinary police committee or other person participating in the hearing of a disciplinary matter shall be compelled in any cause, proceeding or other matter to answer any question as to his own conduct at the hearing or as to anything which came to his knowledge at the hearing or in the course of his duties as a member of the committee.

59.-(1) The Police Service Commission or a police disciplinary committee may, in relation to any disciplinary matter before it, summon and examine witnesses on oath or affirmation and require the production of relevant documents in any matter it is inquiring into and may adjourn any such inquiry from time to time as it deems fit.

(2) Any person summoned as a witness under subsection (1) who fails to attend at the time and place mentioned in the summons without proper reasons or having attended refuses to answer all questions that may be lawfully put to him commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months.

(3) Notwithstanding subsection (2), no person shall be required to answer any question the answer to which may tend to expose him to any criminal charge, penalty or forfeiture.

60.-(1) A police officer who, upon disciplinary, proceedings, is found guilty of an offence against discipline shall be liable to suffer punishment, as specified in this section, according to the degree and nature of the offence.

(2) Subject to the other provision is of this section, the punishments specified in subsections (3) and (4) may be imposed by the Police Service Commission and by a police disciplinary committee, respectively on a police officer found guilty upon

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disciplinary proceedings under this Part, of an offence against discipline and the Police Service Commission or the committee may impose on such police officer one or more of such punishments.

(3) The Police Service Commission may impose the following punishments -

- (a) reprimand;
- (b) severe reprimand;
- (c) stoppage of increment of salary;
- (d) reduction in rank or grade; and
- (e) dismissal.

(4) A police disciplinary committee may impose the following punishments—

- (a) reprimand;
- (b) severe reprimand;
- (c) fine not exceeding seven days pay.
- (d) stoppage of increment of salary
- (e) confinement to quarters for any period not exceeding fourteen days with or without drill, guards, fatigues or other duty; and
- (f) reduction in rank or grade,

(5) Where, after disciplinary proceedings held by it, a police disciplinary committee is of the view that dismissal is the fitting punishment to be imposed on a police officer, it shall make a recommendation to that effect to the Police Service Commission.

(6) Upon considering the recommendation of a police disciplinary committee submitted under subsection (5), the Police Service Commission may direct that the police officer concerned be dismissed or may make such other determination, or give such other directions as to punishment or otherwise, as it sees fit.

(7) Notwithstanding that every police officer is deemed by section 3-1 (4) to be on duty at all times, where the commission by a police officer of an offence against discipline is in relation to him being on duty, the officer shall not be found guilty of the offence unless it shall be proved that, at the time when the offence was committed, he was on a specific duty for which he was specially detailed.

61.-(1) The Inspector General may summarily administer a reprimand or a severe reprimand to a superior police officer or a police officer of the rank of inspector in minor cases of offences against discipline or in any other minor cases of misconduct.

(2) A superior police officer or the officer in-charge of police may deal summarily with any offence against discipline in the case of any police officer of or below the rank of sub-inspector and shall have power to impose the following punishments —

- (a) reprimand;
- (b) extra drill, guards, fatigues or other duty, but such proceedings and the results thereof shall not be entered in the personal record of the police officer who has offended.

62. (1) Where a punishment other than dismissal is imposed on a police officer in respect of an offence against discipline, the authority imposing the punishment may order that such punishment be suspended for a period not exceeding six months and if during such period of suspension the offender commits no further offence against discipline the committee may remit the punishment.

(2) Where any punishment has been suspended under subsection (1) and the offender is found guilty, during the period of the suspension, of any further offence against discipline, the suspended punishment may forthwith be carried into effect.

63. - (1) A person aggrieved by a decision of a police disciplinary committee may within fourteen days after being informed of the decision, appeal
- (a) in the case of a decision of a subordinate disciplinary committee, to the National Police Disciplinary Committee;
 - (b) in the case of a decision of the National Police Disciplinary Committee, to the Police Service Commission.
- (2) An appellant shall submit his appeal to the officer in-charge of his police station.
- (3) The officer in-charge on receiving an appeal submitted under subsection (2), shall transmit the appeal to the National Police Disciplinary Committee or to the Police Service Commission, as the case may be, within fourteen days of receiving the appeal and shall so transmit it together with the record of the police disciplinary committee which shall be supplied to him for the purpose.
- (4) An appeal shall be properly lodged to the National Police Disciplinary Committee or to the Police Service Commission, as the case may be, if based on one or more of the following grounds
- (a) erroneous findings;
 - (b) illegality of punishment;
 - (c) any miscarriage of justice;
 - (d) a point of law; or
 - (e) severity of punishment.

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- 64.—(1) Upon the hearing of an appeal, the National Police Disciplinary Committee or the Police Service Commission, as the case may be, may —
- (a) allow the appeal and quash the finding and set aside the punishment;
 - (b) dismiss the appeal and affirm the finding and punishment;
 - (c) affirm the finding of guilty but vary the sentence as it considers fit, but no punishment shall be increased or any punishment added on appeal unless the offender is first given a further opportunity of being heard; and
 - (d) direct a rehearing on the charge in which case the appellant shall be heard again as if no hearing on the charge has been held.
- (2) An appeal may be summarily dismissed by the National Police Disciplinary Committee or the Police Service Commission, as the case may be if, in its opinion-
- (a) it is vexatious;
 - (b) it is frivolous;
 - (c) it is an abuse of process; and
 - (d) there has been no substantial miscarriage of justice.
65. Any police officer who is found guilty of an offence against discipline and is aggrieved by the decision of the Police Service Commission to dismiss him from the Police Service or otherwise punish him may, within thirty days after receiving notification of the decision, appeal to the High court against the decision.
66. - (1) Any police officer who commits a criminal offence or an offence against discipline may be arrested without a warrant by a superior officer.
- (2) A police officer effecting an arrest under this section shall forthwith bring the

accused before an officer in-charge of the police station or any other competent officer without undue delay and in any event within forty-eight hours of the arrest.

(3) Where the arrest is for criminal offence, the officer in-charge or the competent officer as the case may be shall cause the case to be brought before a court of criminal jurisdiction within forty-eight hours of the arrest, failing which the arrested police officer shall forthwith be released from arrest.

(4) All police officers arrested for any offence against discipline, if remanded in custody, shall be confined in a place set apart as a guardroom or cell for the detention of such police officers.

(5) A police officer arrested in respect of any criminal offence or any offence against discipline, shall be informed at the time of his arrest, or as soon as is practicable thereafter, of the nature of the offence.

67. (1) If criminal proceedings are instituted against a person, no disciplinary proceedings under this Act shall be taken against that person until the conclusion of the criminal proceedings and the determination of appeal from those proceedings.

(2) For the purposes of subsection (1), criminal proceedings against an officer shall be deemed to have concluded on the acquittal, conviction or discharge of the officer.

68. (1) The Inspector General may at any time in the interest of discipline interdict from duty any police officer who is charged with a criminal offence or an offence against discipline.

(2) Any police officer interdicted from duty shall receive such proportion of his pay, not being less than half, as the Inspector General shall direct:

Provided that where the officer is interdicted for misappropriation of public funds or that he obtained his appointment by means of false representation he shall receive no salary during the period of his interdiction.

(3) An interdiction under this section, if it relates to a disciplinary offence shall not exceed a period of three months: and after the expiry of that period the officer, if not brought before a police disciplinary committee shall be deemed to have been re-instated.

(4) If the officer is not subsequently dismissed from the Service he shall receive for the period of his interdiction the proportion of his pay that was withheld, except the amount adjudged to be forfeited as punishment.

(5) A police officer shall not by reason of being interdicted from office cease to be a police officer, but during the period of such interdiction the powers functions and privileges vested in him as a police officer shall be in abeyance but he shall continue to be subject to the same responsibilities, discipline and penalties, and to the same authorities, as if he had not been interdicted.

(6) Where the officer interdicted under this section is a superior police officer or an officer of or above the rank of inspector, the Inspector General shall make a report of the interdiction to the Police Service Commission.

(7) An officer interdicted under this section may not leave Malawi without the permission of the Inspector General.

69. (1) The Inspector General shall notify the Police Service Commission of the case of any police officer who has been convicted of a criminal offence by a court of competent jurisdiction and the Police Service Commission may dismiss such officer from the Police Service.

(2) Any police officer dismissed under this section may within thirty days of the notification of his dismissal, appeal to the High Court against the dismissal.

70. No pay shall accrue to any police officer in respect of any day during which he is absent from duty without leave or is undergoing any sentence of imprisonment:

Provided that in any case the Inspector General may in his discretion, authorize the payment of such proportion of pay not being more than one-half, as he may think it.

71.-(1) All fines imposed on a police officer as punishment in respect of an offence against discipline shall be recovered by stoppage of the officer's pay or by deductions from any benefits due to the officer including benefits due upon his death.

(2) The amount of any stoppage in respect of any fine shall be at the discretion of the officer in-charge of police in the place where the officer is stationed- but in no case shall such amount exceed one-third of the officer's monthly pay.

(3) Where more than one order of stoppage is in force against the same officer so much only of his pay shall be stopped as shall leave him a residue of at least two-thirds of his monthly pay, save for other authorized deductions or stoppages.

(4) Where more than one order of stoppage is made upon the same officer, the orders later in date shall, if necessary be postponed as to their enforcement until the earlier orders have been discharged.

72. If any police officer pawns, sells, loses by neglect, makes away with or willfully damages arms, ammunition, accoutrements, clothing or appointment supplied to him or any Government property or any exhibit or any lost, stolen or unclaimed property committed to his charge he may in addition to or in lieu of any other punishment, be ordered by the Inspector General or any appropriate superior police officer or by his officer in-charge to make good the amount of such loss or damage, and such amount may be recovered by stoppage from his pay in the same manner as provided for the recovery of line by stoppage of pay under section 71.

73. — (1) Subject to subsection (2) and to the provisions of any law for the time being in force in Malawi, a police officer who is dismissed from the Police Service shall forfeit all rights and claims to-

(a) any pension, gratuity or other terminal benefits;

(b) any benefits in respect of any passages at public expense;

(c) any leave or any unpaid leave grant.

(2) Where an officer liable to be dismissed has attained qualifying service for retirement under any prescribed circumstances, he may instead be retired from the Police Service if the Inspector General so recommends and subsection (1) shall not apply, unless the charge proved against him involves misappropriation of, or failure to account for, public funds or public stores committed to his charge or under his control.

74. — (1) It shall not be lawful for any police officer to be or to become a member of-

(a) any trade union or any body or association affiliated to a trade union;

- (b) any body or association, the objects or one of the objects of which is to control or influence conditions of employment in any trade or profession; or
 - (c) any body or association, the objects or one of the objects of which is to control or influence the pay pension or conditions of service other than-
 - (i) any police association constituted and regulated pursuant to rules made under this Act;
 - (ii) or any body or association which the Inspector General may in his discretion permit any police officer to join.
- (2) Any police officer who contravenes this section commits an offence against discipline and shall be liable to be dismissed from the Service and subject to section 73 (2), to forfeit all rights to any pension or gratuity.
- (3) If any question arises as to whether any body is a trade union or association to which this section applies, the question shall administratively be decided in accordance with the legal opinion of the Attorney General.
75. - (1) Where any police officer thinks himself wronged- (a) in any matter by any police officer of a lower rank than the officer in-charge of police in the place where he is stationed, he may complain to the officer in-charge of police;

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- (b) By his officer in-charge of police or any officer of the same rank as his or of higher rank, not being the Inspector General, either in respect of his complaint not being redressed or in respect of any other matter, he may complain to his regional police commissioner or the Inspector General, as appropriate;
 - (c) by the Inspector General either in respect of his complaint not being redressed or in respect of any other matter, he may complain to the Police Service Commission.
- (2) The officer in-charge, the regional police commissioner, the Inspector General or the Police Service Commission, as the case may be, upon receiving a complaint under this section shall cause such complaint to be inquired into, and shall, if on inquiry it is determined that there is some merit to the complaint, take such steps as may be necessary for giving such redress to the complainant, in respect of the matter complained of as the case requires.
- (3) Every complaint shall be made in the manner prescribed by standing orders or rules or regulations made under this Act.

77. Nothing in this Part shall affect the jurisdiction of any court or ordinary court to try and punish any person for an offence triable by a police disciplinary committee.

76. Evidence to prove a charge for an offence against discipline in and hearing before a police disciplinary committee shall be presented in members of the police prosecution department.

PART VII - POLICE REWARDS AND FINES FUND

78. (1) All fines imposed under this Act or under Regulations or Rules made under this Act for an offence against discipline, and all fines levied for assaults on police officers,

and such part of the proceeds of the sale of unclaimed property as is authorised under section 17 shall be paid to a fund to be called the "Police Rewards, and fines fund".

(2) The Police Rewards and Fines fund shall be administered by a special committee to be called the "Police Rewards and Fines Fund Committee" (hereinafter in this section referred to as the "Committee"), which shall consist of the Inspector General, two senior police officers and two junior police officers.

(3) The Committee may, in its discretion, sanction payments from the Police Rewards and Fines Fund for any of the following purposes-

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(a) assistance to the spouses or families of deceased police officers, or to any officers discharged from the police as medically unfit for further service;

(b) contributions towards prizes to be given at athletic meetings, assaults-arms and similar events organized by or for the benefit of the Police Service;

(c) the purchase of ammunition for the encouragement of range practice among police officers;

(d) payments to police officers as rewards for meritorious acts or service in the execution of duty, if such payments are not authorized to be met out of moneys provided by Parliament;

(e) expenditure for the advancement of education, recreation sport, welfare or other similar activities organized within the Police Service.

79. All rewards, forfeitures and penalties, which by law are payable to informers shall, when the information is laid by a police officer, be paid into the Police Rewards and Fines Fund.

PART VIII- MALAWI POLICE RESERVE

80. There shall be established in Malawi a reserve Police Service to be known as the Malawi Police Reserve (in this Act otherwise referred to as the "Police Reserve") which shall consist of former police officers of good character to the satisfaction of the Inspector General—

(a) who have retired from the Service on reaching retirement age; or

(b) whose contracts with the Police Service have expired; or (c) who have been allowed to terminate their service before the expiration thereof, and who offer themselves for service in the Police Reserve.

81. Every member of the Police Reserve upon joining shall sign an engagement in the prescribed form and shall on his admission to the Police Reserve, make and sign an oath or a declaration in the prescribed form.

82. The Inspector General shall have the command, superintendence and direction of the Police Reserve, and may make such appointments as he may see fit.

83. The Inspector General may, by order, call up the whole or any part of the Police Reserve for service whenever it appears to him expedient to do so in the interest of the Police Service, and such calling up order shall be promulgated in such manner as the Inspector General shall think fit in order to bring it to the notice of all the members of the Reserve concerned and shall also be published in the Gazette.

84.—(1) All members of the Police Reserve shall undergo a course of training and instruction for a period of not less than one week in every year.

(2) The times of the courses and the content of the training and instruction to be given to members of the Police Reserve shall be the subject of such directions as the Inspector General may, from time to time, give in that behalf.

85.—(1) Where any member of the Police Reserve is called up for service or is undergoing a course of training and instruction, such member shall, during the period of such calling up or course—

(a) be subject in all respects to the provisions of the Constitution and this Act as if he were a member of the Police Service;

(b) have and exercise all the powers, duties and privileges conferred upon a member of the Police Service by this Act and any other law in force in Malawi; and

(c) be paid at the current rates of pay appropriate to the rank held by him on completion or termination of his engagement in the Police Service.

(2) Where any member of the Police Reserve attends any training or instruction in addition to the annual course under this Part, then for the period of such attendance, the provisions of paragraphs (a) and (b) of subsection (1) shall apply to such member but he shall be paid at such rates of pay as the Minister shall determine from time to time.

86. -(1) Without prejudice to any gratuity or other benefit which any member of the Police Reserve has been paid or to which he may be entitled in respect of his service in the Police Service, every member who undergoes and completes his course of training under this Part shall be paid an annual retainer of an amount equal to one month basic salary calculated at the rate appropriate to the rank held by him on completion or termination of his engagement in the Police Service or such higher amount as the Minister may determine from time to time.

(2) The annual retainer payable under subsection (1) shall be paid in such manner and at such time as the Inspector General may direct.

(3) If in any year any member of the Police Reserve is called up for service and for any reason is not required to undergo the course of training and instruction, then for the purposes of subsection (1) he shall be deemed to have undergone and completed his course of training and instruction.

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87.—(1) Any member of the Police Reserve may at any time Discharge claim his discharge at the expiry of three months after he has given notice in writing to the Inspector General of his wish to be discharged.

(2) The Inspector General may, if at any time he sees it fit so to do, by giving three months notice in writing, discharge any member of the Police Reserve.

(3) No member of the Police Reserve while called up for service shall be entitled to obtain a discharge there from during the continuance of such service.

88.—(1) The Inspector General may provide at the public expense for the use of members of the Police Reserve, uniforms, equipment, arms and other necessary articles for the purpose of carrying out their duties while called up for service or undergoing a course of training and instruction.

(2) At the conclusion of the service or course, every member of the Police Reserve shall deliver up in good order, fair wear and tear only excepted, to the Inspector General or to a police officer authorized by the Inspector General in that behalf the uniform, equipment, arms or other necessary articles which may have been provided to him under this section.

(3) Any member of the Police Reserve who refuses or neglects to make delivery of uniforms, equipment, arms or other necessary articles provided to him under this section commits an offence and shall, upon conviction, be liable to a fine of K10,000 and to imprisonment for three months.

(4) Any court may issue a warrant to search for and search any uniform, equipment, arm or other necessary article, which has not been delivered under subsection (2).

89. Every member of the Police Reserve shall notify the police station nearest to his place of residence for the time being of any change or intended change in his address.

90. Any member of the Police Reserve who, without reasonable cause, neglects or refuses to—

(a) notify any change of address;

(h) attend any course of training and instruction; or

(c) obey any calling up notice, commits an offence and shall, upon conviction, be liable to a fine of K20,000 and to imprisonment for six months.

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91. Any member of the Police Reserve who is convicted under this Part shall be liable to be discharged forthwith.

PART IX —REGULATION OF ASSEMBLIES AND DEMONSTRATIONS

92. In this Part, unless the context otherwise requires—

"assembly" means any assembly, meeting, rally, gathering, concourse or procession of more than fifteen persons in or on any public place or premises or on any public road—

(a) at which the views, principles, policies, actions or failure to act of the Government or any other government, or of a political party or political organization, whether or not that party or organization is registered under any applicable law, are publicly discussed, attacked, criticized, promoted or propagated; or

(b) held to publicly hand over petitions to any person or to mobilize or demonstrate support for or opposition to the views, principles, policies, actions or failure to act of any person or of anybody of persons or any institution, including the Government or any other government or any governmental institution;

"branch", in relation to an organization, includes—

(a) any section or committee of the organization; or

(b) any local, regional or subsidiary body forming part of the organization; "convener" means —

(a) any person who, of his own accord, convenes an assembly; or

(b) in relation to any organization or branch of any organization, any person appointed by such organization or branch under section 93; "demonstration" means any

demonstration, whether by way of a procession, march or otherwise, in or on any public place or premises or on any public road, whether by one or more persons, for or against any person, organization, cause, action or failure to take action, which is organized to be publicly held for the same purposes as in the case of an assembly;

"marshal" means any person appointed as such under section 104;

"organization" includes a branch thereof;

"public road" has the meaning assigned thereto by the Road Traffic Act;

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"riot damage" means any loss suffered as a result of—

(a) any injury to, or the death of, any person;

(b) or any damage to, or destruction of, any property, caused directly or indirectly by, and immediately before, during or after, the holding of an assembly or a demonstration.

93. - (1) Any organization which intends to hold an assembly or demonstration shall appoint—

(a) a convener for that assembly or demonstration; and

(b) a deputy to the convener appointed under paragraph (a).

(2) The organization shall forthwith notify the District Commissioner of the area, in writing, of the names and addresses of the persons appointed under subsection (1).

(3) Upon receipt of a notice under subsection (2), the District Commissioner shall in turn notify the officer in-charge of the police station concerned.

(4) If any person appointed under subsection (1) as a convener or a deputy to the convener is or becomes unable to perform or to continue to perform the functions for which he is appointed, the organization shall forthwith appoint another person in his stead, and shall give particulars of such other person as required under subsection (2) to the District Commissioner who shall in turn notify the officer in-charge of the police station concerned and a person so appointed shall be deemed to have been appointed under subsection (1).

(5) No further appointment shall be made after the appointment of a person under subsection (4), except with the approval of the District Commissioner concerned.

(6) The police officer in-charge, or another police officer authorized by him in that behalf, shall represent the police at consultations or negotiations to be conducted under section 98.

94. The convener shall-

(a) give notice under section 98 (1);

(b) be responsible for the arrangements of any intended assembly or demonstration;

(c) act on behalf of his organization at any consultations or negotiations to be conducted under section 98, or in connexion with any other procedure provided for in this Act at which his presence is required;

(d) appoint marshals of his organization for the assembly or demonstration; and

(e) be present at such assembly or demonstration.

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95. The District Commissioner, or persons authorized by him in that behalf, and within whose area an assembly or a demonstration is to take place, shall perform the functions, exercise the powers and discharge the duties assigned to that office under this Act independent of the direction or interference of any other person or authority and with impartiality.

96.—(1) Where it is intended to hold an assembly or a demonstration the convener shall give notice, in writing, of not less than forty-eight hours and not more than fourteen days to the District Commissioner concerned with a copy to the officer in-charge of the police station concerned.

(2) The District Commissioner shall stamp every notice received under subsection (1) with his official stamp, and shall indicate the date and the time the notice was received by him.

(3) Where the District Commissioner receives two or more notices under subsection (1) for assemblies or demonstrations on or at the same place and time, the convener, or the organization of the convener, whose notice was first received by the District Commissioner shall be the one entitled to hold the assembly or demonstration at such place and time.

(4) Where two or more notices are received by the District Commissioner on the same day and time, the District Commissioner's determination as to which notice was received earlier shall be prima facie evidence of that fact.

(5) For the purposes of this section a convener who has given notice to the District Commissioner shall be entitled, if he so requests, to receive back a stamped copy of the notice as acknowledgment by the District Commissioner of his receipt of the notice.

(6) Where it is not reasonably possible for the convener to give the notice of a period required under subsection (1), he shall give such notice at the earliest opportunity and if such notice is given less than twenty-four hours before the commencement of the assembly or demonstration, the District Commissioner may by notice to the convener prohibit the assembly or demonstration.

(7) The notice under subsection (1) shall be in the prescribed form, if any be prescribed, and shall contain the following information —

(a) the names and addresses and, if any, the telephone and facsimile numbers of the convener and his deputy;

(b) the name of the organization on behalf of which the assembly or demonstration is convened or, if it is so convened, a statement that it is convened by the convener;

(c) the purpose of the assembly or demonstration;

(d) the time, duration and date of the assembly or demonstration;

(e) the place where the assembly or demonstration is to be held;

(f) the anticipated number of participants;

(g) the proposed number and, where possible, the names of the marshals who will be appointed by the convener, and how the marshals will be distinguished from the other participants in the assembly or demonstration;

(h) in the case of an assembly in the form of a procession or a march —

- (i) the exact and complete route of the procession;
- (ii) the time when and the place at which participants in the procession are to assemble, and the time when and the place from which the procession is to commence;
- (iii) the time when and the place where the procession is to end and the participants are to disperse;
- (iv) the manner in which participants will be transported to the place of assembly and from the point of dispersal;
- (i) the number and types of vehicles, if any, which are to form part of the procession;
- (j) if notice is given less than forty-eight before the date on which the assembly or demonstration is to be held, the reason why it was not given timely; and
- (k) if a petition or any other document is to be handed over to any person, the place where and the person to whom it is to be handed over.

97.— (1) Where a police officer receives information regarding a proposed assembly and he has reason to believe that notice under section 96 has not yet been given to the District Commissioner concerned, he shall forthwith inform such District Commissioner.

(2) Where the District Commissioner receives information, other than information from a police officer under subsection (1) regarding a proposed assembly or demonstration of which no notice has been given to him, he shall forthwith inform the officer in-charge of police concerned regarding the proposed assembly or demonstration.

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(3) Without derogation from the functions and duties imposed on a convener by section 94, the District Commissioner shall on receipt of such information take such steps as may be deemed necessary, including the obtaining of assistance from the police, to establish the identity of the convener of such assembly or demonstration, and shall request the convener to comply with the provisions of this Act, failing which the assembly or demonstration shall not take place.

98. (1) If the District Commissioner receives notice in accordance with section 96 or other information regarding a proposed assembly or demonstration comes to his attention, he shall forthwith consult with the officer in-charge of police concerned regarding the necessity for negotiations on any aspect of the conduct of, or any condition with regard to, the proposed assembly or demonstration.

(2) If, after consultation under subsection (1), the District Commissioner is of the opinion that

(a) negotiations are not necessary and that the assembly or demonstration may take place as specified in the notice or with such amendments of the contents of the notice as may have been agreed upon by him and the convener, he shall notify the convener accordingly;

(b) negotiations are necessary, he shall forthwith call a meeting between himself and the convener, the officer in-charge of police and representatives of such other persons or bodies as in the opinion of the District Commissioner ought to be present at such meeting, in order to discuss any amendments of the contents of the notice and such conditions regarding the conduct of the assembly as he may consider necessary, and

the District Commissioner shall endeavour to ensure that such discussions take place in good faith.

(3) If the convener or the officer in-charge of police fails to attend the meeting convened under subsection (2) (b) without reasonable excuse, consultations or negotiations or other proceedings may be conducted in the absence of such convener or officer in-charge, and the organization or the police, as the case may be shall be bound by the result of such consultations, negotiations or proceedings as if they had agreed to the result.

(4) If a convener has been notified under subsection (2) (a) or has not been called to a meeting in accordance with subsection (2) (b) within forty-eight hours after the notice under section 96, the assembly or demonstration may take place in accordance with the contents of the notice and in accordance with section 104 but subject to sections 101 and 102.

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(5) Where agreement is reached at a meeting convened under subsection 2 (b), the assembly or demonstration may take place in accordance with the contents of the notice, including amendments, to such contents, on which agreement was reached.

99. (1) Where agreement is not reached on the contents of the notice, or on the conditions regarding the conduct, of an assembly or a demonstration, the District Commissioner may, if there are reasonable grounds, of his own accord or at the request of the officer in-charge of police, refuse a request for the assembly or a demonstration or impose conditions with regard to the holding of the assembly or demonstration to ensure that—

(a) vehicle traffic or movement of pedestrians on public roads, especially during traffic rush hours, is least impeded;

(b) an appropriate distance is maintained between participants in the assembly or demonstration and a rival or other assembly or demonstration;

(c) access to property and workplaces is least impeded;

(d) injury to persons or damage to property is prevented.

(2) A District Commissioner who refuses a request for an assembly or demonstration or imposes any condition under subsection (1) shall give to the convener reasons in writing for his decision.

(3) The District Commissioner shall ensure as soon as possible that a written copy of his decision made under subsection (1) is handed to the convener, the officer in-charge of police and to every person who attended the meeting convened under section 98 (2) (b).

(b).

(4) Where the identity of the convener is unknown, or if in view of the urgency of the case it is not practicable to deliver a written copy of his decision and the reasons to the convener, the District Commissioner shall, notwithstanding any provision to the contrary in any other law, publish a notice in one or more of the following manner -

(a) in a newspaper circulating where the assembly or demonstration is to be held;

(b) by means of the public radio or public television;

- (c) by the distribution of the notice among the public and the affixing of the notice in public or prominent places where the assembly or demonstration is to be held; or
- (d) by the announcement of the notice orally at the place or in the area where the assembly or demonstration is to be held; or
- (c) by affixing the notice in a prominent place at the address the convener specified in the notice of assembly or demonstration under section 96.

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- (5) The convener and the officer in-charge of police shall, respectively, ensure that every marshal and every police officer at the assembly or demonstration knows the contents of the notice, including any amendments and any conditions that are imposed.
- 100.— (1) If an assembly or a demonstration is postponed or delayed, the convener shall forthwith notify the District Commissioner and the District Commissioner may call a meeting under section 98 (2) (b), and thereupon subsections (3), (4) and (5) of section 98 shall apply to the assembly or demonstration in question.
- (2) Where an assembly or a demonstration is cancelled, the convener shall forthwith notify the District Commissioner of the cancellation and the notice given under section 96 shall lapse.
- (3) If the District Commissioner is notified under this section of the postponement or delay of an assembly or a demonstration he shall forthwith notify the officer in-charge of police accordingly

101. — (1) When credible information on oath is brought to the attention of a District Commissioner that there is a threat that a proposed assembly or demonstration will result in serious disruption of traffic, or in injury to participants in the assembly or demonstration or to other persons, or in extensive damage to property, and that the 1^ohee may not be able to contain such threat, he shall forthwith meet or, if time does not allow it, otherwise consult with the convener and the officer in-charge of police and, if possible, any other person with whom, he believes, he should meet or consult in order to consider the prohibition of the assembly or demonstration.

(2) If, after the meeting or consultation referred to in subsection (1), the District Commissioner is on reasonable grounds, convinced that no amendment under section 98 and no condition under section 99 (1) would prevent the occurrence of any of the circumstances specified in subsection (1) of this section, he may prohibit the proposed assembly or demonstration.

(3) If the District Commissioner decides to prohibit the assembly or demonstration he shall, in a manner specified in section 99, notify the convener, the officer in-charge of police and every other person with whom he has so met or consulted of the decision and the reasons therefore.

102.— (1) Where a condition is imposed in respect of an assembly or a demonstration or when an assembly or a demonstration is prohibited in accordance with section 101, the convener of such assembly or demonstration may apply to the High Court for the setting aside or amendment of such condition or for the setting aside of such prohibition.

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(2) An application under subsection (1) shall be made within, and under any circumstances not later than, twenty-four hours after the District Commissioner has given notice in accordance with section

101 of the imposition of, or the refusal to impose the condition in question or the prohibition of, or the refusal to prohibit, the assembly or demonstration in question; and such condition or prohibition shall, subject to any amendment, remain in force until set aside.

(3) A convener may appeal against any order made by the High Court under this section.

(4) No order as to costs shall be made by any court in respect of an application under subsection (1).

(5) Notwithstanding the other provisions of this section, the convener or any person whose rights may be affected by

(a) the holding of the assembly or demonstration;

(b) the prohibition of the assembly or demonstration;

(c) any term in a notice; and

(d) failure to impose any condition in relation to the assembly or demonstration, may apply to the High Court for the striking out or amendment of any such term or condition or for the imposition of any other condition or for permission to hold, or for a prohibition of, the assembly or demonstration, and the High Court may strike out, amend or impose any such term or condition or grant such permission or prohibit the assembly as it considers to be just in the circumstances.

(6) If the District Commissioner or the High Court, on application, has prohibited an assembly or a demonstration at any place, or if the High Court has upheld the prohibition of an assembly at any place, or in the case of a demonstration or assembly

or demonstration provided for under section 105, the officer in-charge of police shall (a) at the entrance to or vicinity of the place or area in question, give notice that the place or area is closed or inaccessible to member of the public for purposes of that assembly or demonstration.

(b) take such steps to uphold the prohibition as are in the circumstances, reasonable and appropriate.

103. All assemblies and demonstrations within the precincts of any building which is being used as Parliament, a State Residence or a court or at an open air place within a radius of one hundred metres from such building, are prohibited unless authorized by the Speaker, the President, or the Chief Justice, as the case may be.

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104.—(1) This section, in addition to any other provisions of this Part, apply to the conduct of assemblies and demonstrations.

(2) The convener shall appoint such number of marshals as is mentioned in the notice of assembly or demonstration or, if it was amended under section 98, in the amended notice, whose role or function shall be-

(a) to control the participants in the assembly or demonstration;

(b) to take the necessary steps to ensure that the assembly or demonstration at all times proceeds peacefully; and

(c) to ensure that the requirements of this section and the applicable notice and conditions, if any, are complied with.

(3) The marshals shall wear distinguishable clothing as approved by agreement of the District Commissioner so as to be easily identified by participants and the police.

(4) The convener shall take all reasonable steps to ensure that all marshals of the assembly or demonstration and participants in the assembly or demonstration are informed properly and in good time of the conditions to which the holding of the assembly or demonstration is subject.

(5) The assembly or demonstration shall proceed and take place at the locality or on the route and in the manner and during the times specified in the notice or, if the notice was amended, in the amended notice, and in accordance with the contents of such notice and any conditions imposed.

(6) Participants at an assembly or a demonstration shall abide by any law in respect of the carrying of dangerous weapons, and the convener and marshal, shall take all reasonable steps to ensure that such laws are complied with.

(7) No person present at or participating in an assembly or a demonstration shall—

(a) by way of a banner, placard, speech or singing or in any other manner incite hatred of other persons or any group of other persons on account of difference in culture, race, gender, language, religion or political affiliation;

(b) use abusive or insulting language in making or delivering a speech or by way of a banner, placard or singing; or

(c) perform any act or utter any words which are calculated or likely to cause or encourage violence against any person or group of persons.

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(8) No person shall at any assembly or demonstration wear a disguise or mask or any other apparel or item, which obscures his facial features and prevents his identification unless the identity of such person is disclosed before hand.

(9) No person shall at any assembly or demonstration wear any form of apparel that resembles any uniforms worn by members of the Police Service or members of the Defence Force of Malawi.

(10) The marshals at an assembly shall take all reasonable steps to ensure that—

(a) no entrance to any building or premises is barred by participants so that reasonable access to or exit from such building or premises is denied to any person:

(b) no entrance to any building or premises in or on which is situated a hospital, a tire station or an ambulance station or other emergency service is barred by the participants.

(11) No person shall compel or attempt to compel any person to attend, join or participate in an assembly or a demonstration either before or during the assembly or demonstration, and the convener and marshals shall take all reasonable steps to prevent any person from being so compelled.

105.-(1) Where an assembly or a demonstration is to take place in compliance with the provisions of this Part, a police officer--

(a) if he has reasonable grounds to believe that the police will not be able to provide adequate protection for the persons participating in such an assembly or a demonstration may notify the convener and such persons accordingly and shall give them the grounds in writing:

(b) may prevent persons participating in the assembly or demonstration from proceeding to a different place or deviating from the route specified in the notice or in the amended notice or from disobeying any condition to which, in accordance with this Act. the holding of the assembly or a demonstration is subject:

(c) in a case where the District Commissioner has not received a notice pursuant to section 96 or has received such notice but not more than forty-eight hours before the assembly or demonstration may restrict the assembly or demonstration to a place, or guide the participants along a route, to ensure that

(i) vehicle traffic or movement of pedestrian on public roads. especially during rush hours, is least impeded:

(ii) an appropriate distance is maintained between participants in the assembly or demonstration and rival assembly or demonstration;

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(iii) access to property and to work places is not impeded; or injury to persons or damage to property is prevented;

(d) may order any person or group of persons interfering or attempting to interfere with an assembly or a demonstration to cease such conduct and to remain at a distance, specified by him. from such assembly or demonstration;

(e) where an incident, whether or not resulting from the assembly or demonstration, may cause persons to gather at any public place, may by notice in accordance with section 99 (4) specify an area considered by him to be necessary for the-

(i) movement and operation of emergency personnel and vehicles;

(ii) passage of an assembly or a demonstration;

(iii) movement of traffic;

(iv) exclusion of the public from the vicinity; or

(iv) protection of property;

(f) shall take such steps including negotiations with the relevant persons, as are in the circumstances reasonable and appropriate to protect property and persons, whether or not such persons are participating in the assembly or demonstration.

(2) Where a District Commissioner has prohibited an assembly or a demonstration at any place and the High Court has upheld such prohibition or where a police officer of or above the rank of inspector has reasonable grounds to believe that danger to persons or property, as a result of the assembly or demonstration, cannot be averted by the steps referred to in subsection (1) if the assembly or demonstration proceeds any police officer of or above the rank of inspector, as the case may be may-

(a) make or cause to be made a proclamation, commencing with the President's name, in such form as may be prescribed or, if no form be prescribed, in such form as he thinks fit to enable the persons participating in the assembly or demonstration to disperse; and

(b) in a loud voice in the English language or in a language understood by the majority of the persons present, order the persons to disperse and to depart from the place of the assembly or demonstration within a time specified by him which shall be reasonable.

(3) Where, pursuant to subsection (2), a police officer orders persons gathered to disperse and such persons have not dispersed or have made no preparations to disperse, the police officer may order the members of police under his command to disperse the persons

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concerned and such members of police may for that purpose use such force as may be reasonably necessary and as shall be appropriate to the circumstances of the case.

(4) If any person who participates in an assembly or demonstration or any person who hinders, obstructs or interferes with persons who participate in an assembly or a demonstration —

(a) kills or seriously injures, or attempts to kill or seriously injure, or shows a manifest intention of killing or seriously injuring, any person; or

(b) destroys, does serious damage to, or attempts to destroy or to do serious damage to, or shows a manifest intention of destroying or doing serious damage to, any property considered to be valuable, a police officer of or above the rank of inspector may order the members of police under his command to take necessary steps to prevent such action and may for that purpose, if he finds other methods to be ineffective or inappropriate, order the use of force, including the use of firearms and other weapons.

(5) The degree of force which may be used under this section shall not be greater than is necessary for the prevention of the concerned actions and shall be appropriate to the circumstances of the case.

106. (1) If any riot damage occurs as a result of an assembly or a demonstration, every organization on behalf of or under the auspices of which the assembly or demonstration was held, the convener, and every person participating in the assembly or demonstration, as the case may be, shall be liable for that damage as a joint wrongdoer together with any other person who unlawfully caused or contributed to such riot damage.

(2) Any person or organization held liable for riot damage under subsection (1) shall, notwithstanding that subsection, be deemed to be liable in any civil claim in respect of -
(a) recourse against, or contribution by, that person or organization for intentionally and unlawfully causing or contributing to the cause of the riot damage; or
(b) contribution by the other person who, or the other organization which, is jointly liable for the riot damage.

(3) This section shall not in any way affect the right, under the common law or any other written law, of a person or body to recover the full amount of damages arising from the negligence, intentional act or omission committed by or at the behest of any person or body.

107. - (1) Any person who, while present at or taking part in any assembly or demonstration which takes place in or on a road or street or at any place of public

resort, whether such assembly or demonstration has been lawfully convened or not, has with him any weapon otherwise than in pursuance of lawful authority, commits an

offence and may be arrested without a warrant and shall, on conviction be liable to a fine of K100,000 and to imprisonment for two years.

(2) For the purposes of subsection (1), a person shall be deemed to be acting in lawful authority if he is acting in his capacity as a police officer or a member of the Defence Force of Malawi deployed to assist the police in the particular instance or as a member of a fire brigade.

(3) For the purposes of this section, "weapon" means a firearm as defined in the Firearms Act, a knife, an axe, or a machet, or any object, article or thing made or adapted or suitable or suited for causing injury to a person or intended by the person having it with him for such use by him or by any other person.

108. Any person who does any act or thing in contravention of any provision of this Part, not made an offence under any other provision of this Part commits an offence and may be arrested without a warrant.

109. A person guilty of an offence under this Part shall, if no other punishment is prescribed, be liable to a fine of K50,000 and to imprisonment for twelve months.

110. It shall be a defence to a charge of convening an assembly or a demonstration in contravention of this Part that the relevant assembly or demonstration took place spontaneously.

111. The Minister may make regulations for any of the purposes of this Part and may, in such regulations, provide for—

- (a) any further procedure to be followed when dispersing an assembly or demonstration;
- (b) the use of force by police officers, and the further procedure to be followed before the use of force against participants in an assembly or demonstration; and
- (c) any other matter in regard to which it may be necessary to make regulations in order to achieve the purposes of this Part.

PART X—PUBLIC ORDER AT FOOTBALL MATCHES

112. This Part shall apply to all categories of football matches.

113.- (1) Any person who at a football match—

- (a) uses or threatens violence towards another person;
- (b) uses or threatens violence towards property;
- (c) uses threatening, abusive or insulting words or displays disorderly behaviour;

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(d) displays any written sign, or other visible representation which is threatening, abusive or insulting;

(e) is found drunk or drinking alcohol on the premises; (f) is found in possession of alcohol on the premises:

(g) without authority, enters the playing surface, perimeter track or the tunnel or corridor for players and officials; or

(h) throws any thing at or towards the playing area or adjacent to the playing area, or an area where spectators or others may be present, commits an offence and shall, on conviction, be liable to a fine of K20,000 and to an order to perform community service.

(2) A person found guilty under subsection (1) may be liable to a banning order.

(3) A banning order shall specify the venues and the number of matches which the offender is prohibited from attending and shall require the offender to report and remain at the nearest police station during those matches.

(4) Any person who breaches a banning order commits an offence and shall, on conviction, be liable to a fine of K 10,000 and to imprisonment for three months.

(5) A police officer may arrest without a warrant a person who —

(a) commits an offence under subsection (1); or

(b) he reasonably suspects of breaching a banning order.

114.—(1) In the dispersal of a disorderly crowd at a football match, a police officer of or above the rank of inspector may authorize the use of force by the police to prevent breach of peace.

(2) Where every effort to disperse the crowd by persuasive measures has failed, force may be used under subsection (1) as a last resort, and any such measure of last resort shall be used only where escape routes are available.

(3) No firearms shall be used to disperse crowds under subsection (1) unless persuasive measures are not practicable; and the use of firearms in this case shall be subject to the conditions laid down in section 44 (2) notwithstanding that the circumstances may not be similar.

115.- (1) Every club participating in football match shall appoint a specified number of marshals to control the supporters of that club and to take the necessary steps to ensure that the football match proceeds peacefully.

(2) For the purposes of subsection (1), every club shall submit the names of persons appointed as marshals to the officer in-charge of the nearest police station at least forty eight hours before the date of the match.

(3) The marshals shall wear distinguishable clothing as approved by agreement of the national body responsible for football administration so as to be easily identified by the supporters and the police.

116.—(1) The national body responsible for football administration shall, from time to time, and in liaison with football clubs, owners of football match venues, and the police, issue guidelines outlining the role of football clubs and the owners of football match venues, respectively, in ensuring public order at football matches.

(2) The guidelines issued under subsection (1) shall, among other things, specify the minimum number of marshals to be appointed by each club participating in a football match.

117.—(1) Where violence erupts at a football match causing damage to property or injury to a person, a football club shall be jointly and severally liable for the damage and injury caused by the supporters or players of that club.

(2) Subsection (1) shall apply whether the damage or injury is caused while the supporters or players were on the way to or from the football match.

(3) Where it is not possible to ascertain which club whose supporters or players caused the damage or injury both clubs participating in the football match shall be jointly and severally liable.

118.—(1) The Minister may, by Order published in the Gazette, extend the application of this Part to other designated sporting events.

(2) An Order under subsection (1) may make such modifications of the provisions of this Part as are necessary and applicable by virtue of the Order.

PART XI—COMMUNITY POLICING

119. The Malawi Police Service shall liaise with communities, through community police forums, with a view to —

- (a) establishing and maintaining a partnership between the police and the community;
- (b) promoting communication between the police and the community;
- (c) promoting cooperation between the police and the community in fulfilling the needs of the community regarding policing;

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(d) improving the rendering of police services to the community at national, regional, district and local levels;

(e) improving transparency in the Police Service and accountability of the police to the community; and

(f) promoting joint identification of problems and solutions to such problems by the police and the community.

120.—(1) Subject to the directions of the Inspector General, the officer in-charge of a police station may, in liaison with local community leaders, establish a community police forum for the area of his police station which shall be broadly representative of the local community.

(2) A community police forum may establish community police sub-forums.

121.—(1) A community police forum or sub-forum shall consist of—

(a) the officer in-charge of a police station or his representative;

(b) one police officer designated by the officer in-charge of the police station for that purpose; and

(c) at least five other persons from the local community who are independent and of good character, identified through liaison between the officer in-charge of the police station and the community leaders.

(2) In establishing a community police forum, the officer in-charge shall ensure that women and the youth are represented.

(3) A member of a community police forum or sub-forum under subsection (1) (c) shall serve for a period of two years and shall be eligible for reappointment to serve a second term at the expiry of the first term.

(4) Service as a member of a community police forum shall be on voluntary basis and shall be understood by all persons to be such.

122. The functions of a community police forum shall be to— (a) collect and report information on crime in the local area; (b) organize neighbourhood watch groups at local level;

(c) report on common crimes affecting the community so that the police can re-direct their resources as appropriate;

(e) encourage ordinary citizens to report suspicious behaviour by individuals;

(f) ensure regular visible police patrols in the local area;

(g) ensure that the local police communicates to the people of the local community on activities by the police on crime prevention in the area;

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(h) determine the way the police may make their presence felt in the community;

(i) assess the way the police use resources in dealing with crime in the local community;

(j) raise public awareness and disseminate information on how community policing works in the community concerned; and

(k) perform any other function that may be necessary and appropriate to advance the objectives of community policing specified in section 119.

123. Any member of a police forum who is convicted of any offence shall be liable to be discharged forthwith.

PART XII —LAY VISITORS TO POLICE STATION

124. There is hereby established a scheme to be known as the Lay Visitors Scheme (in this Act otherwise referred to as the "Scheme"), the objective of which is to enable members of the local community—

(a) to observe, and comment and report on, the conditions under which persons are detained at police stations; and

(b) to observe the operation and implementation in practice of constitutional, international, statutory or other rules governing the welfare of persons detained at police stations, with a view to ensuring observance by police officers of the human rights of the detained persons and securing greater public understanding and confidence in policing matters.

125.—(1) Subject to subsections (2) and (3), the Minister may, in consultation with the relevant community police forums, appoint persons who are independent and of good character to be lay visitors for the purpose of the Scheme.

(2) The Minister shall appoint a panel of at least eight lay visitors for each police station in Malawi.

(3) In appointing each panel of lay visitors the Minister shall ensure that women are represented and shall consider the ethnic diversity and age range of the community.

(4) A person appointed as a lay visitor shall serve for a period of two years from the date of appointment and shall be eligible for reappointment to serve a second term at the expiry of the first term.

(5) Service as a lay visitor shall be on voluntary basis and shall be understood by all persons to be such.

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126. A person shall be disqualified from being appointed on a panel of lay visitors if he—

- (a) is under twenty-one years or is over sixty-five years of age;
- (b) does not reside or work in the locality for which the panel is to be appointed;
- (c) has been convicted of an offence punishable with imprisonment within five years of the proposed date of appointment; or
- (d) holds or is acting in judicial office or is a police officer or a former police officer.

127. The Minister may issue guidelines regarding the operation of the Lay Visitor Scheme under this Part.

PART XIII—INDEPENDENT COMPLAINTS COMMISSION

128. There is hereby established a body to be known as the Independent Complaints Commission (in this Part otherwise referred to as the "Commission") with power to do or perform all such acts and things as it may be authorized by or under this Act and any other written law.

129. The functions of the Commission shall be—

- (a) to receive and investigate complaints by the public against police officers and the Police Service;
- (b) to investigate death or injury as a result of police action; and
- (c) to investigate all deaths and injuries which occur in police custody.

130.—(1) For the purpose of carrying out its functions, the Commission shall have power—

- (a) upon receipt of a complaint, to investigate any misconduct or offence allegedly committed by a police officer;
- (b) upon receipt of a complaint, to investigate any death or injury in police custody or as a result of police action;
- (c) to investigate any matter referred to it by the Minister;
- (d) on its own initiative, to investigate any complaints against a police officer or against the Police Service;
- (e) to obtain information from the Inspector General, any police officer or any other person or authority as may be necessary for conducting an investigation under this Part;
- (f) to obtain the cooperation of any person as may be necessary for the performance of its functions;
- (g) to commence an investigation on any matter as specified in this subsection, notwithstanding that an investigation regarding the same matter has been submitted to any other authority for any purpose.

(2) The Commission shall—

(a) make recommendations to the Minister, the Police Service Commission, the Inspector General or any other appropriate authority on any findings pursuant to an investigation it has conducted under this Part;

(b) make recommendations to the Minister which it deems necessary regarding any matter investigated by it or relating to the performance of its functions.

131.—(1) The Commission shall function independently of the Malawi Police Service.

(2) No organ of State and no member or an employee of an organ of State or any other person shall interfere with the Commission or any of its personnel in the exercise and performance of its powers and functions.

(3) All organs of State shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Commission in the exercise and performance of its powers and functions.

132. The Commission shall consist of the Independent Complaints Commissioner and other personnel in the service of the Commission.

133.—(1) The office of the Independent Complaints Commissioner shall be a public office.

(2) Nominations for appointment to the office of the Independent Complaints Commissioner shall be received from the public following a public advertisement and the successful candidate, who shall be qualified as a legal practitioner, shall be appointed by the Public Appointments Committee of the National Assembly.

(3) The Independent Complaints Commissioner shall hold office for a term of five years on first being appointed to that office and shall be eligible for reappointment for one more term not exceeding five years.

134. The Independent Complaints Commissioner may be removed from his office by the Public Appointments Committee on the following grounds—

(a) incompetence;

(b) incapacity; or

(c) where he is compromised to the extent that his ability to impartially exercise the duties of his office is seriously in question.

135.—(1) The Independent Complaints Commissioner shall—

(a) be responsible for the performance and exercise of the functions and powers of the Commission;

(b) be responsible for the management and administration of the Commission;

(2) The Independent Complaints Commissioner may delegate any of his powers to any members of the personnel of the Commission as he may see fit.

136. The other personnel of the Commission shall be officers of subordinate to the Independent Complaints Commissioner and whom he shall appoint as officers in the public service and such other persons as may be seconded or transferred to the service of the Commission with his agreement.

137. The terms and conditions of service of the Independent Complaints Commissioner and the other personnel of the Commission shall be determined by Parliament on the recommendation of the Independent Complaints Commissioner

made after he has consulted with the officer for the time being responsible for the public service.

138.—(1) The funds of the Commission shall consist of such sums as may be appropriated by Parliament for the purposes of the Commission.

(2) The Commission may receive any donation of funds, materials and any other form of assistance for the purposes of its functions and powers:

Provided that no such donation shall jeopardize or compromise the independence and impartiality of the Commission.

139.—(1) The Independent Complaints Commissioner shall cause to be kept proper books of accounts and other records relating to the accounts of the Commission.

(2) The accounts of the Commission shall be subject to audit by the Auditor General.

140. Any person who interferes or fails to cooperate with, or otherwise obstructs, the Independent Complaints Commissioner or any employee of the Commission or other person in the service of the Commission in the discharge of the functions and powers of the Commission commits an offence and shall, on conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

141. The Independent Complaints Commissioner and the other personnel of the Commission and other persons in the service of the Commission shall have such immunities and privileges as are by law necessary in order to ensure the proper exercise and performance of their duties.

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142. Every person working for the Commission shall be issued with a document, in a prescribed form, identifying him that he is an employee of the Commission or is working for the Commission and has been authorized to perform duties in the discharge of the functions and powers of the Commission as specified in this Part.

143. Any person working for the Commission, whether as an employee or otherwise, who discloses any information in circumstances in which he knows or could reasonably be expected to know that such disclosure would or may prejudicially affect the performance or exercise of the functions or powers of the Commission or of the Police Service commits an offence and shall, on conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

144. The Independent Complaints Commissioner shall issue instructions in writing for the operations of the Commission regarding—

- (a) the lodging, receiving and processing of complaints;
- (b) recording and safe-guarding of information and evidence;
- (c) disclosure of information;
- (d) the making of findings and recommendations;
- (e) procedures for the protection of the identity and integrity of complainants; and
- (f) all matters incidental to the matters specified in paragraphs (a) to (e).

145. The officer in-charge of police shall inform the Commission immediately of all cases of death or injury in police custody or as a result of police action.

146.—(1) Within three months after the expiry of each year, the Commission shall submit to Parliament a report of its activities during that year.

(2) The report of the Commission shall be tabled in Parliament within fourteen days after it has been submitted or if Parliament is not then meeting within fourteen days after the commencement of the next meeting.

(3) The Independent Complaints Commissioner shall, at any time when requested to do so by a competent Committee of the National Assembly submit a report on the activities of the Commission to that Committee and appear before such Committee to answer questions on the content of such report.

147. Nothing in this Part shall preclude any person or authority from exercising the rights, powers, functions or duties conferred on such person or authority by or under any written law in respect of any matter otherwise provided under this Part.

148. The Minister may, on the advice of the Commission, make regulations for the proper implementation of this Part.

PART XIV— MISCELLANEOUS

149. Nothing in this Act shall exempt any person from being prosecuted under any other Act for the time being in force for any offence made punishable by this Act or from being liable under any other Act to any other or higher penalty or punishment than is provided for such offence by this Act: Provided that no person shall be tried twice for the same offence.

150. Any keeper of a house, store or place in which intoxicating liquor is sold who, himself or by any person in his employment, knowingly harbours or entertains any police officer or permits any police officer to remain in such house, store or place, during any part of the time in which such officer has been detailed for duty, commits an offence and shall, on conviction, be liable to a fine of K10,000 or to imprisonment for three months.

151. Any person, not being a police officer, who is found in possession of any article whatsoever which has been supplied to any police officer for the execution of his duty or any medal or decoration granted to any such officer for service or good conduct and who fails to account satisfactorily for the possession thereof or who, without due authority, purchases or receives any such article, medal or decoration from a police officer, or who aids or abets any police officer to sell or dispose of any such article, medal or decoration, commits an offence and shall, on conviction, be liable to a fine of K10,000 and to imprisonment for three months.

152.—(1) Any person who—

(a) causes, or attempts to cause, or does any act calculated to cause disaffection amongst police officers: or

(b) induces, or attempts to induce or does any act calculated to induce, any police officer to withhold his services or to commit a disciplinary offence, commits an offence and shall, on conviction, be liable to a fine of K100,000 and to imprisonment for two years.

(2) Where the person under subsection (1) is a police officer, he shall be liable to dismissal.

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153.—(1) Any person who, in any court, police station, police office lock-up, is guilty of any riotous, indecent, disorderly or insulting behaviour commits an offence and shall, on conviction, be liable to a fine of K50,000 and to imprisonment for twelve months.

(2) Any police officer may arrest without a warrant any person, who, in his presence or within his view, commits any offence under subsection (1).

(3) Any superior police officer in-charge of the police in any area, if he is satisfied that any person has committed an offence under subsection (1), may accept from such person a sum of money by way of compensation for any damage caused by such person during the commission of the offence:

Provided that in no case shall the amount of compensation exceed the value of the estimated damage.

(4) In any proceedings brought against any person under subsection (1), it shall be a good defence if such person proves to the satisfaction of the court that he has compounded the offence under this section.

154.—(1) Any person who at any time is found in or upon police premises without lawful authority, the proof of which shall lie on him, commits an offence.

(2) Any person who shall have been lawful in or upon police premises and who is thereafter found at any place in such police premises, other than on one of the principal roadways within such premises or at the office or premises of the person with whom he has business, and who fails satisfactorily to account for his presence at that part of such police premises commits an offence.

(3) Any person guilty of offence against subsection (1) or (2) shall be liable to a fine of K10,000 and to imprisonment for three months.

(4) In this section, "police premises" means any police station or other premises for the time being in the occupation of the police.

155.—(1) The Minister may make regulations or rules for the purposes of this Act respecting any matter for which the power to make regulations or rules has not been specially conferred under any other Part of this Act.

(2) Without derogation from the generality of subsection (1), regulations and rules made under this section may provide for-

(a) anything which by this Act may or is to be prescribed and generally for the effective administration of this Act;

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(b) the enlistment, terms of conditions of service and discipline of police officers;

(c) the training of police officers;

(d) the awarding of good conduct medals and badges and the grant to be paid in respect thereof;

(e) the establishment, constitution, functions and procedure of Police Associations and for matters incidental thereto; and

(f) the prevention and regulation of access of persons to police stations or any premises in the occupation of the police.

156. The Police Act is repealed.

SCHEDULE s. 52

CODE OF DISCIPLINARY CONDUCT FOR POLICE OFFICERS

1. A police officer commits an offence against discipline who—
 - (a) is disrespectful in word, act or demeanour to his superior in rank;
 - (b) willfully disobeys any lawful order given to him by his superior in rank.
2. A police officer commits an offence against discipline who—
 - (a) is guilty of drunkenness;
 - (b) drinks intoxicating liquor when on duty;
 - (c) enters any place licensed for the sale of intoxicating liquor when on duty, except when his presence is required there in the execution of his duty.
3. A police officer commits an offence against discipline who—
 - (a) sleeps when on duty;
 - (b) idles or gossips or leaves his post without authority, express or implied, when on duty;
 - (c) smokes on duty;
 - (d) removes his armlet or duty badge when on duty or endeavours at any time to conceal or disguise his number;
 - (e) absents himself without leave; and (f) neglects his duty.
4. A police officer commits an offence against discipline who—
 - (a) being under arrest or in confinement, leaves or escapes from his arrest or confinement without authority, express or implied;
 - (c) neglects or refuses to assist in the apprehension of any police officer charged with any offence;

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(d) allows to escape any prisoner who is committed to his charge or whom it is his duty to keep or guard.

5. A police officer commits an offence against discipline who -
 - (a) offers or uses unwarrantable personal violence to any person in his custody
 - (b) ill-uses or ill-treats any person in his custody.
6. A police officer commits an offence against discipline who is guilty of cowardice.
7. A police officer commits an offence against discipline who discharges his firearm without just orders or cause.
8. A police officer commits an offence against discipline who —
 - (a) without proper cause, fails to appear or appears late at any parade;
 - (b) talks or is inattentive or otherwise misbehaves himself on parade.
9. A police officer commits an offence against discipline who
 - (a) parades or reports for duty dirty or untidy on his person, arms, clothing or accoutrements;

(b) is slovenly.

10. A police officer commits an offence against discipline who—

(a) is uncivil or quarrelsome;

(b) bullies an inferior in rank;

(c) forces a sentry.

11. A police officer commits an offence against discipline who pawns, sells, loses by neglect, makes away with, willfully fails to report any damage to—

(a) any of the articles of arms, ammunition, clothing, accoutrements or necessaries supplied to him;

(b) any medal or decoration granted to him for service or good conduct;

(c) any Government property or any exhibit or any lost, stolen or unclaimed property committed to his charge,

12. A police officer commits an offence against discipline who, without the knowledge and permission of the Inspector General, accepts directly or indirectly any gift, gratuity, present or reward from any member of the public in respect of any thing done by him in the discharge of the duties of his office.

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13. A police officer commits an offence against discipline who, without due authority discloses or conveys any information concerning any investigation or other police or departmental matter to any unauthorized person.

14. A police officer commits an offence against discipline who—

(a) malingers or feigns sickness;

(b) conceals any venereal or contagious disease;

(c) neglects or fails to report the fact if he is suffering from any venereal or contagious disease.

15. A police officer commits an offence against discipline who is guilty of wilful misconduct, or who wilfully disobeys, whether in hospital or elsewhere, any orders, by which misconduct or disobedience lie contracts or aggravates any disease or infirmity or delays its cure.

16. A police officer commits an offence against discipline who, without proper authority, exacts from any person carriage, portage or provisions.

17. A police officer commits an offence against discipline who resists an escort whose duty it is to apprehend such police officer or to have such police officer in his charge.

18. A police officer commits an offence against discipline who breaks out of, or leaves without lawful excuse, any police lines, camp or quarters.

19. A police officer commits an offence against discipline who makes or signs any false report or statement in any official record or document knowing or having reasonable grounds to believe that such report or statement is false.

20. A police officer commits an offence against discipline who makes a false accusation against any police officer knowing or having reasonable grounds to believe that such accusation is false.

21. A police officer commits an offence against discipline who—

(a) makes or joins in making any anonymous complaint to a superior officer;
(b) makes any frivolous or vexatious complaint or makes a complaint in an irregular manner.

22. A police officer commits an offence against discipline who engages without the authority of the Inspector General in any employment, occupation or office other than his police duties.

23. A police officer commits an offence against discipline who is guilty of any other act, conduct, disorder or neglect to the prejudice of good order or discipline in the Police Service.

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OBJECTS AND REASONS

This Bill proposes to repeal the Police Act (Cap.13:01) and in its place introduce new legislation to comprehensively codify the law that regulates the Malawi Police Service so that its operations are in line with the Constitution.

This Bill is a product of the work of a Special Law Commission appointed under section 133 of the Constitution (the "Commission") to comprehensively review the Police Act and related legislation. The Commission was set up following receipt in 1999 by the Law Commission of two submissions from the Ministry of Home Affairs and from the Inspector General of Police recommending the review of all legislation relating to policing.

The Bill endeavours to, among other things —

(a) portray the Police as a "Service" rather than a Force to emphasize that policing duties are actually a service to citizens;

(b) incorporate constitutional and applicable international norms relating to modern policing methods;

(c) enhance transparency and accountability of the Police as a State organization;

(d) enhance respect for human rights within the Police Service;

(e) create certain bodies, institutions and mechanisms which will make the Police transparent and accountable service organization and improve its functioning;

(f) introduce provisions which specifically outlaw and create penalties for the use of unconventional and internationally proscribed policing methods; and

(g) create an elaborate disciplinary regime within the Police Service capable of dealing with transgressions by police officers swiftly and fairly through a process which creates confidence in the general public,

Dr. Jane Ansah, SC
Attorney General