

THE POLICE

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| The Malawi Police Force | 152. | There shall be a Malawi Police Force which shall be constituted by an Act of Parliament that shall specify the various divisions and functions of the Malawi Police Force. |
| Powers and functions of the Police | 153. | <ol style="list-style-type: none"> 1. The Malawi Police Force shall be an independent organ of the executive, which shall be there to provide for the protection of public safety and the rights of persons in Malawi according to the prescriptions of this Constitution and any other law. 2. The Malawi Police Force shall enjoy only such powers as are necessary for the protection of rights under this Constitution and the maintenance of public safety and public order in accordance with the prescriptions of this Constitution and the law. 3. In the exercise of their functions, members of the Malawi Police Force shall be subject to the direction of the courts and shall be bound by the orders of such courts. 4. Political responsibility for the Malawi Police Force shall vest in a Minister of the Government who shall ensure that the discipline and conduct of the Malawi Police Force accords with the prescriptions of this Constitution and any other law. |
| The Inspector General of Police 6 of 1995 | 154. | <ol style="list-style-type: none"> 1. There shall be an Inspector General of Police who shall be the Head of the Malawi Police Force whose office shall be a public office and also shall be accountable to the Minister responsible for the Police and whose office shall be a public office. 2. The Inspector General of Police shall be appointed by the President and confirmed by the National Assembly by a majority of the members present and voting, but the Public Appointments Committee may at any time inquire as to the competence of the person so appointed to carry out the duties of that office and as to such other questions as may have direct bearing on the performance of the duties of that office. 3. The office of the Inspector General of Police shall become vacant after the person holding that office has served for five years, but the person holding that office may be nominated for such further terms, not exceeding five years, as the President may deem appropriate. 4. A person holding the office of Inspector General of Police shall be subject to removal by the President only by reason of that person being - <ol style="list-style-type: none"> a. incompetent in the exercise of his or her duties; b. compromised in the exercise of his or her duties to the extent that his or her capacity to exercise his or |

- her powers impartially is in serious question;
- c. otherwise incapacitated; and
- d. over the age prescribed for retirement.

5. Subject to subsection (4), in the exercise of the duties and powers vested in the office of the Inspector General of Police by the Constitution or any other law, the person holding that office shall not be subject to the direction or control of any other person or authority, other than as prescribed in this Constitution or an Act of Parliament.
6. The Inspector General of Police may delegate such powers as are conferred on him or her by this Constitution or by an Act of Parliament to such other persons or authorities, being part of the Malawi Police Force, as he or she may consider appropriate.
7. With respect to any powers under this section, the Inspector General of Police shall notify the Police Service Commission of any delegation and the Police Service Commission may prescribe any regulations it considers appropriate in relation to the manner and form of reports that the person exercising that power shall make and shall specify such restrictions as may be required to ensure the proper exercise of the powers delegated under this section in accordance with the law.

The Police Service
Commission

- 155.
1. There shall be a Police Service Commission with such powers and functions as are conferred upon it by this Constitution or an Act of Parliament.
 2. Subject to this Constitution, power to appoint persons to hold or act in offices in the Malawi Police Force other than that of Inspector General of Police, including the power to confirm appointments, and to remove such persons from office shall vest in the Police Service Commission.
 3. The Police Service Commission shall, subject to this Constitution and any general directions of an Act of Parliament, exercise disciplinary control over persons holding or acting in any office to which this section applies.

Power to delegate

- 156.
1. The Police Service Commission, may, subject to such conditions as may be laid down by an Act of Parliament, delegate powers conferred by this Constitution or an Act of Parliament by directions in writing to any member of the Commission or to any public officer or public body.
 2. Where any person or body may from time to time exercise powers under this section on behalf of the Police Service Commission in accordance with subsection (1), the Police Service Commission shall-
 - a. require that person or body to furnish reports in such manner or form as the Commission may

prescribe in the directions which delegated those powers; and

- b. hear such complaints or appeals from persons with sufficient interest relating to the exercise of powers delegated under this section and shall have the authority to -
 - i. quash the decision of a person or body exercising such powers;
 - ii. exercise such disciplinary powers in relation to such person or body, subject to the conditions laid down by an Act of Parliament; and
 - iii. revoke directions delegating powers to any person or body:

Provided that nothing in this section shall prejudice the right of any person who is the subject of a decision made by or on behalf of the Police Service Commission to appeal to the High Court or the right of any person with sufficient interest in such a decision to petition the High Court for judicial review of that decision.

Composition

157.

1. The Police Service Commission shall consist of the following members -
 - a. such Justice of Appeal or Judge as may for the time being be nominated in that behalf by the Judicial Service Commission and who shall be the Chairman of the Police Service Commission;
 - b. such member of the Civil Service Commission as may for the time being be nominated in that behalf by the Civil Service Commission;
 - c. the Inspector General of Police or such senior officer in the Malawi Police Force as the Inspector General may for the time being nominate in that behalf;
 - d. the Ombudsman; and
 - e. such legal practitioner as may for the time being be nominated in that behalf by the President and confirmed by the Public Appointments Committee.
2. Any three members of the Police Service Commission shall form a quorum.
3. A person shall not be qualified for appointment as a member of the Police Service Commission if he or she is President, Vice-President, a Minister or Deputy-Minister, a Member of Parliament or a police officer.
4. Subject to this section, the office of a member of the Police Service Commission shall become vacant -
 - a. at the expiration of three years from the date of that

person's appointment, unless reappointed to a new three year term:

Provided that this paragraph shall not apply where the member in question still holds the office of Inspector General of Police or of Ombudsman, or other office in which behalf that person was appointed to the Police Service Commission; or

- b. if any circumstances arise that, if that person were not a member of the Police Service Commission, would cause that person to be disqualified from appointment as such.

Political independence
of the Malawi Police
Force

- 158.
1. Members of the Malawi Police Force shall ensure that they exercise their functions, powers and duties as impartial servants of the general public and the Government of the day.
 2. No member of the Malawi Police Force shall be permitted to participate directly in political activities:

Provided that -

- a. any member of the Malawi Police Force of Malawi shall have the right to resign in order to participate directly in political activities;
 - b. nothing in this section shall be deemed to prejudice any member of the Malawi Police Force having the absolute right to vote in accordance with this Constitution; and
 - c. nothing in this subsection shall prejudice the right of any member of the Malawi Police Force to hold office in or be a member of any association, group or professional body, the purposes of which are principally to represent their members interests in relation to the terms and conditions of employment or the general carrying on of any profession or trade or the promotion of any interest, not pertaining directly to the promotion of a political party, campaign or philosophy or otherwise inconsistent with the functions of the Malawi Police Force.
3. No government or political party shall cause any member of the Malawi Police Force acting in that behalf to exercise functions, powers or duties for the purposes of promoting or undermining the interests or affairs of any political party or individual member of that party, nor shall any member of the Malawi Police Force, acting in that behalf, promote or undermine any party or individual member of that party.
 4. No government or political party shall cause any member of the Malawi Police Force, acting in that behalf, to deploy resources, whether they be financial, material or human resources, for the purposes of promoting or undermining any political party or member of a political party or

interest group, nor shall any member of the Malawi Police Force, acting in that behalf, cause such deployment:

Provided that nothing in this section shall be construed as derogating from the duty of the Police to uphold the rights and afford protection to all political parties, persons and organizations equally, without fear or favour, in accordance with this Constitution and subject to any law.

5. Any member of the Malawi Police Force who contravenes this section shall be subject to such disciplinary measures as the Police Service Commission considers appropriate, taking into account the gravity and circumstances of the contravention, subject to such regulations as may be prescribed by an Act of Parliament.
6. Where the Police Service Commission is satisfied that a government or political party or member of a political party has acted in contravention of subsection (3) or subsection (4), the Police Service Commission may initiate proceedings before the High Court for punitive damages and, in the case of a contravention of subsection (4), for the recovery of such resources or sums equivalent to the benefit of the enjoyment of those resources from the government, or political party or member of a political party who has so benefitted, as the case may be.