## Chapter VIII : The Executive

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CHAPTER
VIII

## THE EXECUTIVE

The President 78. There shall be a President of the Republic who shall be Head of State and Government and the Commander-in-Chief of the Defence Forces of Malawi.

Vice-
Presidents 31 of 1994
79. There shall be a First Vice-President and, subject to section 80 (5), a Second Vice-President both of whom shall assist the President and who shall exercise the powers and perform the functions conferred on the First Vice-President or the Second Vice-President, as the case may be, by this Constitution or by any Act of Parliament and by the President.

Election of the
Presidentand
the Vice-
President
31 of 1994
6 of 1995
38 of 1998
80. -

1. The President shall be elected in accordance with the provisions of this Constitution in such manner as may be prescribed by Act of Parliament and, save where this Constitution provides otherwise, the ballot in a Presidential election shall take place concurrently with the general election for members of the National Assembly as prescribed by section 67 (1).
2. The President shall be elected by a majority of the electorate through direct, universal and equal suffrage.
3. Every presidential candidate shall declare who shall be his or her First Vice-President if he or she is elected at the time of his or her nomination.
4. The First Vice-President shall be elected concurrently with the President and the name of a candidate for the First Vice-President shall appear on the same ballot paper as the name of the Presidential candidate who nominated him.
5. Where the President considers it desirable in the national interest so to do, he or she may appoint a person to the office of Second VicePresident and may do so upon taking his or her oath of office or at any time thereafter or upon a vacancy in the office of Second VicePresident; and, where no person has been appointed to the office of Second Vice-President then -
a. the provisions of this Chapter making reference to that office shall be read mutatis mutandis; and
b. the office of First Vice-President shall be known as the office of VicePresident as if section 79 created the office of a Vice-President only:

Provided that where the President was elected on the sponsorship of a political party, then he or she shall not appoint a Second Vice-President from that political party.
6. Notwithstanding any provision of this Constitution to the contrary, a person shall only be qualified for nomination for election as President or First Vice-President or for appointment as First Vice-President or Second Vice-President if that person-
a. is a citizen of Malawi by birth or descent; and
b. has attained the age of thirty-five years.
7. No person shall be eligible for nomination as a candidate for election as President or First Vice-President or for appointment as first VicePresident or Second Vice-President if that person-
a. has been adjudged or declared to be of unsound mind;
b. is an undischarged bankrupt having been declared bankrupt under a law of the Republic;
c. has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;
d. owes allegiance to a foreign country;
e. is the holder of a public office or a member of Parliament, unless that person first resigns;
f. is a serving Member of the Defence Forces or Malawi Police Force; or
g. has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

Oath of office 81.31 of 1994

1. Before a person elected to be President or First Vice-President or appointed to be First Vice-President or Second Vice-President takes office that person shall take the following oath which shall be administered in public by the Chief Justice-
"I.......do solemnly swear that I will well and truly perform the functions of the high office of President (or Vice-President) of the Republic of Malawi, and that I will preserve and defend the Constitution, and that I will do right to all manner of people according to law without fear or favour, affection or ill-will. So help me God."
2. Instead of taking an oath, the President, First Vice-President or Second Vice-President may, if he or she thinks fit, make an affirmation which shall be in the like form with the substitution of "affirm" for "swear", and the omission of the final sentence.
3. A person elected to be President or appointed to be First Vice-President or Second Vice-President shall be sworn into office, in accordance with sub-section (1), within thirty days of being elected or appointed.
4. The President, First Vice-President and Second Vice-President shall hold office until such time as his or her successor is sworn in.

Remuneration 82. The President, First Vice-President and Second Vice-President shall receive 31 of 1994

Tenure of office 31 of 1994

1998 such salary, allowance or pension as may, from time to time, be determined by an Act of Parliament in consultation with the President and shall have such adequate number of residences and personal staff, at State expense, as an Act of Parliament may prescribe.

1. The President shall hold office for five years from the date that his or her oath of office is administered, but shall continue in office 38 of until his or her successor has been sworn in
2. The First Vice-President and the Second Vice-President shall hold office from the date of the administration of the oath of office to them until the end of the President's term of office unless their office should come to an end sooner in accordance with the provisions of this Constitution.
3. The President, the First Vice-President and the Second Vice-President may serve in their respective capacities a maximum of two consecutive terms, but when a person is elected or appointed to fill a vacancy in the office of President or Vice- President, the period between that election or appointment and the next election of a President shall not be regarded as a term.
4. Whenever there is a vacancy in the office of President, the First VicePresident shall assume that office for the remainder of the term and shall appoint another person to serve as First Vice-President for the remainder of the term.

## Death or

 resignationVice-President
31 of 1994
84. If the First Vice-President and Second Vice-President dies or resigns from office, the vacancy shall be filled for the unexpired period of that term by a person appointed by the President.

## Vacancy of

 office of President and Vice-President 31 of 199485. If at any time both the office of President and First Vice- President become vacant then the Cabinet shall elect from among its members an Acting President and Acting First Vice-President who shall hold office for not more than sixty days or, where four years of a Presidential term have expired, for the rest of that Presidential term.

Removal from
office
31 of 1994

6 of 1995
86. -

1. The President or First Vice-President shall be removed from office where the President or First Vice-President, as the case may be, has been indicted and convicted by impeachment.
2. The procedure for impeachment shall be as laid down by the Standing Orders of Parliament, provided that they are in full accord with the principles of natural justice and that -
a. indictment and conviction by impeachment shall only be on the grounds of serious violation of the Constitution or serious breach of the written laws of the Republic that either occurred or came to light during the term of office of the President or the First Vice-President;
b. indictment on impeachment shall require the affirmative vote of two-thirds of the members of the National Assembly in a committee of the whole house;
c. conviction on impeachment shall require the affirmative vote of twothirds of the members of both Chambers;
d. conviction in cases of impeachment shall cause the removal, and disqualification from future office, of the office holder; and
e. conviction by way of impeachment shall not act as a bar to legal proceedings.
3. The President shall have power to remove the Second Vice-President from office.
4. Whenever the President is incapacitated so as to be unable to discharge the powers and duties of that office, the 6 of 1995First VicePresident shall act as President, until such time, in the President's term of office, as the President is able to resume his or her functions.
5. The President shall not be deemed to be incapacitated for the purposes of this section until and unless -
a. there is a written declaration, certified by a board of independent medical practitioners, that the President is unable to discharge the duties of the office of President;
b. the declaration is signed by the First Vice-President and a majority of the Cabinet, holding office at that time; and
c. the declaration is submitted by the First Vice-President to the Speaker of the National Assembly.
6. Upon submission to the Speaker of a declaration under subsection (2), the First Vice-President shall immediately assume the powers and duties of the office of President as Acting President.
7. Where the President has been declared to be incapacitated in accordance with subsection (2) the President may, at any time thereafter, submit to the National Assembly a written declaration, certified by a board of independent medical practitioners, stating his or her fitness to carry on the duties of the office of President:

Provided that -
a. upon receipt of such a declaration from the President, the National Assembly shall have thirty days within which to determine whether or not the President is in fact or not so incapacitated as to be unable to discharge the duties of the office of President; and
b. if the National Assembly determines that the President remains so incapacitated so as to be unable to discharge the duties of the office of President, by an affirmative vote of two-thirds of all of its members, the First Vice-President shall continue to act as President until the National Assembly determines that the President is again fit to assume the duties and powers of the office of President; or
c. if the National Assembly determines that the President is no longer so incapacitated as to be unable to discharge the duties of the office of President by an affirmative vote of two-thirds of the National Assembly, the President shall resume the duties of the office of President within thirty days of that vote.
5. If, on the expiry of twelve months from the date of the Speaker being notified of the incapacity of the President, the National Assembly has not determined that the President is fit to perform duties of the office of President in accordance with subsection (4), then a Presidential election shall be held.
6. The provisions of this section shall applymutatis mutandis to the incapacity of the First Vice-President except that the certificate shall then be signed by the President and be submitted to the Speaker by the President and the functions of the First Vice-President shall be carried out by such other member of Cabinet as the President may appoint.
7. Every board of independent medical practitioners required for the purposes of this section shall be selected in accordance with the procedure laid down in the Standing Orders of Parliament.

1. The President shall be responsible for the observance of the provisions of this Constitution by the executive and shall, as Head of State, defend and uphold the Constitution as the supreme law of the Republic.
2. The President shall provide executive leadership in the interest of national unity in accordance with this Constitution and the laws of the Republic.
3. The President and members of the Cabinet shall not hold any other public office and shall not perform remunerative work outside the duties of their office and shall, within three months from the date of election or appointment, as the case may be, fully disclose all of their assets, liabilities and business interests, and those of their spouses, held by them or on their behalf as at that date; and, unless Parliament otherwise prescribes by an Act of Parliament, such disclosure shall be made in a written document delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the document with such public office as may be specified in the Standing Orders of Parliament.
4. Any business interests held by the President and members of the Cabinet shall be held on their behalf in a beneficial trust which shall be managed in such manner as to ensure conformity with this section.
5. The President and members of the Cabinet shall not use their respective offices for personal gain or place themselves in a situation where their material interests conflict with the responsibilities and duties of their offices.
6.     - 7. The President shall have the following powers and duties -
a. to assent to Bills and promulgate Bills duly passed by Parliament;
b. to convene and preside over meetings of the Cabinet;
c. to confer honours;
d. to make such appointments as may be necessary in accordance with powers conferred upon him or her by this Constitution or an Act of Parliament;
e. subject to this Constitution, to appoint, accredit, receive and recognize ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;
f. to negotiate, sign, enter into and accede to international agreements or to delegate such power to ministers, ambassadors and high commissioners;
g. to appoint commissions of inquiry;
h. to refer disputes of a constitutional nature to the High Court; and
i. to proclaim referenda and plebiscites in accordance with this Constitution or an Act of Parliament.
1. The President may pardon convicted offenders, grant stays of execution of sentence, reduce sentences, or remit sentences:

Provided that -
a. decisions under this subsection shall be taken in consultation with an Advisory Committee on the Granting of Pardon, the composition and formation of which shall be determined by an Act of Parliament; and
b. judgements in cases of impeachment of the President or VicePresident shall not be liable to pardon by the President.
3. The President shall each year, immediately before the consideration of the official budget, attend Parliament and shall -
a. address Parliament on the state of the nation and on the future policies of the Government at that time;
b. report on the policies of the previous year; and
c. respond to questions.
4. The President shall be called to Parliament to answer questions at such times as may be prescribed by the Standing Orders of Parliament or on a motion of the National Assembly or Senate.
5. Subject to this Constitution and any Act of Parliament, the President shall exercise all other powers reasonably necessary and incidental to the functions of his or her office in accordance with this Constitution.
6. The powers and functions of the President shall be exercised by him or her personally or by a member of the Cabinet or by a government official to whom the President has delegated such power in writing.

Confirmation of decisions, etc., of the President
90. -

1. Decisions of the President shall be expressed in writing under his or her signature.
2. The signature of the President on any instrument shall be confirmed by the Public Seal.
3.     - 
4. No person holding the office of President or performing the functions of President may be sued in any civil proceedings but the office of President shall not be immune to orders of the courts concerning rights and duties under this Constitution.
5. No person holding the office of President shall be charged with any criminal offence in any court during his [or her] term of office, except where he or she has been charged with an offence on impeachment.
6. After a person has vacated the office of President, he or she shall not be personally liable for acts done in an official capacity during his or her term of office but shall not otherwise be immune.

Cabinet 92. - 1. There shall be a Cabinet consisting of the President, the First VicePresident, the Second Vice-President and such Ministers and Deputy Ministers as may, from time to time, be appointed by the President.
2. The Cabinet shall exercise the powers and functions assigned to it by this Constitution or an Act of Parliament and shall be responsible for advising the President with respect to the policies of the Government and with respect to such other matters as may be referred to it by the President.
3. Cabinet meetings shall be presided over -
a. by the President; or
b. in the temporary absence of the President, by the First VicePresident; or
c. in the temporary absence of both the President and First VicePresident, by the Second Vice-President.
4. There shall be a Secretary to the Cabinet who shall be appointed by the President and whose office shall be public office and who shall -
ve charge of the Cabinet office;
b. be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;
c. convey the decisions of the Cabinet to the appropriate persons or authorities; and
d. have such other functions as the Cabinet may direct.

Government departments
93. - 1. There shall be Ministers and Deputy Ministers who shall be appointed by the President and who shall exercise such powers and functions, including the running of Government departments, as may be prescribed by the President subject to this Constitution.
2. Every Government department shall be under the supervision of a Principal Secretary who shall be under the direction of a Minister or Deputy Minister, and whose office shall be a public office.

## Appointment

of Ministers 6 of 1995
94. -
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1. The President shall have the power to appoint Ministers or Deputy Ministers and to fill vacancies in the Cabinet.
2. A person shall not be qualified to be appointed as a Minister or Deputy Minister unless that person -
a. is a citizen of the Republic who upon taking office, has attained the age of twenty-one years;
b. is able to speak and [to] read the English language; and
c. is registered as a voter in a constituency.
3. Notwithstanding subsection (2), no person shall be qualified to be appointed as a Minister or Deputy Minister who -
a. owes allegiance to a foreign country;
b. is, under any law in force in the Republic, adjudged or otherwise declared to be of unsound mind;
c. has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;
d. is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in the Republic;
e. holds or acts in any public office or appointment, except where this Constitution explicitly provides that a person shall not be disqualified from standing for election solely on account of holding that office or appointment, or where that person resigns from that office in order to stand;
f. belongs to, and is serving in the Defence Forces of Malawi or in the Malawi Police Force;
g. has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

Oath of office and removal of Minister or Deputy Minister
95. - 1. No Minister or Deputy Minister shall assume office, unless an oath or solemn affirmation was taken and executed in public in a manner prescribed by an Act of Parliament.
2. The President shall have the power to remove Ministers or Deputy Ministers from their posts.

Duties and functions of the Cabinet
96. - 1. The members of the Cabinet shall have the following functions -
a. to advise the President;
b. to direct, co-ordinate and supervise the activities of Government departments, including parastatal bodies;
c. to initiate Bills for submission to the National Assembly and to explain those Bills;
d. to prepare, explain and formulate for the Parliament the budget of the State and its economic programmes;
e. to be available to Parliament for the purposes of answering any queries or participating in any debate pertaining to the content of the policies of the Government;
f. to assist the President in determining what international agreements are to be concluded or acceded to and to inform Parliament thereon;
g. to take responsibility for the implementation and administration of laws; and
h. to carry out such other functions reasonably necessary for the performance of their duties in accordance with this Constitution, as may be prescribed by an Act of Parliament or the President.
2. In performing the duties and functions referred in this section the Cabinet shall make legislative proposals available in time in order to permit sufficient canvassing of expert and public opinion.

Ministerial 97. All Ministers shall be responsible to the President for the administration of their own departments.

The Attorney General
98. - 1. There shall be the office of Attorney General, who shall be the principal legal adviser to the Government.
2. Such powers as are vested in the office of the Attorney General may be exercised by the person appointed to that office or such other persons in the public service, acting as subordinates of that person and in accordance with his or her general and specific instructions.
3. Appointment to the office of Attorney General shall be made by the President.
4. The office of Attorney General shall become vacant after the person holding that office has served for five years, or on his or her resignation or retirement, whichever is sooner, provided that the person holding that office may be nominated for such further terms, not exceeding five years, as the President considers appropriate.
5. The office of Attorney General may either be the office of a Minister or may be a public office.
6. The Attorney General shall be subject to removal by the President on the grounds of incompetence, incapacity or being compromised in the exercise of his [or her] duties to the extent that his [or her] ability to give impartial legal advice is seriously in question.

1. There shall be a Director of Public Prosecutions, whose office shall be a public office.
2. The Director of Public Prosecutions shall have power in any criminal case in which he [or she] considers it desirable so to do-
a. to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
b. to take over and continue any criminal proceedings which have been instituted or undertaken by any other person or authority; and
c. to discontinue at any stage before judgement is delivered any criminal proceedings instituted or undertaken by himself or herself or any other person or authority.
3. Subject to section 101 (2), the powers conferred on the Director of Public Prosecutions by subsection (2) (b) and (c) shall be vested in him or her to the exclusion of any other person or authority and whenever exercised, reasons for the exercise shall be provided to the Legal Affairs Committee or Parliament within ten days:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.
4. For the purposes of this section, any appeal from any judgement in any criminal proceedings before any court, or any case stated or question of law reserved to any other court for the purpose of any such proceedings, shall be deemed to be part of those proceedings:

Provided that the Director of Public Prosecutions shall not exercise the power under subsection (2) (c) to discontinue proceedings with respect to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

Delegation of powers to prosecute

1. Save as provided in section 99 (3), such powers as are vested in the office of the Director of Public Prosecutions may be exercised by the person appointed to that office or such other persons in the public service, acting as his or her subordinates and in accordance with his or her general and specific instructions in accordance with an Act of Parliament.
2. Notwithstanding subsection (1) -
a. the person appointed to the office of Director of Public Prosecutions shall be accountable to the Legal Affairs Committee of Parliament for the exercise of such powers in his or her own behalf and those powers exercised on his or her behalf by subordinates in accordance with subsection (1); and
b. an Act of Parliament shall prescribe restrictions relating to the exercise of powers under this section by any member of the Malawi Police Force.

Appointment of the Director of Public

Prosecutions
6 of 1995

1 of 1997

1. Appointment to the office of Director of Public Prosecutions shall be made by the President and confirmed by the Public Appointments Committee subject to satisfying requirements as to competence of the person so appointed to perform the duties of that office and as to capacity of a person so appointed to pursue prosecutions independently.
2. In the exercise of the powers conferred on him or her by this Constitution or any other law, the Director of Public Prosecutions shall be subject only to the general or special directions of the Attorney General but shall otherwise act independent of the direction or control of any other authority or person and in strict accordance with the law:

Provided that the Director of Public Prosecutions or the Attorney General may be summoned by the Legal Affairs Committee of Parliament to appear before it to give account for the exercise of those powers.

Removal of the
102.

Director of
Public
Prosecutions

1. The office of the Director of Public Prosecutions shall become vacant after the person holding that office has served five years or on his or her resignation or retirement whichever is sooner: Provided that the person holding that office may be appointed for such further terms, not exceeding five years, as the President considers appropriate.
2. A person holding the office of the Director of Public Prosecutions may be removed from the office by the President before the expiration of his or her term of office, if the President is satisfied that the person holding that office-
a. is incompetent in the exercise of his or her duties;
b. is compromised in the exercise of his or her duties to the extent that his or her ability to exercise his or her functions impartially is in serious question;
c. is otherwise incapacitated; or
d. has attained the age prescribed for retirement.
