

FOREWORD

In 1994, the Malawi Government invited the British Development Division in Central Africa (predecessor to the present day Department for International Development (DFID) of the British Government) and the British High Commission in Lilongwe to provide assistance towards reforms to the criminal justice system in Malawi. In response, British legal consultants were engaged. They made several visits to Malawi and conducted studies and interviews in the legal/judicial sector and discussed possible law reform and related aspects of good governance. Those consultations culminated in a workshop held from 2nd to 4th June, 1995, at the Capital Hotel in Lilongwe.

The workshop identified problems at every stage of the criminal justice process: from police investigations, arrest, remand, pre-trial to trial itself. It also identified the causes of these problems. A strategy was developed which included the formation of a Task Force to review the whole criminal justice process.

Following intense discussion, wide consultation and in-depth research, the Task Force made several recommendations to the Government. His Excellency the State President, Dr Bakili Muluzi, gave approval to those recommendations, one of which was that various laws relating to criminal justice required reform, which should aim to enhance efficiency in the delivery of justice in criminal matters. The report was widely discussed within the Government, and donor pledges to support the reform were received. It was, therefore, decided to institutionalize the carrying out of the necessary law reform through the Law Commission.

The work has been undertaken by a special Law Commission on Criminal Justice Reform which was appointed in 1998. It includes, so far, members from the Judiciary, the Ministry of Justice, the Malawi Law Society, the Women Lawyers Association, the Law Faculty of the University of Malawi and the Police. Members from other interest areas may be co-opted as the work progresses. The Commission is tasked to review several statutes in aspects related to criminal justice. These are: the Penal Code, Criminal Procedure and Evidence Code, Probation of Offenders Act, Children and Young Persons Act, Courts Act, Dangerous Drugs Act, Road Traffic Act.

A number of provisions of a criminal justice nature in these statutes are outdated and do not conform to the new constitutional order. There are some penal provisions which interfere with judicial discretion and are contrary to the respect for fundamental human rights or are otherwise objectionable. Some of them require to be reviewed because they are not in consonance with contemporary thinking and with economic and social trends. Yet some of the provisions are inadequate to cope with developments in the administration of the criminal justice system and to deal effectively with new and diverse forms in which criminal activities are committed.

There are also cumbersome procedures which give rise to unwarranted delays, backlog of cases, congestion in prisons, and impaired access to justice, among other set backs.

It is also to be noted that unlike the 1966 Constitution (repealed), the 1994 Constitution has enshrined in it human rights principles focusing on individual rights of citizens and envisages major law reform. This impacts on the criminal justice system and calls for the review of the system to bring it into conformity with the precepts of democracy and to remove clogs.

In short, the reform of our laws is necessary to ensure conformity with the Constitution, to resolve contradictions between existing laws, to ensure that the law was appropriate for a modern pluralistic democracy and to provide for a system of justice that is adequate and effective, speedy, proximate, understandable, affordable and which reflects the needs of special interest groups, as well as those of the vulnerable groups of people, and which also reflects gender concerns and cultural norms and values.

The Commission has just concluded an in-depth examination of the provisions of the Penal Code. The Commission undertook a programme of public consultation in order to secure wider views and input. Further, members of the Commission visited some countries within the region, namely, South Africa, Zambia and Zimbabwe, to assess any lessons appropriate for Malawi.

As part of the national consultative process, the Commission also convened a workshop to subject its findings and recommendations on the Penal Code to the scrutiny of a wider section of the society. It is hoped that this approach enhanced participation in the law reform process and brought about among a wide cross section of Malawians a sense of ownership of the final outcome of the review exercise.

Finally, may I take this opportunity to gratefully acknowledge the Department for International Development (DFID) of the British Government for the funding, moral encouragement and support it has given the Law Commission on Criminal Justice Reform throughout. There are many names in DFID that deserve to be mentioned in connection with the assistance we have received. His Excellency the British High Commissioner himself, Mr George Finlayson, and his Deputy Mr John Rice, are among them. But I wish to specially mention, and say our special thanks to, Mr. Bob Leverington of the DFID Desk at the British High Commission in Lilongwe and Ms. Mary Straker of the Regional DFID Office in Harare for their untiring understanding and help in processing and administering the financial assistance we have received from DFID.

L.E. Unyolo, SC.
Justice of Appeal
CHAIRMAN

REPORT
OF
THE LAW COMMISSION ON CRIMINAL JUSTICE REFORM
ON THE
REVIEW OF THE PENAL CODE (CAP. 7:01)

*TO : THE HONOURABLE P.H. FACHI, SC.
MINISTER OF JUSTICE*

This is the Report on the review of the Penal Code by the Law Commission on Criminal Justice Reform appointed under section 133 of the Constitution.

We, the members of the Commission, with our signatures appended, submit this Report pursuant to section 135 of the Constitution and commend the Report and its recommendations to the Government, Parliament, and the people of Malawi.

MEMBERS

Honourable Justice L.E. Unyolo, SC. - Justice of the Supreme Court
of Appeal, Chairperson

.....

Honourable Justice E.B. Twea - Judge of the High Court of
Malawi, Deputy Chairperson

.....

Honourable Justice E.M. Singini - Law Commissioner

.....

Mr E.D.A. Chibwana - Ombudsman

.....

Mr I.N.K. Nyasulu

- Director of Public Prosecutions

.....

Mrs. M. Mangwiza-Manyusa

- Commissioner of Police

.....

Mr A.D. Kamanga

- Chief Parliamentary Draftsman

.....

Mrs. R. Kanyuka - Women Lawyers Association

.....

Mr R.K. Kasambara - Malawi Law Society

.....

Mr N.D. Mhura - The Law Faculty, University of
Malawi

.....

Dated: 31st March, 2000

Acknowledgements

The Commission wishes to acknowledge the institutional support it received from the Law Commission under the leadership of Justice E.M. Singini, Law Commissioner. The Commission was professionally serviced by two Law Reform Officers of the Law Commission, Mrs Janet Banda and Mrs Matilda Katopola, who were specifically attached to the Commission, and their services were most valuable to the work of the Commission. The professional services of Mr Ray C.M. Harris, Adviser to the Law Commission engaged under the technical assistance of the Commonwealth Secretariat, are also acknowledged.

INTRODUCTION

The general mandate of the Law Commission on Criminal Justice is to review a number of statutes in the area of criminal justice with a view to promote better delivery of criminal justice. The statutes identified are-

- Penal Code
- Criminal Procedure and Evidence Code
- Courts Act
- Children and Young Persons Act

Probation of Offenders Act
 Dangerous Drugs Act
 Road Traffic Act

Terms of Reference

The Commission agreed that the following should be the Terms of Reference to guide its work-

- consider recommendations of the Report of the Task Force on Legal Reforms
- carry out research into developments and social trends that have a bearing on the administration of criminal justice
- invite, and consider, submissions from the general public
- carry out a general review of the statutes mentioned above
- ascertain about any reforms that have taken place within the SADC Region and other common law jurisdictions in the area of criminal justice laws with a view to drawing any lessons from neighbouring or similar jurisdictions
- review penal provisions relating to fines, terms of imprisonment, etc.
- consider proposals for guidelines on the granting of bail

The work of the Commission is estimated to be completed within three years, and the Commission has started with the review of the Penal Code. This first Report therefore is on the review of the Penal Code.

Methodology for the review of the Penal Code

The methodology adopted by the Commission for the review of the Penal Code was as follows-

- submissions were invited from members of the public through notices in the local press and in the *Gazette*, and several written submissions were received;
- the Commission, at its sittings, scrutinized the Penal Code section by section and examined several similar or comparable statutes which the Commission sourced from a number of other common law jurisdictions;
- the Commission heard oral submissions from specialized institutions and special interest groups on special provisions of the Penal Code;
- the Commission undertook a study visit to Zambia, Zimbabwe and South Africa;
- a consultative workshop was held on the recommendations reached by the Commission, and participants came from the Public Service (Ministry of Justice, the Prisons, the Police, Ministry responsible for women and children affairs, Ministry of Health and Population) Parliament, the Judiciary, the Law Society,

civil society organisations (including human rights NGO's, religious groups, traditional leaders, women groups, professional associations)

- review of the workshop deliberations
- production of a draft report by a committee of the Commission
- review of the draft report by the full Commission and production of the final Report for submission to the Minister of Justice and to Parliament and for publication in the *Gazette*

This Report may not reflect specific submissions. However, all submissions, comments and criticisms that were received by the Commission were considered and debated and, in some instances, have been used in developing the final recommendations contained in this Report.

The Penal Code (Cap 7:01)

The Penal Code and its twin statute, the Criminal Procedure and Evidence Code (Cap 8:01), were drafted in the last century for application in the colonies. They were first introduced in India in the mid 1800's and were later applied to other colonies. They were enacted in Malawi in 1929 and brought into force on 1st April 1930.

Seventy years thence, the Penal Code has remained largely unchanged except for a few matters introduced since the country's independence, notably, those about the mode of execution of the death penalty for the offence of treason, allowing for the declaration of unlawful societies by order of the Minister, the mandatory minimum sentences for the offence of theft by public servants relative to the amounts misappropriated, the system of Traditional Courts introduced in 1970, the introduction of the death penalty with judicial discretion for the offences of armed robbery and burglary, and introduction of offences relating to obscene matters. Since the advent of the new Constitution of 1994 there has also been a few amendments to the Penal Code to raise the penalty for the offence of official corruption from imprisonment for two years to a mandatory minimum of five years imprisonment subject to a maximum of twelve years, to increase the amounts relative to the mandatory terms of imprisonment for the offence of theft by public officers and to introduce "community service" as a new form of punishment alternative to imprisonment.

In its review of the Penal Code, the Commission has found that there is need to update the Code generally in several respects, to introduce new offences to punish new forms and ways that have emerged of committing certain crimes (e.g. in the area of sexual offences), to legislate for new crimes (e.g. in the area of monetary transactions), to review the general principles for establishing criminal responsibility, to review sentencing principles and to introduce new forms of sentences, to revise the levels of fines in view of inflationary trends, to correct obvious inconsistencies and ambiguities within the text of the Code, to align the Code with the provisions and terminology of the new Constitution, to draw from developments in criminal law and criminal jurisprudence in other common law jurisdictions, and to seize the opportunity to improve the text of the Code wherever possible.

Nonetheless, the Commission considers that the bulk of the provisions of the Code remain valid law to-date and that they should be retained. Thus, the Commission is not recommending the enactment of a new Penal Code, but rather that the present Code be merely amended to incorporate the findings and proposals of the Commission. The Commission is

satisfied that the enactment of its recommendations as contained in this Report will serve to update the Penal Code to a modern, comprehensive code of crimes to serve the country's needs today and for a foreseeable future.

Structure of the Report

The ensuing structure of this Report follows the Penal Code by sequence of Parts, Divisions, Chapters and sections. All matters recommended to be brought into the Penal Code as new provisions or in substitution of some parts of the existing text have been shown in **bold**.

Draft Amendment Legislation

As required by section 7(1) (g) of the Law Commission Act, 1998, the Commission has prepared draft Legislation incorporating the recommendations of the Commission; and the draft Legislation is attached as part of this Report.

LAW COMMISSION ON CRIMINAL JUSTICE REFORM
Report on the Review of the Penal Code

PART I

GENERAL PROVISIONS

CHAPTER I - PRELIMINARY

Long title

The Commission considered the long title of the Penal Code, which is an "Act to establish a Code on Criminal Law", and decided that it should be retained.

Short title

The Commission considered the appropriateness of the short title of the Code, as "Penal Code", and discussed the advantages and disadvantages of changing the title to "Criminal Code".

The arguments in favour of changing the title were-

- (a) the title "Criminal Code" is more encompassing and flexible since it allows for the codification of common law and emerging criminal activities;
- (b) the title gives a true picture of what the Code is all about, i.e. that it deals with other criminal matters apart from penal sanctions. Chapters III and IV which deal with territorial application and criminal responsibility as opposed to penal sanctions were given as illustrations to give weight to the argument;
- (c) the problem of cross-references to the Penal Code in other statutes might easily be resolved since the review process is on-going and will affect a lot of statutes.

The arguments in favour of retaining the title were-

- (a) the law was drafted to criminalize actions in the form of a Code, and the task of the Commission is to revise and reform the existing Code;
- (b) if the title is changed to "Criminal Code", this may confuse people with the Criminal Procedure and Evidence Code;
- (c) the change is certain to create problems with cross references. It is not known when the review of other statutes will be completed to overcome the problem of cross references.

After considerable debate, the Commission decided to retain the title, "Penal Code."

Section 2

The Commission considered section 2 of the Code and took the view that

it would be proper to split the section into two subsections. Subsection (1) should consist of the paragraphs presently numbered (1) to (6); and, in keeping with proper legislative drafting practice, those paragraphs numbered (1) to (6) should be numbered (a) to (f).

The present proviso should become subsection (2) and the words "Provided that if" should be deleted and substituted with the word "**Where**".

As regards the present paragraph (6) of section 2, now numbered subsection (1)(f), the Commission recommends that the words "armed forces" be deleted and substituted with the words "**Defence Force**" in conformity with the language of the new Constitution in which the "armed forces" are now referred to as the "Defence Force".

The Commission also considered the use in the same paragraph (in referring to the Malawi Police) of the term "police force" and which has also been used throughout the Penal Code. The Commission agrees with the recommendation of the Law Commission on the Technical Review of the Constitution in its Report published in the *Gazette* (General Notice No. 230 of 1998, at page 283) to change the name of the Malawi Police Force to "Malawi Police Service". However, since the Constitution has not yet been amended, the Commission is unable to recommend the necessary amendment with regard to references to the police in the Penal Code.

CHAPTER II- INTERPRETATION

Section 3

The Commission thoroughly considered section 3 as regards the legal system on which Malawi's criminal law is founded, and decided to retain the substance of the section. The Commission however considered that it was important that reference should be made to the principles enshrined in the new Constitution, which is the supreme law of the land.

The Commission therefore recommends that section 3 should be redrafted to read as follows-

"General rules
of construction
of the Code

3. This Code shall be interpreted in accordance with the principles of legal interpretation that-

- (a) **takes full account of the principles and provisions enshrined in the Constitution; and**
- (b) **where applicable, have regard to common law and comparable English criminal law."**

Section 4

The Commission considered section 4 of the Code and recommended the following changes as regards definitions-

"Act"

The Commission was of the view that the definition of "Act" should be extended to include all subsidiary legislation. Therefore, the Commission recommends that the words "orders, rules or regulations" should be deleted and substituted with the words "**subsidiary legislation**".

"husband" or "wife"

The Commission paid attention to section 22(5) of the Constitution which recognizes all forms of marriages whether by law, custom, repute or permanent cohabitation and considered that there should be a definition of the words "**husband**" and "**wife**" in the light of the several provisions dealing with the relationship of husband and wife throughout the Penal Code and the use of those words in the jurisprudence of Malawi. The Commission therefore recommends the following definition-

"husband" or "wife" includes a person living in a marriage relationship as recognized by section 22(5) of the Constitution;"

"judicial proceeding"

The Commission recommends that all the words appearing immediately after the word "oath" be deleted and substituted with the words "**or not**". Those words are to be deleted to remove the reference to Traditional Courts which no longer exist as envisaged by the present wording of the definition and this amendment takes cognisance of section 110 of the Constitution, which deals with subordinate courts.

"knowingly"

The Commission discussed whether the word "knowingly" should be defined in a broader sense since the present definition relates only to "uttering" or "using". The Commission noted that the word is also used in relation to other offences in the Penal Code. However, the Commission felt that it was better to leave it to case law in coming up with guidelines in relation to those other offences.

"money"

The Commission discussed the definition of money and considered whether there was need to expand the definition to include other forms or articles for effecting monetary transactions such as credit cards, auto teller machines (ATM) and smart cards. The Commission sought submissions from the Reserve Bank of Malawi and from the commercial banks on this matter. The Commission considered the submissions received but finally decided to retain the definition as the wording was considered sufficient for the purposes of the offences of the Penal Code.

"offence"

The Commission recommends that the word "is" used to introduce the definition be deleted and substituted with the word "**means**" so as to be consistent with legislative drafting practice.

"persons employed in the public service"

In relation to paragraph (c) of the definition, the Commission recommends, for reasons of clarity, that the words "of the two last preceding paragraphs of this definition," be deleted and substituted with the words "**paragraph (a) or (b)**".

In paragraph (d) (ii), for reasons earlier stated in relation to the definition of "judicial proceeding", the Commission recommends the deletion of the words, ",including a Traditional Court".

In paragraph (d) (iii), the Commission recommends that the words "armed forces" be deleted and substituted with the words "**Defence Force**".

In paragraph (d) (viii), the Commission recommends that the words "the National Assembly" be deleted and substituted with the word "**Parliament**" to reflect the new structure of the Houses of Parliament, which now consist of the National Assembly and the Senate.

The Commission recommends rearrangement of certain definitions appearing in section 4 into their proper alphabetical sequence. The definitions affected are "**public**", "**publicly**," "**public place**" and "**public way**" which should follow in that order.

"utter"

As presently worded, both the word "means" and the word "includes" have been used together and this is inherently contradictory in that "means" is restrictive while "includes" is expansive. The Commission also considered that the proper conjunction was the disjunctive "or" instead of the conjunctive "and".

The Commission therefore recommends that the definition of the word "utter" should read as follows-

"utter" includes using or dealing with or attempting to use or attempting to induce any person to use, deal with or act upon the thing in question.

"vessel"

The Commission considered whether it could draw from the definition of the word "vessel" in the Inland Waters Shipping Act, 1995, where the word "vessel" includes such equipment as "drilling rigs" and "production platforms". The Commission however was of the view that such an approach would depend on future developments when such equipment is actually in use in Malawi. The Commission further felt that the present definition of the word "vessel" is sufficient for the purposes of the Penal Code.

CHAPTER III - TERRITORIAL APPLICATION OF THIS CODE

Section 5

The Commission recommends that this section should commence with the words "**Except as otherwise provided in this Code**", to recognize the fact that there are other offences in the Code, such as the offence in section 6 and the offence of treason which attract extra-territorial jurisdiction.

Secondly, the Commission observed that the word "makes" appearing in the section should correctly read as "**takes**". As a consequence, the Commission recommends that the words "makes any part of" be deleted and substituted with the words "**takes any part in**".

CHAPTER IV - GENERAL RULES OF CRIMINAL

RESPONSIBILITY

Section 9

In keeping with proper drafting practice and for reasons of reference, the Commission recommends that the provisions of the section should have subsection numbers as subsections (1), (2) and (3).

In relation to the principle of intention in criminal law, the Commission recommends that in the light of subsection (2), as renumbered, the presumption that a person intends the natural consequences of his actions should only apply with regard to particular circumstances and not as a general principle. Therefore the Commission recommends that the following provision be added to section 9 as subsection (4)-

“(4) In determining whether a person has committed an offence, a court shall not be bound to infer that he intended or foresaw a result of his actions by reason only of its being the natural and probable consequence of those actions, but shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances.”.

Section 10

For ease of reference, the Commission recommends that the provisions of this section be numbered as subsections (1) and (2).

Section 12

In keeping with proper drafting practice, the Commission recommends that the section should read as a single provision. Thus, a "**semi-colon**" should be substituted for the "**fullstop**" after the word "**omission**".

The Commission further recommends that, in light of its recommendation later in this Report to introduce a new provision as section 214A on diminished responsibility, section 12 should commence with the words "**Subject to the provisions of this Code with regard to persons suffering from diminished responsibility, a person**".

Section 12 would thus read as follows-

“ Insanity

12. Subject to the provisions of this Code with regard to persons suffering from diminished responsibility, a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is, through any disease affecting his mind, incapable of understanding what he is doing, or knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.”.

Section 13

The Commission considered the issue of "intoxication" in relation to criminal responsibility and noted the trends and developments in other common law jurisdictions where intoxication suffices as a defence to a criminal charge if it results from medicinal administration of either a specially or a generally prescribed drug without the malice or negligence of another person.

The Commission recommends that a similar provision be introduced in Malawi. To that end the Commission recommends an amendment to section 13 (2) to shift the present paragraph (b) to be paragraph (c) and to create a new provision for paragraph (b) to read as follows;

“(b) the state of intoxication was caused by medical administration of a generally or specially prescribed drug whether that drug was self-administered or not; or”.

Section 14

In keeping with proper drafting practice and for reasons of reference the Commission recommends that the provisions of this section be numbered as sub-sections **(1), (2) and (3)**.

As regards the age for criminal responsibility prescribed in subsections (1) and (2) as numbered, the Commission recommends that "seven years" be substituted with "**ten years**" and "twelve years" be substituted with "**fourteen years**". This change will be in keeping with regional trends and with the general requirements of the United Nations Convention on the Rights of the Child as regards the age of criminal responsibility for children to divert young children from institutionalized correctional or penal systems.

Section 16

The Commission considered the defence of “compulsion” which applies in circumstances where one acts under threats of grievous bodily harm to himself or herself. The Commission was of the view that this defence should apply not only in cases of threats of harm to the person under compulsion but also in cases where such threats of harm are to his or her spouse, child, dependant and person under his or her charge.

The Commission therefore recommends that section 16 should be redrafted to read as follows-

"Compulsion **16. A person is not criminally responsible for an offence if it is committed by two or more offenders and if the act is done or committed only because during the whole of the time in which it is being done or committed the person is compelled to do or omit to do the act by threats on the part of the offender or offenders, instantly to kill him or his spouse, child or any person under his charge or to do him, his spouse, child or any person under his charge grievous bodily harm if he refuses; but threats of future injury do not excuse any offence."**

Section 16 A

The Commission proposes the introduction of a new provision, as section 16A, to expressly state that the defence of acting under superior orders is not available for an offender where the order was known to be unlawful or appeared to be manifestly unlawful. This position has now been adopted in most common law jurisdictions. The new section 16 A should read as follows-

"Superior Orders **16A. A person's conduct pursuant to an order of a government or of a superior, whether military or civilian, shall not free the person from criminal responsibility if the order was known to be unlawful or appeared to be manifestly unlawful."**

Section 17

The section refers to "English common law". The Commission recommends that the reference be merely to "**common law**" and therefore that the word "English" be deleted from the phrase "English common law".

Section 19

This section recognizes compulsion of a wife by the husband as a defence to a charge for any offences except the offences of treason and murder. The Commission was of the view that the substance of this provision has validity since it is intended to capture the special relationship of husband and wife. However, the Commission recognized that the general consensus in the world of today is that the wife too can compel her husband to commit an offence and therefore the same considerations in affording this defence to the wife should also apply in the case of the husband. The Commission therefore recommends that references to “married women” and “wife” and “husband” in the provision be substituted with the word “spouse”.

Secondly, since the Commission has recommended the introduction of the offence of “genocide” later in the Code, the Commission is of the view that the offence of genocide should be included in this section in addition to “treason” and “murder” as offences for which the defence of compulsion by spouse is not available.

The Commission therefore recommends that section 19 should be amended to read as follows-

"Compulsion by spouse	19. A spouse is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of his or her spouse; but on a charge against a spouse for any offence other than treason, murder or genocide it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the other spouse."
--------------------------	---

CHAPTER V - PARTIES TO OFFENCES

Section 21

In keeping with proper drafting practice and for reasons of reference, the Commission recommends that the separate provisions of this section be numbered as subsections (1), (2), (3) and (4).

In the provision to be numbered subsection (2), which commences with the words “In the fourth case he,”, the Commission recommends that those words be deleted and substituted with the words “**In a case arising under subsection (1)(d), the accused**”

Section 21, with subsection numbers, and as amended, shall read as follows-

"Principal
offenders

21. (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-

- (a) every person who actually does the act or makes the omission which constitutes the offence;**
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;**
- (c) every person who aids or abets another person to commit the offence;**
- (d) any person who counsels or procures any person to commit the offence.**

(2) In a case arising under subsection (1) (d), the accused may be charged with himself committing the offence or with counselling or procuring its commission.

(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4) Any person who procures another to do or omit to do any act of such nature that if he had himself done the act or made the omission the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission."

Section 23

After considering section 23, the Commission recommends that the word "such" be deleted as this word serves no function.

The Commission also recommends that the second paragraph of this section be made part of the first paragraph, to make the section clearer. To that end, the Commission recommends the substitution of a semi-colon (;) for the fullstop

appearing at the end of the first paragraph and the insertion of the word “**and**” to connect the second paragraph.

Further, it will be necessary to align this section with the principle introduced by the new subsection (4) of section 9, as recommended earlier in this Report, by inserting after the phrase “are a probable consequence of carrying out the counsel” the words “, drawing such inference from the evidence as appears proper in the circumstances”. Thus, the section should read as follows-

"Counselling another to commit an offence	<p>23 When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel , drawing such inference from the evidence as appears proper in the circumstances; and in either case the person who gave counsel is deemed to have counselled the other person to commit the offence actually committed by him."</p>
--	--

CHAPTER VI - PUNISHMENTS

Section 25

In keeping with proper drafting practice, the Commission recommends that the listed punishments should be numbered with letters and not numerals.

Secondly, the Commission recommends that the punishment of "corporal punishment" should be deleted from the list since it has been abolished by the Constitution and that the word “judgment” in the existing paragraph (6) be substituted with the word “**sentence**” to reflect the correct legal position.

In the phrase "payment of compensation" in the existing paragraph (5), the words "payment of " should be deleted to allow for other forms of compensation than monetary payments.

Further, taking cognizance of emerging trends in penal reform which emphasize the diversion of first offenders from institutionalized imprisonment, the Commission recommends the inclusion of other forms of punishment in this section, namely, “weekend or public holiday imprisonment”, “attendance centre orders”, “public work”, “suspended sentence” and “probation orders”.

The new section 25 should read as follows-

"Different
kinds of
punishment

25. The following punishments may be inflicted by a court-

- (a) **death;**
- (b) **imprisonment;**
- (c) **fine;**
- (d) **compensation;**
- (e) **finding security to keep the peace and be of good behaviour; or to come up for sentence;**
- (f) **liability to police supervision;**
- (g) **forfeiture;**
- (h) **suspended sentence;**
- (i) **public work;**
- (j) **community service;**
- (k) **probation;**
- (l) **weekend or public holiday imprisonment;**
- (m) **attendance centre orders;**
- (n) **any other sentence provided by this Code or by any law or Act".**

Section 26

The Commission considered this section which deals with the execution of the death penalty and provides that in general death shall be by hanging. However, in cases of treason the section gives discretion to the executive branch of government to determine the actual manner of executing the death penalty.

The Commission considers that the discretion presently given to the executive should be removed as it could be abused. The Commission also felt that "discrimination" will be avoided by having one uniform procedure for executing the death penalty.

The Commission therefore recommends that section 26 (1) be redrafted to read as follows-

"Sentence of
death

26. (1) "When any person is sentenced to death the sentence shall direct that he shall suffer death by hanging within the prison in which he is detained.".

Further, the Commission was of the view that to reflect the current sentencing practice for juvenile offenders in cases of capital offences, subsection (2) should be amended by deleting all the words appearing immediately after the words "the President's pleasure" and substituting the words "**on the advice of the Board of Visitors appointed under the Children and Young Persons Act**" (Cap. 26:03)

Section 28

The Commission recommends that this section, which provides for the manner of administering corporal punishment, should be deleted since corporal punishment has been abolished by the Constitution.

New section 28

The Commission was of the view that a new section should be introduced as section 28 to deal with the administration of short sentences. This was felt to be necessary in light of the introduction of "weekend or public holiday imprisonment" where a person would serve intermittent sentences.

The new section 28 should read as follows-

"Short
sentences of
imprisonment

28. (1) Where a court passes a sentence of imprisonment on an offender for a period not exceeding three months, or where a convicted person is required to serve a sentence of such duration in lieu of payment of a fine, and the Court is satisfied-

- (a) on an application made before it by or on behalf of the convicted person of the existence of the conditions set out in subsection (2); and**
- (b) on a report from the Chief Commissioner of Prisons that satisfactory arrangements exist for the sentence to be served in the manner applied for,**

it may order that the sentence be served at stated periods.

(2) The conditions required for the purposes of subsection (1) shall be that-

- (a) the convicted person was in employment at the time of the commission of the offence or that he is or was in employment at the time of conviction;**

- (b) **the convicted person would continue to be in such employment if it were not for such conviction and the obligation to serve the sentence of imprisonment;**
- (c) **the discontinuance from such employment would cause hardship to his dependants; and**
- (d) **the convicted person consents to serve the sentence of imprisonment in the manner ordered by the court.**

(3) Where an order under subsection (1) is made, the court shall cause a copy of the order to be served on the police officer who is in charge of the police station in the district in which the convicted person resides or will reside.

(4) A stated period for the purposes of this section shall be at the discretion of the court but shall not be less than twenty-four hours of continuous duration for any one week.

(5) When any convicted person as is mentioned in this section has failed to serve any stated portion of his sentence, the Chief Commissioner of Prisons may, on application made by way of summons, so inform the court which sentenced such person under subsection (1), and the court may thereupon, after hearing the convicted person, revoke the order for imprisonment at stated periods and substitute therefor a continuous sentence not exceeding the unserved portion of the sentence originally passed.

(6) The court may on application made by a convicted person, but subject to subsection (4), vary the commencement or duration of a stated period."

Section 29(2)

In view of the introduction under section 25 of other forms of punishment, namely, "community service" and "public work", the Commission recommends that subsection (2) be amended to include references to those other forms of punishments in paragraph (a) and in the proviso.

Thus, both in paragraph (a) and the proviso, the words "**community service**

or public work" should be inserted immediately after the word "imprisonment" wherever it appears.

Section 29(3)

This provision prescribes the maximum periods of imprisonment that may be imposed where an offender has defaulted in the payment of a fine. The periods of imprisonment prescribed are relative to the amounts of the fines. The Commission considers that these amounts have with time fallen in value as with most monetary amounts expressed in the Code. The Commission recommends that the scale under subsection (3) be revised in relation to the amounts, as follows-

<i>"Amount</i>	<i>Maximum Period</i>
Not Exceeding K1,000	1 Month
Exceeding K1,000 but not exceeding K5,000 ..	3 Months
Exceeding K5,000 but not exceeding K10,000 ..	6 Months
Exceeding K10,000 but not exceeding K20,000 ..	8 Months
Exceeding K20,000	12 Months".

Section 29(5)

The Commission recommends the introduction of a provision to empower the Minister from time to time to amend the monetary sums in the scale under subsection (3). This is in order to take due account of changing values of money. To that end, the Commission recommends that the following subsection be added to section 29 as subsection (5)-

“(5) The Minister may by Order published in the *Gazette* amend the monetary sums prescribed in the scale in subsection (3).”.

Section 30

This section confers power on the courts to order forfeiture of proceeds of crime committed under certain sections in the Penal Code. The Commission recommends that the section be amended to include reference to the new section 331A, recommended later in this Report, to introduce the offence of “money laundering”. Thus, the section should be amended by inserting, after the word “111”, the words “,**331A**”.

Section 31

The Commission noted that in subsection (2), the penalty provision, the necessary words creating the offence are omitted and the Commission recommends that such words be inserted.

The Commission also addressed the issue of the adequacy of the fine of £100 prescribed for the offence and felt that the fine should be revised upwards in order to bring it into line with current monetary values. The Commission therefore recommends that subsection (2) be deleted and substituted with the following-

“(2) Any person who fails to comply with an order made under subsection (1) shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for six months.”.

On this question of the level of fines, the Commission considered that most of the fines currently prescribed for the offences in the Penal Code have fallen in value due to inflationary trends. The Commission therefore recommends an upward revision of all of these fines; and in this Report the Commission will merely indicate, at the appropriate point, the new fine to replace the existing fine.

The Commission would see it as a possible solution to the continuing declining values of money for Malawi to pass an Act that would permit revision of fines in the Penal Code and in all other Acts at regular intervals through the promulgation of subsidiary legislation by the Minister. Countries in the Commonwealth have followed different formulae in dealing with this matter and we will need, as a country, to develop a formula suitable to our situation. The Commission proposes to pursue this matter further in its continuing mandate.

Section 32

This section provides for an award of compensation for "injury" suffered by a victim of an offence. The Commission was aware of the restrictive interpretation of the word "injury" to include merely personal injury. The Commission recommends that the section makes it explicit that "injury" includes both injury to the person and injury involving loss of property.

Accordingly, the Commission recommends that section 32 be amended by deleting the words "injured by his offence" and substituting the words "**who has suffered personal injury or loss of property by such offence.**"

Secondly, the Commission recommends that a provision be made in the section that retains to the injured person his or her right to bring civil proceedings for compensation. However, any award of compensation by a court in such civil proceedings should take into account any amount already awarded in criminal proceedings under this existing provision.

The Commission therefore proposes that the existing provision as amended be numbered as subsection (1) and the following new provision be added as subsection (2)-

" (2) A person shall not be precluded from instituting civil proceedings but the court shall take cognisance of the earlier compensation awarded in criminal proceedings under subsection (1)".

The Commission also addressed the issue of payment of compensation to the family of the victim of the offence where the victim dies. To that end, the Commission recommends that a third subsection be added as follows-

"(3) Where a person dies as a result of an offence, compensation under subsection (1) may be awarded by the court to any surviving spouse, child or dependant of the deceased person."

Section 35

The Commission recommends that the words "or of corporal punishment" be deleted for the reasons already given.

Section 36(a)

The Commission recommends that the words ",fine or corporal punishment" be deleted and substituted with the words "**or fine**".

PART II

CRIMES

Division I - Offences Against Public Order

CHAPTER VII - TREASON AND OTHER OFFENCES AGAINST THE GOVERNMENT'S AUTHORITY

Section 38

The Commission considered at length the offence of treason with a view to bringing it into line with the principles and aspirations of the new Constitution and also taking into account modern trends as regards this offence in commonwealth jurisdictions. The Commission looked at a number of precedents within the Commonwealth from regions as far as the Caribbean, the Pacific and within the Southern Africa region.

The Commission has observed, among other things, that in comparison to other treason provisions of other countries the offence of treason in the Malawi Penal Code is couched in terms that are vague in some respects. This is contrary to the general principle that penal laws must be succinct in specifying the conduct intended to be criminalized.

As a result, the Commission recommends that the present section 38 be repealed and replaced by the following new section-

- "Treason 38. (1) Any person who-**
- (a) by an overt act-**
- (i) engages in armed hostilities against the Republic of Malawi;**
 - (ii) assists any State or group of persons engaged in armed hostilities against the Republic of Malawi;**
 - (iii) assists any armed forces or group of persons against whom the Malawi Defence Force is engaged in armed hostilities; or**
 - (iv) uses force or violence for the purpose of overthrowing the lawfully constituted Government of the Republic of Malawi;**
- (b) recruits or trains persons for the implementation of anything mentioned in paragraph (a) or participates in any such recruitment or training; or**
- (c) conspires with any person to do anything mentioned in paragraph (a),**

shall be guilty of treason and shall be liable to be punished with death or imprisonment for life.

(2) "Armed hostilities" includes any unlawful use of force constituting an act of rebellion against, or calculated to undermine the authority of, the Government or any arm of the Government.

(3) A person may be tried and punished for an offence against this section whether committed within or outside the Republic of Malawi.

(4) No person shall be convicted of treason on the evidence of one witness alone, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused."

As regards the punishment for treason, it will be noted that the Commission has recommended the punishment of death or life imprisonment. This is in line with the general approach favoured by the Commission throughout the Code, of retaining judicial discretion on sentencing for all offences, without exception, moving away from mandatory sentences. This is currently the practice in criminal law in this region and in most Commonwealth countries.

Section 40

The Commission considered that this section was a relic of the colonial times in prohibiting war-like activities "amongst Africans". However, the Commission affirms the principle of punishing violent activities between groups of people and the Commission, therefore, recommends that the section be redrafted to read as follows-

<p>“Promoting war, etc, amongst groups</p>	<p>40. Any person who, without lawful authority, carries on or makes preparation for carrying on or aids in or advises the carrying on of or preparation for any war or war-like undertaking, violence, fighting or similar undertaking with, for, by, or against any ethnic, tribal, racial, religious, political or other group of people, shall be guilty of a felony and shall be liable to imprisonment for life.”.</p>
--	---

Sections 41(a), 42 and 43

In keeping with the terminology in the Constitution, as earlier explained in this Report, the Commission recommends that wherever the words “armed forces” or “military forces” appear, they should be changed to “**Defence Force**”.

Section 44(b)

The Commission recommends that for the words “the last preceding paragraph” there should be substituted the words “**paragraph (a)**”.

Section 46

The Commission considered the section in some detail and was of the view that there was too much discretion left to the executive branch of Government in controlling the importation and production of publications. This is because section 46 has used words such as "opinion" and "absolute discretion" in conferring the power on the Minister. In view of the need to protect certain fundamental freedoms enshrined in the Constitution, such as the freedom of expression and freedom of opinion, the Commission recommends that the Minister's power in this regard should be subjected to the test of reasonableness. The Commission, therefore, recommends that the section be redrafted to read as follows-

"Power to
regulate
publications

46. If the Minister has reasonable grounds to believe that the publication or importation of any publication would be contrary to the public interest, he may, by Order published in the Gazette, prohibit the publication or importation of such publication."

Section 47(1) & (2)

In view of the new section 46, the Commission recommends a consequential amendment to both subsections (1) and (2) of section 47, inserting before the word "importation" the words "**publication or**".

Fine: Delete "£400" and substitute "**K50,000**"
Delete "£200" and substitute "**K20,000**"

Section 48(1)

The Commission recommends similar amendments as in section 47. Thus, immediately before the word "importation", there should be inserted the words "**publication or**".

Fine: Delete "£200" and substitute "**K20,000**"

Section 48(2)

Similarly, the words "**published or**" should be inserted immediately before the word "imported".

Section 49(1)

In order to ensure that the authority granted to officers to search for prohibited publications is exercised on reasonable suspicion, the Commission recommends the insertion of the word "**reasonably**" immediately before the word "suspects".

Section 51(1)

Fine: Delete "£400" and substitute "**K50,000**"

Section 51(2)

Fine: Delete "£200" and substitute "**K20,000**"

Sections 57 & 58

For reasons already given, the Commission recommends that for the words "military forces", there should be substituted the words "**Defence Force**".

Section 60

This section deals with the publication of false news likely to cause fear and alarm to the public. The Commission received a number of submissions on this section, some of which, particularly from the media fraternity, advocated outright repeal of the section. After

considerable discussion within the Commission and at a consultative workshop, the Commission has taken the position that the offence created by this section provides a necessary balance to avoid abuse of the freedom of the press and further to ensure professionalism among the media. The Commission considered that the restrictions and limitation placed by this section on the freedom of the press were necessary in an open and domestic society. The Commission, therefore, recommends that the section be retained.

Section 61

The Commission decided to retain the section with only a minor change to the marginal note, deleting the word “princes” and substituting the word “**dignitaries**”.

Section 62(1)(a)

The Commission felt that rather than referring to “the dominions of any friendly state”, the subparagraph should simply refer to “**any friendly state**”, as this expression would cover both the friendly state and any of its dominions. The Commission, therefore, recommends an amendment to that effect.

Section 63

The Commission noted that the section creates the offence of piracy based on the operation of the law in England and the Commission considered this to be unsatisfactory. The Commission also noted that the elements of the offence have not been specified in the section. The Commission recommends instead that the offence of piracy should be created along the provisions of the Tokyo Convention on Piracy, and Malawi is a party to that Convention. Thus, the Commission recommends that section 63 be deleted and substituted with a new section as follows-

- "Piracy
- 63. (1) Any person who commits piracy shall be guilty of an offence and shall be liable to death or imprisonment for life.**
- (2) Piracy consists of any of the following acts-**
- (a) any illegal acts of violence, detention or any act of depredation committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed-**
- (i) on the high seas against another ship or aircraft, or against persons or property on board such ship or aircraft;**
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;**
- (b) any act of voluntary participation in the operation of a ship or aircraft or with the knowledge of facts making it a pirate ship or aircraft;**

- (c) any act of inciting or intentionally facilitating an act described in paragraph (a) (i) or (ii).

(3) The acts of piracy, as defined in subsection (2), committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

(4) A ship or aircraft is considered to be a pirate ship or aircraft -

- (a) if it is intended by the person in dominant control to be used for the purposes of committing one of the acts referred to in subsection (2); or
 (b) if the ship or aircraft has been used to commit any such act as long as it remains under the control of the persons guilty of that act.

(5) For the purposes of any proceeding before a court in Malawi in respect of piracy, the provisions set out in subsection (2) shall be treated as constituting part of the law of nations and any such court having jurisdiction in respect of piracy committed on the high seas shall have jurisdiction in respect of piracy committed by or against a ship or aircraft wherever the piracy is committed."

CHAPTER IX - UNLAWFUL ASSEMBLIES, RIOTS , AND OTHER
OFFENCES AGAINST PUBLIC TRANQUILLITY

Section 64

The Commission noted certain flaws with some parts of the section. The section seems to concern itself with the purpose for which a society is formed and not the manner in which it may subsequently operate. The element of "subversion" imported into the section is vague, and the Commission, therefore, recommends its deletion.

To address all those matters, the Commission recommends that section 64 be repealed and substituted with the following new section-

"Definition of
society and
unlawful
society

64. (1) A society includes any combination of persons, whether the society be known by any name or not.

(2) A society is an unlawful society if formed for, or carries on, any of the following purposes-

- (a) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of the Republic;
 (b) killing or injuring or inciting to the killing or injuring of any person;

- (c) **destroying or injuring or inciting to the destruction or injuring of any property;**
- (d) **committing or inciting to acts of violence or intimidation;**
- (e) **interfering with, or resisting, or inciting to interference with or resistance to the administration of the law; or**
- (f) **disturbing or inciting to the disturbance of peace and order in any part of the Republic."**

Section 67(1)

For ease of reference, the Commission recommends that the words "the two last preceding sections" be deleted and substituted with the words "**sections 65 and 66**".

Section 69

The Commission noted that an amendment was made to section 64 in 1993 by the Penal Code (Amendment) Act (No. 31 of 1993), which removed the power of the Minister to declare societies as unlawful. The Commission is of the view that a consequential amendment should have been made to section 69 to remove the authority of the Minister to deal with the disposal of the property of an unlawful society. The Commission recommends that such authority should be vested in the courts.

Thus, the Commission recommends the following amendments to section 69-

- (a) in subsection (1), for the words appearing before paragraph (a), there should be substituted the following-

"When a society is found by a court to be an unlawful society, the following consequences shall ensue-";

- (b) in paragraphs (a) to (e), for the word "Minister", there should be substituted the word "**court**" and in paragraph (c), for the word "he", there should be substituted the word "**it**".
- (c) in subsection (2), for the word "Minister" there should be substituted the word "**court**" and for the word "him", there should be substituted the word "**it**".
- (d) the marginal note should read-

"Disposal of property of an unlawful society".

Section 70

For ease of reference, the Commission recommends that the words “the last preceding section” be substituted with the words “**section 69**”.

Secondly, for reasons given with regard to the amendment to section 69, the Commission recommends that the word “Minister” be substituted with the word “**court**”.

Section 71

The Commission recommends that the provisions of the section should be numbered as subsections **(1), (2) and (3)**.

Section 73

The offence of riot is expressed to be punishable with imprisonment for five years and yet the section refers to the offence as a misdemeanour. The Commission recommends that the words “a misdemeanour” be deleted and replaced with the words “**an offence**”, since misdemeanours are punishable by imprisonment of not more than two years.

Section 74

For the words “any military force”, there should be substituted the words “**the Defence Force**”.

Section 77

For reasons of simplicity, the words “as is in section 74 mentioned”, there should be substituted the words “**as mentioned in section 74**”.

Section 79

For ease of reference, for the words “the last preceding section”, there should be substituted the words “**section 78**”.

Section 81(1)

The Commission noted that the necessary words to create an offence have been omitted from this section therefore the Commission recommends that there should be inserted after the word “weapon” the words “**shall be guilty of an offence and**”.

Fine: Delete “£100” and substitute “**K10,000**”

Section 82

The Commission recommends that the provisions of this section should be numbered as **subsections (1) and (2)**.

Section 86

The Commission recommends that the provisions of the section be numbered as subsections (1) and (2) and that in subsection (1), the words “a misdemeanour” should be substituted with the words “**an offence**”. The change from “misdemeanour” to “offence” is because the offence is not a misdemeanour, since it is not punishable by less than two years. (It is in fact punishable by up to four years imprisonment.)

Section 87(1)

The Commission recommends that for the same reasons given in relation to section 86, the words “a misdemeanour” appearing immediately after the words “shall be guilty of” be substituted with the words “**an offence**”.

Section 88

Fine: Delete “£500” and substitute “**K50,000**”

Section 89

Fine: Delete “£300” and substitute “**K30,000**”

*Division II - Offences Against the Administration of
Lawful Authority*

CHAPTER X - CORRUPTION AND THE ABUSE OF OFFICE

Sections 90, 91 and 92

The Commission noted that an amendment was made in 1995 to sections 90, 91 and 92 to provide for a mandatory minimum sentence of five years imprisonment subject to a maximum sentence of twelve years for the offences of official corruption under those sections.

In keeping with the general principle enunciated earlier in this Report in favour of retaining judicial discretion with regard to sentencing for all offences without exception, the Commission recommends that the mandatory minimum sentence of five years imprisonment for offences of official corruption in the Penal Code be deleted, maintaining the maximum sentence of twelve years.

The Commission, therefore, recommends that sections 90, 91 and 92 be amended by deleting the words “shall be guilty of a felony and shall be liable to imprisonment for a term of not less than five years and not more than twelve years” and substituting the words “**shall be guilty of a felony and shall be liable to imprisonment for twelve years**”.

With regard to the offences of corruption, the Commission has learnt that in other jurisdictions within the South Africa region mandatory minimum sentences have been found to be counter-productive, in that the courts have tended to shy away from convicting the offenders due to those mandatory sentences, and those jurisdictions that had introduced such sentences have now moved back to discretionary sentences, notably, Zambia.

The Commission wishes to observe that at the time of writing this Report there had not been any completed court case of corruption since the mandatory minimum sentences were introduced in 1995 and the Commission is therefore not able to draw from what has been the experience in Malawi.

Section 95

The Commission recommends that the provisions of the section should be numbered as subsections (1), (2) and (3) and that in subsection (3), the words “of the two last preceding sections” should be substituted with the words “**section 93 or 94.**”

CHAPTER XI - OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

Section 101

The Commission recommends that the distinct unnumbered provisions of subsection (1) should constitute subsection (2), which should read as follows-

“(2) For the purposes of subsection (1)-

- (a) it is immaterial whether the testimony is given on oath or in any other manner authorized by law;**
- (b) the forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used;**
- (c) it is immaterial whether the false testimony is given orally or in writing;**
- (d) it is immaterial whether the court or tribunal is properly constituted or is held in the proper place or not, if it actually acts as a court or tribunal in the proceedings in which the testimony is given;**
- (e) it is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.”.**

Consequently, the Commission recommends that the existing subsections (2), (3) and (4) be numbered as subsections (3), (4) and (5), respectively.

The Commission also considered that there was need to make provision in this section to deal with issues of perjury concerning evidence lawfully taken in a foreign jurisdiction for the

purposes of judicial proceedings in Malawi. The Commission, therefore, recommends that the following provision be added to section 101 as subsection (6)-

"(6) Where, for the purposes of a judicial proceeding in Malawi, a person is lawfully sworn-

(a) in a foreign jurisdiction under the authority of an Act of Parliament of that jurisdiction; or

(b) in a tribunal of any foreign state,

a statement made by such person (unless the Act of Parliament under which it was made otherwise specifically provides) shall be treated for the purposes of this section as having been made in the judicial proceeding in Malawi for which it was made."

Section 102

The section is meant to refer to section 101 and, therefore, the Commission recommends that instead of opening with the words "This section", it should open with the words "**Section 101**".

Section 105

The Commission recommends that the words "**court or**" be inserted immediately before the word "tribunal" and also that the words "a misdemeanour" be deleted and substituted with the words "**an offence**".

Section 112

The Commission was of the view that in order to remove the possibility of a false inference that a person can be lawfully molested, the use of the word "molested" should be removed from the section. The Commission, therefore, recommends that paragraph (a) of section 112 be amended by deleting the words "or molested".

Section 113

The Commission recommends that a new provision be added as paragraph (j) prohibiting disclosure of proceedings in jury rooms as has been done in other common law jurisdictions. The proposed paragraph (j) would read as follows-

"(j) obtains, discloses or solicits any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any judicial proceedings,"

The Commission, however, recognizes that there are obvious exceptions which must apply with regard to the operation of the proposed paragraph (j) and the Commission, therefore, recommends that the following provision be added to section 113 as subsection (4)-

" (4) Subsection(1)(j) shall not apply to any disclosure of any particulars-

- (a) **in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or**
- (b) **in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings, or in relation to the publication of any particulars so disclosed.”.**

Section 113(2)

Fine: Delete "£70" and substitute "**K10,000**"

CHAPTER XII - RESCUES, ESCAPE AND OBSTRUCTING
OFFICERS OF COURT OF LAW

Section 114

The Commission recommends that the provisions of section 114 be numbered as subsections **(1)** and **(2)**.

The Commission also recommends that in paragraph (b) of subsection (1), for the words “those specified above”, there should be substituted the words “**those specified in paragraph (a)**”.

Section 116

This section creates an offence to punish those who intentionally or negligently permit prisoners to escape from lawful custody. The offence is presently punishable as a misdemeanour, which means that it carries a term of imprisonment of less than two years. The Commission was of the view that since the offenders are likely to be persons holding public office, it is necessary to enhance the penalty in order to deter such persons from breaching the public trust reposed in them.

The Commission, therefore, recommends that the section be amended by deleting the words “shall be guilty of a misdemeanour” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for seven years**”.

Section 122

Fine: Delete "£150" and substitute "**K10,000**"

CHAPTER XIII - MISCELLANEOUS OFFENCES AGAINST
PUBLIC AUTHORITY

Section 124(1)

The Commission noted that the necessary words creating the offence have been omitted from the section and recommends that such words be included. The Commission, therefore, recommends that subsection (1) of section 124 be amended by deleting the words “shall be liable to imprisonment for five years” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for five years**”.

Section 125

For similar reasons as in section 124(1), the Commission recommends that section 125 should be amended by deleting the words “shall be liable to imprisonment for five years” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for five years**”.

Section 131

The Commission recommends that the provisions of this section be numbered as subsections (1) and (2).

CHAPTER XV - OFFENCES AGAINST MORALITY

Section 132

The Commission considered proposals to make the offence of rape gender neutral so as to render it capable of being committed by either sex. After considerable discussion, with the Commission returning to the issue on several occasions throughout the review of the Penal Code, the Commission finally resolved to maintain the status quo whereby rape is understood to be a sexual offence by men against women without consent. The principal consideration in arriving at this final position was the question of carnal knowledge as an element of the offence which traditionally refers to carnal knowledge of a woman.

Related to the issue of rape, the Commission also considered the proposal to introduce marital rape, that is, a husband being charged with raping his wife, which at present is not the position in the criminal law of Malawi. Again, after detailed discussions, the Commission decided to maintain the status quo, partly for reasons that this offence might have the effect of opening up to the general public the private relations of husband and wife which for valid social and family reasons need to be strongly protected. In this regard, the Commission also had in mind the provisions of section 22 of the Constitution which deal with the family and marriage and which, in subsection (1), requires the State and society to protect the family as the fundamental group unit of society.

Section 133

This section provides for the punishment for rape (as death or imprisonment for life). The Commission’s discussions on this section dealt in part with submissions received by the Commission urging for the introduction of a mandatory minimum sentence for rape. The Commission was, however, not convinced that the solution in dealing with the rampant cases of rape lay in the imposition of mandatory minimum sentences, but rather felt that the problem can be taken care of through mechanisms in the Judiciary in developing guidelines for sexual offences generally, including rape. In the view of the Commission, the underlying principle of

retaining judicial discretion for all forms of sentencing equally applies to sentencing for the offence of rape.

The Commission only recommends an amendment to delete from the section the words ", with or without corporal punishment", since this form of punishment has been abolished by the Constitution.

Section 134

The Commission recommends a similar amendment to this section as it has for section 133, that is, to delete the words “, with or without corporal punishment”.

Section 137

The Commission recommends that the words “, with or without corporal punishment” in subsection (1) be deleted.

In relation to subsection (2), the Commission recommends that the recognized age of girls for consent to sexual intercourse be raised from the present thirteen years to sixteen years. The Commission’s recommendation in this regard is premised upon the provisions of section 22(8) of the Constitution which prescribes a minimum age of entering into marriage. Presently, that age is prescribed at fifteen years, but the Commission noted that the Law Commission on the Technical Review of the Constitution has recommended that the age be raised to sixteen years, for the reasons very well articulated in its Report as published in General Notice No. 230 of 1998 at page 259.

New section 137A

The Commission recommends the introduction of an offence to punish acts of indecency among female persons, in public or private, similar to the offence of gross indecency among male persons under section 156. It is noted that female persons are equally capable of engaging in acts of indecency among themselves. The offence would come under section 137A, to read as follows-

<p>“Indecent practices between females</p>	<p>137A. Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.”.</p>
--	---

Section 138

This section creates the offence of defilement of young girls below the age of thirteen years. For similar reasons as given for the proposed amendment to section 137, the Commission recommends that the age of thirteen years for defilement be raised to sixteen years.

Secondly, the section suggests that there could be lawful sexual intercourse with a girl who is under the prescribed age, in that it prohibits acts of sexual intercourse which are unlawful.

The Commission considers that there should be no circumstances or instances where sexual intercourse with a girl below the prescribed age would be lawful. The Commission, therefore, recommends that subsection (1) of section 138 be amended by deleting the words “unlawful and” and that subsection (2) also be amended by deleting the word “unlawful”.

The Commission also recommends the deletion of the words “, with or without corporal punishment”.

Section 138, in a proviso, provides for a defence to the offence of defilement where the person charged had reasonable cause to believe that the girl was of or above the prescribed age. The Commission has learnt that in order to strengthen the protection of girls against acts of defilement, several jurisdictions which had a similar defence to the offence have restricted its availability only to boys below a certain age, with certain safeguards. These ages have varied between under twenty five years to under sixteen years. The Commission recommends that a similar approach be adopted in Malawi and that the following new provision be introduced as subsection (3) to replace the proviso to section 138-

- “(3) It is a defence to a charge under this section if it is proved that-**
- (a) the girl consented; and**
 - (b) the person charged-**
 - (i) was not more than twenty one years of age at the time of the commission of the offence and has not been previously charged with the same or similar offence; and**
 - (ii) had reasonable cause to believe, and did believe, that the girl was sixteen years of age or more”.**

Section 140

The Commission considered that the several offences created by this section, of "procuring the prostitution of women and young girls", cannot properly be classified as misdemeanours since they are offences of a serious nature and that they should attract a more serious penalty. The Commission, therefore, recommends that the words “shall be guilty of a misdemeanour” be deleted and substituted with the words “**shall be guilty of an offence and shall be liable to imprisonment for fourteen years**”.

The Commission also recommends the deletion of that part of the penalty provision which refers to corporal punishment.

A third point considered by the Commission was that the offences created by this section do not in any circumstances call for corroborative evidence as required by the proviso. In the view of the Commission, the requirement for corroborative evidence is too onerous on the victim and that it would be better to leave it to the court to determine the sufficiency of the evidence in each case. The Commission, therefore, recommends that the proviso be deleted.

Section 141

The Commission took a similar view about the serious nature of the offences under this section (dealing with procuring the defilement of women and girls through threats, fraud or the administration of drugs) as it did with the offences under section 140 and recommends that the punishment for these offences should be equally enhanced to imprisonment for fourteen years. Thus, the Commission recommends that the words “shall be guilty of a misdemeanour” be deleted and substituted with the words “**shall be guilty of an offence and shall be liable to imprisonment for fourteen years.**” The Commission’s view was strengthened by comparing these offences with the offence under section 234, involving the same element of stupefying, through the administration of drugs, which carries a penalty of life imprisonment.

Section 142

The Commission recommends, for similar reasons given in relation to sections 137 and 138, that the words “unlawfully and” be deleted from this section and that the age of thirteen years prescribed in the section be raised to **sixteen years**.

The Commission noted that the section, in a proviso, provides for a defence to a charge under this section in cases where the girl is believed to be of the age of sixteen years or above. The Commission strongly felt that the availability of this defence weakens the protection intended to be accorded by this section against abuses of young girls. The Commission recommends that the defence reflected in the proviso be removed and therefore that the proviso be deleted.

Section 143

The Commission recommends that the provisions of the section be numbered as subsections **(1)**, **(2)** and **(3)**.

The Commission again felt that the offence of detaining women and girls for sexual activities was of a serious nature and ought not to be punished as a mere misdemeanour. The Commission, therefore, recommends that in subsection (1), the words “shall be guilty of a misdemeanour” be deleted and substituted with the words “**shall be guilty of an offence and shall be liable to imprisonment for five years.**”.

Section 144

The Commission recommends that the provisions of the section be numbered as subsections **(1)**, **(2)**, **(3)** and **(4)**.

The Commission further recommends that the proviso appearing at the end of the section be deleted, for the reason that it has no application in modern Malawi, in that it is discriminatory in providing only for non-Africans.

Section 145(1)

The Commission recommends that the reference to corporal punishment be deleted. All the words appearing after the word “misdemeanour” should therefore be deleted.

Section 147

The Commission took cognisance of the incidence of the scourge of HIV/AIDS and felt that it was important to express the society’s concerns as regards the spread of this fatal disease through prostitution. The Commission recommends that for the offence of keeping brothels, the penalty should be enhanced from a misdemeanour to an offence punishable with seven years. The Commission therefore recommends that the words “shall be guilty of a misdemeanour” be deleted and substituted with the words “**shall be guilty of an offence and shall be liable to imprisonment for seven years.**”.

Section 147A

The Commission considered that there was need to introduce a provision prohibiting sexual activities for commercial purposes generally. In this connection, the Commission was made aware of the illicit trafficking of women and girls, as well as boys, to destinations abroad for purposes of commercial sex. The Commission recommends that a new provision be introduced as section 147A as follows-

“Promoting prostitution, etc	147A (1)	<p>Any person who-</p> <p>(a) owns, controls, manages, supervises or otherwise keeps, alone or in association with another person, a house or business for prostitution; or</p> <p>(b) procures, encourages, induces, or otherwise purposely causes another person to become or remain a common prostitute; or</p> <p>(c) solicits another person to patronize a prostitute; or</p> <p>(d) transfers or transports any person into or out of or within Malawi with the purpose to engage that other person in prostitution; or</p> <p>(e) rents or permits any place to be regularly used for prostitution or promotion of prostitution; or</p> <p>(f) fails to disclose or notify the relevant authorities by any available means, of the existence of any house or business for prostitution,</p>
------------------------------	-----------------	--

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

(2) For the purposes of this section-

- (a) “prostitution” means any sexual activity with another person for money or something of economic value, or the offer or acceptance of an offer made to engage in sexual activity in exchange for money or something of economic value;**
- (b) “sexual activity” includes sexual intercourse whether in the form of genital, oral-genital or anal-genital contact or otherwise, whether between persons of the same or opposite sex, masturbation, touching of the genitals, buttocks, breasts, sadistic or masochistic abuse and other deviant sexual relations.”.**

Section 148

The Commission recommends the insertion of the words “, **false representation**” immediately after the words “false pretence” as in the existing text of section 141(b).

The Commission also recommends the deletion of the words “, with or without corporal punishment”.

Sections 149 to 151

The Commission considered sections 149 to 151, which deal with abortion, and recommends that the sections be retained. However, the Commission also recommends the enactment of a separate law that would make provision for the procedure relating to the legal termination of pregnancies for appropriate reasons. Such a procedure would be necessary the operation of section 243. For this purpose, the Commission looked at a number of precedents within the region, notably, those of Zambia, Zimbabwe and South Africa and generally accepted the approach under their statutes which provide for elaborate procedure to safeguard against abuse.

The Commission also noted that some of the grounds to be stipulated for legal termination of pregnancy have, in those countries, been determined as a matter of policy. The Commission felt therefore that this was an area with regard to which more time was required and the Commission will have to work in close consultation with the Ministry of Health and Population as well as with other interested parties, such as the Ministry responsible for women and children affairs, in the course of the duration of the Commission’s mandate.

Section 153

The Commission recommends the deletion of the words “, with or without corporal punishment”.

Section 154

The Commission recommends, for ease of reference, that the words “the last preceding section” be deleted and substituted with the words “**section 153**”. The Commission also recommends the deletion of the words “, with or without corporal punishment”.

Section 155

The Commission recommends the deletion of the words “, with or without corporal punishment”.

New section 155A

The Commission recommends the introduction of a new provision as section 155A to deal with sexual abuse of male persons who are idiots or imbeciles, as has been done under section 139 for women and girls. The new section will read as follows-

<p>“Indecent assault against idiots and imbeciles</p>	<p>155A. Any person who indecently assaults a male person, knowing that person to be an idiot or imbecile, shall be guilty of an offence and shall be liable to imprisonment for seven years.”</p>
---	---

Section 156

The Commission recommends that the words “, with or without corporal punishment” be deleted.

Sections 157, 158 and 159

These sections deal with the offence of incest, being an offence of sexual intercourse among persons closely related by blood.

In section 157, which deals with the offence when committed by male persons, the relationships specified are those of “granddaughter”, “daughter”, “sister” or “mother”. The Commission recommends that the prohibition should extend to “grandmother”, corresponding to the same degree of blood relationship as granddaughter. Thus, the Commission recommends that subsection (1) of section 157 be amended by deleting the words “or mother” and substituting the words “**mother or grandmother**”.

Also in relation to subsection (1) of section 157 the Commission recommends that the age of “thirteen years” be raised to “**sixteen years**” consistent with the recommendations already made in relation to sexual offences against young girls.

In section 158 which deals with the offence of incest committed by females, the relationships specified are those of “grandfather”, “father”, “brother” or “son”. The Commission recommends that the offence should extend to the relationship of one's grandson. Thus, the Commission recommends that section 158 be amended by deleting the words “or son” and substituting with the words “**son or grandson**”.

In section 159, the Commission recommends that, for ease of reference, the words “the two last preceding sections” be deleted and substituted with the words “**sections 157 and 158**”.

The Commission also considered generally whether the degrees of prohibited relationships could extend to include, for example, "uncles", "aunts", "nephews" and "nieces" as well as "step-parents" or "step-children". However, the Commission considered that for the purpose of the offence of incest, the relationship traditionally recognized should be maintained as specified in the sections.

New section 159A

On the other hand, the Commission was concerned about the presently unpunished sexual abuses of minors who are under the charge or care of adult persons by those same adults. The Commission has studied a number of provisions from other jurisdictions which have addressed this issue and recommends that the following provision be introduced as section 159A, to read as follows-

“Sexual intercourse with minors under one's care or protection **159A Any person who has sexual connection with a person under the age of twenty years who-**

- (a) is the first mentioned person's stepchild, foster child, dependant or ward; or,**
- (b) is, at the time of the intercourse, living with the first mentioned person as a member of that person's family or is under that person's care or protection,**

shall be guilty of an offence and shall be liable to imprisonment for five years.”.

Section 160

The requirement for the consent of the Chief Public Prosecutor should extend to the offender under the proposed section 159 A. The Commission therefore recommends that section 160 be amended by deleting the words "or 158" and substituting the words ", **158 or 159A**" .

The Commission also recommends that the title "Chief Public Prosecutor" appearing in the marginal note and in the provision should revert to the title “Director of Public Prosecutions” as in the new Constitution.

NEW CHAPTER XVA - OFFENCES AGAINST MORALITY RELATING TO CHILDREN

Section 160A

The Commission received and heard written and oral submissions as regards offences of a sexual nature against children. These submissions clearly attest to the fact that such abuses are on the increase in Malawi as they are in other parts of the world and that they are committed in various and diverse forms not presently adequately addressed by under the Penal Code.

The Commission also examined studies that have been carried out in Malawi particularly those under the auspices of Ministry responsible for women and children affairs which have documented some of the cases.

The Commission also became aware that in several jurisdictions of the Commonwealth, steps have been taken to legislate for such offences under separate Acts. The Commission however took the view that it would be a better approach for Malawi to legislate against these activities under the Penal Code so that they form part of our general code of crimes.

The Commission therefore recommends the introduction of a new chapter as Chapter XVA, as follows-

**“CHAPTER XVA - OFFENCES AGAINST MORALITY
RELATING TO CHILDREN**

Definitions

160A In this Chapter-

“child” means a child under the age of sixteen years;

“sexual activity” means sexual contact other than sexual intercourse (whether between persons of the same or opposite sex) in the form of genital, oral-genital or anal-genital contact or otherwise, masturbation, touching of genitals, buttocks or breasts, sadistic or masochistic abuse and other deviant sexual behaviour;

“prohibited sexual act” includes sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, or nudity if the nudity is depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction;

“material” includes-

- (a) an object;**
- (b) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;**
- (c) a moving visual image of any kind, whether produced from a cinematographic film, video tape or other medium;**
- (d) a hologram;**

“offensive material” means material that-

- (a) describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;
- (b) depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child under the age of sixteen years in a manner that is likely to cause offence to a reasonable adult;
- (c) describes, depicts, expresses, or otherwise deals with sexual activity of any kind between a human being and an animal;
- (d) promotes, incites, or instructs in matters of crime or violence, and includes a publication, the importation of which is prohibited under this Code or under any written law,

“public entertainment” means an entertainment to which the public or any section of the public is admitted or in connection with which a charge, whether for admission or otherwise, is made.

**Sexual activity
with a child**

160B. (1) Any person who engages or indulges in sexual activity with a child shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

(2) If the offence under subsection (1) is committed in circumstances of aggravation, the offender shall be liable to imprisonment for twenty years.

(3) For the purposes of subsection (2), “circumstances of aggravation” means circumstances in which-

- (a) at or immediately before or immediately after the commission of the offence-
 - (i) the accused is armed with any dangerous or offensive weapon or instrument or pretends to be so armed;
 - (ii) the accused person is in company with another person or persons;

- (iii) the accused by his acts or conduct wounds, maims, disfigures or endangers the life of the victim;
- (iv) the accused does an act which is likely seriously and substantially to degrade or humiliate the victim; or
- (v) the accused threatens to kill the victim.

- (b) the accused is a step parent, foster parent, teacher, guardian or is a person who has the guardianship or charge of the child or is a person with whom the child is living as part of the accused's family.

Indecent practice with, or in the presence of, a child

160C Any person who, whether in public or private-

- (a) procures a child to commit any act of gross indecency with him or with another person; or
- (b) commits any act of gross indecency with a person of the same or opposite sex in the presence of a child,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Showing, selling, exposing offensive Material to a child

160D Any person who, with intent to commit an offence, shows, sells, or exposes offensive material to a child, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Recording a child

160E Any person who-

- (a) causes or permits a child to be engaged in a prohibited sexual act or simulation of such act if the person knows or has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner or may be part of an exhibition or a performance;
- (b) photographs or films a child in a prohibited sexual act or in the simulation of such an act or uses any device to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act;
- (c) knowingly receives for the purpose of selling, or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, sends, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or

agrees to offer, any photograph film, video tape, computer program, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such act;

- (d) knowingly possesses or knowingly views any photograph, film, video tape, computer program, video game or any other reproduction or reconstruction which so depicts a child,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Procuring a child
to take part
in public
entertainment

160F (1) Any person who causes or procures any child, or being a parent or guardian of any child allows the child, to take part in any public entertainment-

- (a) of an immoral nature;
(b) which is dangerous to life or prejudicial to the health, physical fitness and kind treatment of the child,

shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three years.

(2) If the person convicted of an offence under subsection (1) is the holder of a licence issued under a law regulating public entertainment or under any other relevant law, the court may also order the cancellation of the licence or its suspension for such period as the court may think fit.

Knowledge of
age of
child
immaterial

160G It shall not be a defence to a charge for an offence under this Chapter that the accused did not know that the child in respect of whom the offence was committed was under the prescribed age of sixteen years, or believed that the child was not under that age."

CHAPTER XVI
OFFENCES RELATING TO MARRIAGE AND
DOMESTIC OBLIGATIONS

Section 164

The Commission noted that the section deals with the offence of "deserting children under the age of fourteen years". The Commission felt that since the age of a child has been prescribed as "sixteen years" in the Constitution, the age of children, for the purposes of this section, should be aligned to the Constitution. The Commission therefore recommends that the words "fourteen years" be deleted and substituted with the words "**sixteen years**".

Secondly, the Commission was of the view that the offence of deserting children should not be regarded as a mere misdemeanour. The Commission therefore

recommends that the words "shall be guilty of a misdemeanour" be deleted and substituted with the words "**shall be guilty of an offence and shall be liable to imprisonment for seven years**".

Section 165

The Commission noted that the section refers to children of "tender years". The Commission felt that it would be more appropriate to specify the exact age of children being addressed by this section. The offence under this section punishes acts of neglecting to provide food and other necessities of life to one's own children. In the view of the Commission the age of sixteen years would be in line with the Constitution as regard the age of the children protected by this section.

The Commission therefore recommends that the words ", child of tender years" be deleted and substituted with the words "**child under the age of sixteen years**".

Secondly, the Commission was of the view that the offence under this section should not be regarded as a mere misdemeanour. The Commission therefore recommends that the words "shall be guilty of a misdemeanour" be deleted and substituted with the words "**shall be guilty of an offence and shall be liable to imprisonment for seven years**".

Section 167

The Commission recommends that the provisions of this section be numbered as subsections (1) and (2).

In subsection (1), the Commission recommends that for the age of "fourteen years" there should be substituted the age of "**sixteen years**" for reasons already given.

CHAPTER XVII NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE

Section 168

The Commission recommends that the provisions of the section be numbered as subsections (1) and (2).

Section 169(4)

Fine:	Delete "£5" and substitute " K1,000 "
	Delete "£20" and substitute " K2,000 "

Section 173(2)

Fine: Delete “£50” and substitute “**K10,000**”

Section 174(3)

Fine: Delete “£10” and substitute “**K2,000**”

Section 176

Fine: Delete “K1,000” and substitute “**K10,000**”

Section 177

Fine: Delete “K400” and substitute “**K5,000**”

Section 178

This section deals with the delivery of chain letters and authorizes the Postmaster General to open any mail which he reasonably believes to be of the nature of a chain letter. The Commission considered that it was important to bring the powers of the Postmaster General under this section within the acceptable ambit of restrictions that may be placed under this section on the right to non-interference with mail guaranteed by section 21(c) of the Constitution.

The Commission proposes that the powers of the Postmaster General under this section should be exercised only upon a warrant of a court. The Commission therefore recommends that subsection (1) of section 178 be replaced with a new provision to reflect the recommendation of the Commission.

Additionally, the Commission recommends that the existing subsection (3) be deleted but that subsection (2) (which authorizes confiscation of any bank note, currency note, postal order and money order found in the chain letter) and subsection (4) (which defines the expression “postal article”) be retained as part of the new section.

Accordingly, the Commission recommends that section 178 be repealed and substituted with the following-

“Opening of
postal article
suspected
of containing
chain letter

178 (1) If the Postmaster General or any other officer authorized by him in that behalf has reasonable grounds to believe that any postal article is, or contains, a chain letter sent in contravention of any of the provisions of section 177 he may apply to a court of a Resident Magistrate or First Grade Magistrate for a warrant to detain and open the postal article.

(2) Every application under this section shall be made in writing and on oath setting out the facts relied upon.

(3) On an application made in accordance with this section, the Court may grant the warrant if it is satisfied that there are reasonable grounds for believing that the postal article is, or contains, a chain letter.

(4) The court may order that any bank note, currency note, postal order, money order, coin, postal article money or money's worth found in any such postal article under subsection (1) shall be forfeited.

(5) In this section, the expression "postal article" includes any letter, printed paper, newspaper, parcel or other article whatsoever in course of transmission by post, and a telegram when conveyed by post."

Section 179(1)

Fine: Delete "K1,000" and substitute "**K500,000**"

Section 179(5)

The Commission was of the view that the section should make reference to trade or business licences issued under any written law and not only under the Businesses Licensing Act as the section presently provides. The Commission, therefore, recommends that the words "the Businesses Licensing Act" be deleted and substituted with the words "**any other written law.**".

Section 180

The Commission recommends that paragraph (g) of this section which regulates the wearing of hair by male persons, in the same manner as was provided in the Decency in Dress Act (now repealed) should be deleted. It must have been overlooked when repealing the Decency in Dress Act in 1993.

Section 180

Fine: Delete "£20" and substitute "**K1,000**"
Delete "K50" and substitute "**K3,000**"

Section 181

The Commission recommends that the necessary words creating the offence should be inserted in the section.

Thus, the section should be amended by inserting, after the words "breach of the peace", the words "**shall be guilty of an offence and**".

Fine: Delete "K50" and substitute "**K3,000**"

Section 182

The Commission received submissions, notably, from women groups calling for the strengthening of the protection afforded under this section as regards the use of insulting language. This is in the wake of what has been observed to be a growing incidence of abusive language in public directed at women in particular. The Commission considered that this would

be achieved if words denoting variations of uses of insulting language were to be inserted in the section and thus recommends that the words “, **abusive, indecent or threatening**” be inserted immediately after the word “insulting”.

Fine: Delete “K100” and substitute “**K5,000**”

Section 183

The Commission considered that there was need to provide for the various activities punishable under this section as separate offences. The Commission, therefore, recommends that section 183 be deleted and substituted with the following-

“Nuisances
by drunken
persons, etc
1 of 1932
Cap 50:07

183 (1) Every person found drunk and incapable in any public place, or on any premises licensed under the Liquor Act, shall be guilty of an offence and shall be liable to a fine of K1,000, and on a second or subsequent conviction shall be liable to a fine of K5,000.

(2) Every person who, in any public place or any premises licensed under the Liquor Act, while drunk conducts himself in a riotous or disorderly behaviour shall be guilty of an offence and shall be liable to a fine of K3,000.

(3) Every person who, in any public place or on any premises licensed under the Liquor Act, while drunk is in possession of any loaded firearm shall be liable to a fine of K10,000 and to imprisonment for twelve months.

(4) Any person who commits an offence against this section may be arrested without a warrant.”

Section 184(1)

The title of the Head of Police should be properly reflected as “Inspector General of Police” in accordance with section 154 of the Constitution and not as “Commissioner of Police”. Thus, in paragraph (i) of the proviso to subsection (1), the words “Commissioner of Police” should be deleted and substituted with the words “**Inspector General of Police**”.

Section 185

The Commission recommends that the second provision appearing as part of subsection (1) should be numbered as subsection (2) of this section. This subsection should commence with the words “**For the purposes of subsection (1)(b),**” and the paragraphs of that subsection, numbered with (i) and (i), should be numbered with letters (a) and (b), respectively.

The existing subsections (2), (3) and (4) should be numbered as subsections **(3), (4) and (5)**, respectively.

Section 186(4)

The Commission considered that the rule-making power conferred on the High Court by subsection (4) should properly be conferred on the Chief Justice and, therefore, recommends that the subsection be amended by deleting the words “High Court” where they first appear in this subsection and substituting the words “**Chief Justice**”.

Section 187(1)

The section makes provision for detaining persons in custody for periods of up to thirty days pending removal orders under section 185. (The removal orders under section 185 issuable by courts of Magistrates, are directed at undesirable and dangerous persons loitering in towns and urban centres).

The Commission recommends that the period for the detention of such persons be reduced to fifteen days, consistent with the current criminal procedure for remanding persons in custody. Thus, subsection (1) should be amended by deleting the words “one month” and substituting the words “**fifteen days**”.

Section 189(2)

Fine: Delete “£10” and substitute “**K1,000**”

Section 191(1)

Fine: Delete “£30” and substitute “**K3,000**”

Section 191(2)

Fine: Delete “£60” and substitute “**K5,000**”

Section 191(3)

The Commission noted that the reference in the subsection to “service of Malawi” should be to “service of the Malawi Government”. The Commission therefore recommends that the section be amended by deleting the words “service of Malawi” and substituting the words “**service of the Malawi Government**”.

Fine: Delete “£100” and substitute “**K10,000**”

Section 192

The section creates an offence for any person who knowingly spreads the infection of any disease which is dangerous to life. The Commission considered several points in relation to this offence.

First, the Commission felt that the offence should also carry the element of acting recklessly apart from the elements of acting unlawfully or negligently.

Secondly, the Commission felt that the offence of spreading diseases dangerous to life, especially in the light of the prevalence presently of the fatal HIV/AIDS, should be regarded as a serious offence and not as a mere misdemeanour as the section now provides.

Accordingly, the Commission recommends that section 192 be amended by deleting the words “or negligently” and substituting the words “, **negligently or recklessly**” and also by deleting the words “shall be guilty of a misdemeanour” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for fourteen years**”.

In spite of the approach recommended by the Commission in reviewing this section, the Commission is aware of efforts worldwide of developing specialized legislation to deal with the complex issues related to HIV/AIDS. The Commission anticipates that Malawi as a country will in time have to develop such specialized legislation.

Sections 193 to 196

The Commission considered that the offences created by these sections which deal with the adulteration of food or drinks, the sale of noxious food or drinks and the sale of adulterated drugs, are all serious offences and should not be punished as mere misdemeanours.

The Commission recommends that in each of these sections, the words “shall be guilty of a misdemeanour”, be deleted and substituted with the words “**shall be guilty of an offence and shall be liable to imprisonment for seven years**”.

The Commission also felt that there was need to introduce new offences akin to the ones mentioned to deal with the importation of adulterated food, drinks or drugs. These sections should be inserted as section 193A, immediately after section 193, and as section 195A, immediately after section 195, to read as follows-

“Importation of adulterated food or drinks	193A Any person who imports any adulterated article of food or drink knowing it to be adulterated and intending to sell such article of food or drink or knowing that it is likely that such article will be sold as food or drink shall be guilty of an offence and shall be liable to imprisonment for seven years.
--	--

Importation of adulterated drugs	195A Any person who imports any adulterated drug or medical preparation knowing it to be adulterated and intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purposes as if it had not undergone such adulteration shall be guilty of an offence and shall be liable to imprisonment for seven years.”.
----------------------------------	--

CHAPTER XVIII - DEFAMATION

Section 203

The Commission recommends the deletion of “(a)” and “(b)”, as they do not serve any purpose, and the section reads well without paragraphing.

Section 204

The Commission noted that the legal privilege of the President to publish defamatory matters as granted under paragraph (c) of subsection (1) of this section extends to any matter published by the order of the President without qualification. The Commission was of the view that the privilege to publish defamatory matters by the President, the Cabinet or the National assembly in official documents or proceedings was adequately covered in paragraph (a) of the subsection.

The Commission recommends that paragraph (c) of subsection (1) be deleted, and as a consequence, paragraphs (d), (e), (f) and (g) be numbered as **(c)**, **(d)**, **(e)** and **(f)**, respectively.

Division I - Offences Against the Person

CHAPTER XIX - MURDER AND MANSLAUGHTER

Section 210

The section prescribes the mandatory sentence of death for the offence of murder. The Commission resolved to maintain its approach of recommending discretionary sentences for all offences including the offence of murder. As explained earlier in this Report, the Commission has been strengthened in its view in this regard by similar trends, even for the offence of murder, within the Region. The Commission, therefore, recommends that section 210 be amended by deleting the words “shall be sentenced to death” and substituting the words “**shall be liable to be punished with death or with imprisonment for life**”.

It is to be noted that the same punishment has been provided for in the Penal Code for the offence of “rape” under section 133, the offence of “armed robbery under section 301 and the offence of “burglary” under section 309.

Section 214

The Commission recommends that the provisions of this section be numbered as subsections **(1)**, **(2)**, **(3)**, **(4)**, **(5)** and **(6)**.

With regard to the term “provocation” in subsection (1), the Commission noted that the definition of this word is introduced by the phrase “means and includes”. The use of these two words together creates an ambiguity in that the word “means” is restrictive while the word “includes” expands the definition.

The Commission was of the view that for the purposes of this section, the proper word to introduce the definition is “means”. The Commission, therefore, recommends that subsection (1) be amended by deleting the words “and includes”.

New Section 214A

The Commission recommends the introduction of a specific provision to deal with the defence of diminished responsibility to charges of homicide. The Commission noted that this defence has been dealt with in Malawi under case law as part of the defence of insanity. But following trends within a number of common law jurisdictions, the Commission was of the view that this defence should be codified separately. The new section 214A should read as follows-

“Diminished
responsibility

214A (1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind or other inherent cause induced by disease or injury or otherwise, as has substantially impaired his mental responsibility for his acts in doing or being a party to killing.

(2) On a charge of murder it shall be for the defence to prove that the person charged is, by virtue of this section, not liable to be convicted of murder.

(3) A person who, but for this section would be liable, whether as a principal or otherwise, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to the killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to the killing.”.

NEW CHAPTER XIXA - GENOCIDE

The Commission considered that it was necessary to introduce the offence of genocide in the Penal Code and under a separate Chapter as Chapter XIXA. The Commission noted that the offence of genocide (which involves mass killings of groups of people often on national, ethnic, tribal, racial and religious grounds) is becoming common in Africa as in other parts of the world, and that presently it is not adequately or specially covered by penal law in Malawi.

Further, in keeping with international practice, the offence of genocide is punishable even when committed outside the jurisdiction.

The Commission recommends that the offence be introduced under section 217, (which is presently a reserved section number in the Penal Code) as follows-

“CHAPTER XIXA - GENOCIDE”

- Genocide 217 (1) A person commits the offence of genocide if he does any of the following acts with intent to destroy, in whole or in part, a national, ethnic, tribal, racial or religious group-**
- (a) killing members of the group; or**
 - (b) causing serious bodily or mental harm to members of the group; or**
 - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part; or**

- (d) **imposing measures intended to prevent births within the group; or**
 - (e) **forcibly transferring children of the group to another group.**
- (2) **A person guilty of the offence of genocide shall on conviction-**
- (a) **if the offence consists of the killing of any person, be liable to be punished with death or imprisonment for life;**
 - (b) **in any other case, be liable to imprisonment for twenty-one years.**
- (3) **A person may be tried and punished for the offence of genocide whether committed within or outside the Republic.”.**

In the context of introducing the offence of genocide under Malawi penal law, the Commission considered that it would generally improve the operation of the law on genocide if the general principles applicable to this offence under the Statute of the International Criminal Court were given the effect of law in Malawi. The Commission would therefore urge that Malawi urgently ratifies the Statute which has been adopted by the 1998 United Nations Convention on the Establishment of the International Criminal Court, to which Malawi is a signatory.

CHAPTER XX - DUTIES RELATING TO THE PRESERVATION OF LIFE AND HEALTH

Section 219

The Commission considered the prudence of using the expression “head of family” in the present era of equal opportunities for both sexes. The Commission felt that the duty imposed on the head of the family by this section to take care of children and the family should extend to every parent, guardian or other person who has charge of the child.

The Commission, therefore, recommends that the words “head of a family” be deleted and substituted with the words “**parent, guardian, or other person**”.

Secondly, the Commission recommends that the age of children, for the purposes of this section, should be raised from the present fourteen years to sixteen years, consistent with the definition of a child in the Constitution. The Commission, therefore, recommends that the words “fourteen years” be deleted and substituted with the words “**sixteen years**”.

The Commission also recommends that the marginal note should change to read “**Duty of parent, etc**”.

Section 218 to 222

As regards this Chapter, the Commission received comments indicating that the duties created by this Chapter are not supported by corresponding offences to punish failures to discharge all those duties. The Commission, however, took cognisance of a number of offences in the Penal Code which may be invoked in relation to failures to discharge duties under this Chapter, for example, sections 166, 208 and 247.

CHAPTER XXI - OFFENCES CONNECTED WITH
MURDER AND SUICIDE

Section 224

This section punishes the offence of attempt to murder if committed by a convicted person who is serving a term of imprisonment of three years or more, and states that the offender shall be liable to corporal punishment in addition to imprisonment for life, which is the general punishment for the offence of “attempt to murder”. Since corporal punishment has been abolished by the Constitution, the need to separate this offence from the general offence of attempt to murder under section 223 falls away.

The Commission, therefore, recommends that section 224 be repealed.

Section 232

The Commission recommends that the section be redrafted to make it clear that the woman who has herself given birth to a child could also be charged with the offence created by this section of concealing the birth of a child. The Commission felt that the section as it is at present was capable of being understood as excluding such woman, and the Commission sees no valid basis for such exclusion.

The Commission also felt that the offence of concealing the birth of a child should not be limited only to circumstances where the child has died, but should also apply to concealment of the birth of a child who is alive.

The Commission, therefore, recommends that section 232 be repealed and substituted with the following new section-

“Concealing birth of child	232 If any woman shall be delivered of a child, every person who, by any secret disposition, endeavours to conceal the birth of the child shall be guilty of an offence and shall be liable to imprisonment for five years.”
-------------------------------	---

New Section 232A

The Commission considered the prevalence of child abandonment by young mothers and was aware of the society’s concerns about such conduct. The Commission was also aware that some jurisdictions in the Commonwealth have now introduced offences that punish such conduct.

The Commission recommends the introduction of a new offence as section 232A as

follows-

“Abandonment
of child at
birth

232A. Any woman who, being delivered of a child, abandons the child at birth, whether such child dies or lives, shall be guilty of an offence and shall be liable to imprisonment for seven years.”.

CHAPTER XXII - OFFENCES ENDANGERING LIFE OR
HEALTH

Section 233

The Commission recommends the deletion of the words “, with or without corporal punishment”.

Section 235

The Commission felt that the same considerations justifying the element of unlawfulness in paragraphs (a), (b), (c) and (g) of this section should equally apply to paragraphs (d), (e) and (f).

The Commission, therefore, recommends that paragraphs (d), (e) and (f) should be amended by inserting, at the beginning of each of those paragraphs, the word “**unlawfully**”.

Section 237

This section creates the offence of endangering the safety of persons travelling by railway. The Commission noted that there is no similar offence regarding the safety of persons travelling by road.

The Commission recommends that the offence under this section should also cover activities endangering the safety of persons travelling by road and that the section should be amended by inserting throughout the section, after the word “railway”, the words “**or road**”.

The Commission also recommends that the words “, with or without corporal punishment” be deleted.

NEW CHAPTER XXIIA - OFFENCES ENDANGERING
THE ENVIRONMENT

The Commission considered that activities endangering the environment should be made punishable under the Penal Code as the general code of crimes and recommends the introduction of a new Chapter to create the relevant offences, as follows-

“CHAPTER XXIIA - OFFENCES ENDANGERING
THE ENVIRONMENT

Endangering
the environment

245A. Any person who in such a manner as to endanger or to be likely to cause harm to the environment-

- (a) **manages hazardous materials, processes and wastes in an environmentally unsound manner;**

- (b) **mislabels wastes, pesticides or chemicals;**
- (c) **aids or abets the illegal trafficking in wastes, chemicals, pesticides, hazardous processes or substances;**
- (d) **discharges or emits any pollutant into the environment otherwise than in accordance with the provisions of the Environmental Management Act, 1998,**

Act No. 1998

shall be guilty of an offence and shall be liable to a fine of K1,000,000 and to imprisonment for ten years.”.

The high level of the fine proposed by the Commission is in recognition of the fact that this type of offence is likely to be committed for economic purposes and, therefore, the punishment must be made meaningful in monetary terms.

CHAPTER XXIII - CRIMINAL RECKLESSNESS AND NEGLIGENCE

Section 246

The offences created under this section, which punish reckless and negligent acts endangering human life or causing harm to persons, were considered to be of a serious nature and the Commission recommends that they should be punished not as mere misdemeanours. The Commission, therefore, recommends that the section be amended by deleting the words “shall be guilty of a misdemeanour” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for seven years.”.**

Section 247

Similarly, the Commission was of the view that the maximum punishment of six months for “other activities endangering human life” needed to be enhanced. The Commission, therefore, recommends that the words “shall be guilty of a misdemeanour and shall be liable to imprisonment for six months” be deleted and substituted with the words “**shall be guilty of an offence and shall be liable to imprisonment for five years.”.**

Section 248

The Commission accepted that the offence of dealing in poisonous substances in a negligent manner should be punished as a misdemeanour, that is, with imprisonment up to two years. The Commission, however, recommends that the other punishments prescribed in the section should be deleted. Thus, section 248 should be amended by deleting the words “and shall be liable to a fine of £100 or to imprisonment for six months.”.

Section 249

For similar reasons given in relation to section 237, the Commission recommends the insertion of the words “**or road**” after the word “railway”.

Section 250

The Commission recommends that the necessary words used to create an offence should be inserted. Thus, section 250 should be amended by inserting after the words “any navigator”, the words “**shall be guilty of an offence and**”.

Section 251

The Commission felt that the offence of conveying persons by water for hire in unsafe or overloaded vessels was of a serious nature and should not be punished as a mere misdemeanour.

The Commission recommends that section 251 be amended by deleting the words “shall be guilty of a misdemeanour” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for seven years.**”.

Section 252

The Commission noted that the necessary words to create the offence have been omitted and recommends that the section should be amended accordingly by deleting the words “shall be liable to a fine” and substituting the words “**shall be guilty of a misdemeanour**”.

CHAPTER XXIV - ASSAULTS

Section 254

The Commission recommends that the offence under this section which is punishable with five years, should not be expressed as a misdemeanour. Further, the reference to “corporal punishment” should be deleted.

The Commission therefore recommends that section 254 be amended by deleting the words “is guilty of a misdemeanour, and shall be liable to imprisonment for five years with or without corporal punishment” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for five years.**”.

Section 255

The Commission recommends that the section be amended by deleting the words “shall be guilty of a misdemeanour” and substituting the words “**shall be guilty of an offence**”. This is because the penalty prescribed for the offence is imprisonment for seven years, which exceeds the maximum penalty of two years imprisonment for misdemeanours.

Section 256

For the same reasons given in relation to section 255, the Commission recommends that the section be amended by deleting the words “a misdemeanour” and substituting the words “**an offence**”, since the penalty prescribed is imprisonment for five years.

CHAPTER XXV - OFFENCES AGAINST LIBERTY

Section 258

The Commission recommends that the age of children should be sixteen years for both boys and girls, in accordance with the definition of “a child” in the Constitution, and that in referring to children, the section should use the word “child” and not the word “minor”.

The Commission was of view that the offence under this section should not include activities of persons who may have a lawful claim to the custody of a child or a person of unsound mind.

To take into account these observations, the Commission recommends that section 258 be redrafted to read as follows-

“Definition of
kidnapping

258. Any person who unlawfully takes or induces from lawful guardianship any child under sixteen years of age or any person of unsound mind out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person of unsound mind from lawful guardianship.”

Section 261

The section creates the offence of kidnapping or abducting persons in order to murder them and provides for a penalty of imprisonment for ten years. The Commission was of the view that this offence was akin to the offence of murder and recommends that, as such, it should carry a maximum penalty of imprisonment for life. Thus, section 261 should be amended by deleting the words “imprisonment for ten years” and substituting the words “**imprisonment for life**”.

Section 263

The Commission took the view that kidnapping for purposes of subjecting people to ransom, although generally covered in offences under Chapter XXV of the Penal Code, should be made explicit as part of the offence under section 263.

The Commission, therefore, recommends that section 263 be amended by inserting, before the words “or slavery”, the words “, **or ransom**”.

Section 265

The Commission recommends that the age of fourteen years prescribed in the section in relation to a child should be raised to sixteen years, consistent with the age of a child as defined in the Constitution.

The Commission, therefore, recommends that section 265 be amended by deleting the words “fourteen years” and substituting the words “**sixteen years**”.

Section 266

The Commission recommends that the words “a misdemeanour” be deleted and substituted with the words “**an offence**”. The offence under this section is punishable with five years imprisonment and is, therefore, not a misdemeanour.

Fine: Delete “£700” and substitute “**K100,000**”

Division V - Offences Relating to Property

CHAPTER XXVI - THEFT

Section 270

The Commission recommends that the provisions of this section be numbered as subsections **(1), (2), (3), (4), (5), (6), (7) and (8)**.

Section 282

This section specifies aggravating circumstances of the offence of theft, attracting a higher punishment of imprisonment for ten years.

The Commission recommends that in paragraph (b), the reference to the value of the thing stolen (presently prescribed at K10) should not be an element of the offence of theft in a dwelling house. The fact, alone, that the offence was committed in a house should be considered as an aggravating factor. Thus, the Commission recommends that paragraph (b) of section 282 be amended by deleting the words “and its value exceeds K10.”.

The Commission noted that one other aggravating factor specified in the section is where the thing stolen is a bicycle. The Commission was of the considered opinion that other means of conveyance should also be specified, such as vessels, aircraft, vehicles or draughts.

The Commission recommends that section 282 be amended by the addition of the following new paragraph-

“(i) if the thing stolen is a vessel, an aircraft, a vehicle or a draught.”.

Section 283

The Commission recommends that subsection (4) which in essence prescribes minimum mandatory sentences for this offence relative to the amounts of money stolen, should be deleted. The Commission recommends that the punishment of imprisonment for life, already prescribed in the section as the maximum, remains as the maximum penalty. This proposal accords with the approach of the Commission, advocated throughout this Report, of moving away from mandatory sentences.

Secondly, relating terms of imprisonment or other forms of punishments to monetary values is unsatisfactory since, with inflation, those values fall in the course of time.

Thus, section 283 should be amended by deleting subsection (4) and the existing subsections (5), (6) and (7) should be renumbered as subsections **(4)**, **(5)** and **(6)**, respectively.

Section 289

The Commission considered that for the offence of stealing by tenants and lodgers, the value of the thing stolen (now prescribed at K10) need not be an element of this offence. What is material is the breach of trust as a lodger or tenant.

The Commission recommends that section 289 be amended by deleting the words “, and its value exceeds K10”.

“CHAPTER XXVII - OFFENCES ALLIED TO STEALING

Section 296

This section deals with the fraudulent disposal of mortgaged goods. The Commission proposes that the section be expanded to provide for better protection of the value of mortgaged property and also to provide that the consent required in subsection (1) of the section may be either expressed or implied. The Commission recommends that the section be amended by renumbering the existing subsection (2) as subsection (3) and by inserting the following new provisions as subsection (2) and subsection (4)-

“Fraudulent disposal of mortgaged goods	<p>(2) Any person, being such a mortgagor as mentioned in subsection (1), who destroys, breaks, injures, kills, or otherwise damages any mortgaged goods with intent to deprive the mortgagee of his security or any part thereof, or to defeat or otherwise impair the security, shall be guilty of a misdemeanour.</p>
---	---

(4) The consent of the mortgagee, as referred to in subsection (1), may be either express or implied from the nature of the property mortgaged.”.

New sections 298A and 298B

The Commission recommends that the following new offences be introduced under sections 298A and 298B to punish fraudulent appropriation of water and telecommunication services as has already been done under section 298 for fraudulent appropriation of power. The new sections would read as follows-

“Fraudulent appropriation of water	<p>298A. Any person who fraudulently abstracts or diverts to his own use or the use of any other person water from any pipes or apparatus shall be guilty of a felony and shall be liable to imprisonment for five years.</p>
------------------------------------	--

“Fraudulent appropriation of telecommunication service”

298B. Any person who dishonestly obtains a telecommunication service for his own use or for the use of any other person with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence and shall be liable to imprisonment for ten years.”.

Section 299(2)

Fine: Delete “£50” and substitute “**K10,000**”

CHAPTER XXVIII - ROBBERY AND EXTORTION

Section 301

The Commission recommends that the provisions of the section be numbered as subsections (1) and (2).

In subsection (2), the Commission recommends that the words “, with or without corporal punishment” be deleted.

Section 302

The Commission recommends that the provisions of the section be numbered as subsections (1) and (2).

In subsection (2), the Commission recommends that the words “, with or without corporal punishment” be deleted.

Section 305

The Commission recommends that the provisions of this section should be divided into three subsections. Subsection (1) should consist of the provision which commences with the words “Any person who” and ends with the words “the offender shall be liable to imprisonment for fourteen years”.

Subsection (2) should consist of the provision which commences with the words “In any other case” and the subsection should be redrafted as follows-

“(2) In any other case not mentioned in subsection (1), the offender shall be liable to imprisonment for three years.”.

Subsection (3) should consist of the provision commencing with the words “It is immaterial”.

CHAPTER XXIX - BURGLARY, HOUSEBREAKING AND
SIMILAR OFFENCES

Section 308

The Commission recommends that the provisions of this section be numbered as subsections (1), (2) and (3).

Section 309

The Commission recommends that the provisions of this section be numbered a subsections (1) and (2).

Section 310

The Commission recommends that the provisions of this section be numbered as subsections (1) and (2).

Section 311

The Commission recommends that the two paragraphs of this section be numbered as “(a)” and “(b)”, in-keeping with legislative drafting practice and not as “(1)” and “(2)” which are used for numbering of subsections and not paragraphs.

Section 313

The Commission recommends that the provisions of this section be numbered as subsections (1) and (2).

Section 314

The Commission recommends that the provisions of this section be numbered as subsections (1) and (2).

CHAPTER XXX - MISCELLANEOUS PROVISIONS

Section 317(1)

The Commission observed that the reference in the provision to certain chapters of the Code erroneously includes Chapter XIX which should have been a reference to Chapter XXIX.

The Commission therefore recommends that subsection (1) of section 317 be amended by deleting "XIX" and substituting "XXIX".

CHAPTER XXXI - FALSE PRETENCES

Section 319

The Commission considered that the development of the law on false pretence should now cover not only obtaining of goods but also of services. The Commission therefore recommends that section 319 be amended by inserting after the words “**anything capable of being stolen**” the words “**or any services**”.

With the extension of this provision to cover “services”, the Commission proposes that the "obtaining of services" be defined as to what it means in the context of this section. The Commission therefore recommends that the existing provisions of section 319 be numbered as subsection (1) and a new subsection (2) be added, as follows-

“(2) It is an obtaining of service where the other is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for with money or money’s worth.”.

New sections 319A, 319B, 319C and 319D

The Commission recommends that several new offences be introduced to cover cases of fraudulent activities not covered in the present offence of obtaining by false pretences. These are activities which are commonly committed in commercial transactions with fraudulent intention. These include making off without payment, passing valueless cheques, evasion of liability by false pretence, and obtaining property by deceit. A number of other common law jurisdictions have now also introduced similar offences in their general codes of crimes.

The Commission recommends that these new offences should constitute sections 319A, 319B, 319C and 319D, as follows-

“Fraud other
than false
pretence

319A Any person who by deceit or other fraudulent means-

- (a) obtains property from any person;**
- (b) induces any person to deliver property to another person;**
- (c) gains a benefit, pecuniary or otherwise, from any person;**
- (d) causes a detriment, pecuniary or otherwise, to any person;**
- (e) induces any person to do any act that a person is lawfully entitled to abstain from doing ; or**
- (f) induces any person to abstain from doing any act the person is lawfully entitled to do,**

Shall be guilty of an offence and shall be liable for imprisonment for seven years.

Evasion of
liability by
false pretence

319B (1) Where a person by any deception-

- (a) **dishonestly secures the remission of the whole or any part of existing liability to make a payment, whether his own or another's; or**
- (b) **with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment (whether or not the due date for payment is deferred) or to forgo payment; or**
- (c) **dishonestly obtains any exemption from or abatement of liability to make a payment,**

he shall be guilty of an offence and shall be liable to imprisonment for five years.

(2) For the purposes of this section, "liability" means legally enforceable liability; and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

(3) For the purposes of subsection (1)(b), a person induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is to be treated not as being paid but as being induced to wait for payment.

(4) For the purposes of subsection (1)(c), "obtains" includes obtaining for another or enabling another to obtain.

"Making off without payment

319C. (1) Any person who knowing that payment on the spot for any goods supplied, work done or service provided is required or expected of or from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence and shall be liable to a fine of K5,000 and to imprisonment for twelve months.

(2) For purposes of this section, "payment on the spot" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) shall not apply where the supply of the goods or where the service provided is such that payment is not legally enforceable.

Passing valueless cheques

319D. (1) Any person who obtains any chattel, money, valuable security, credit, benefit or advantage by passing a cheque which is not paid on presentation is guilty of an offence and shall be liable to a fine of K5,000 and to imprisonment for twelve months.

(2) It is a defence to a charge for an offence under subsection (1) where it is proved that the accused -

- (a) had reasonable grounds for believing that the cheque would be paid in full on presentation; and**
- (b) had no intention to defraud.**

(3) The fact that at the time when the cheque was passed there were some funds to the credit of the account on which the cheque was drawn is not of itself a defence.”.

Section 320

The Commission recommends that the words "**a misdemeanour**" be deleted and substituted with the words "**an offence**" since the offence is punishable by imprisonment for five years and is therefore not a misdemeanour.

Section 321

Since the offence is punishable by three years imprisonment it is not a misdemeanour and the Commission recommends that the section be amended by deleting the words "a misdemeanour" and substituting the words "**an offence**".

CHAPTER XXXII - RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES

Section 328

The Commission considered that there was need to widen the scope of the offence of receiving stolen property to include certain aspects of the way stolen property is handled, such as removal, disposal or realization by or for the benefit of another person.

The Commission recommends that a new provision be introduced, as subsection (4), in the following terms-

“(4) For the purposes of this section, the term “receives” or “retains” includes dishonestly undertaking or assisting in the retention, removal, disposal or realization of stolen property by or for the benefit of another person or arranging to doing so.”.

Section 330

The Commission recommends that-

- (a) in subsection (1), the words "the last preceding section" be deleted and substituted with the words "**in section 329**";**

- (b) in subsection (2), the words "the last preceding subsection mentioned" be deleted and substituted with the words "**mentioned in subsection (1)**";
- (c) in subsection (3), there should be inserted before the words "to be " the word "**also**" so that it is made clear that both the agent and the employer are covered.

Section 330(2)

Fine: Delete "K20" and substitute "**K3,000**"

Section 331A

The Commission considered that it was important and timely to legislate against money-laundering and that a general offence in this regard be codified in the Penal Code. By the expression "money-laundering" it is meant to refer to transactions involving property derived or realized from unlawful activity within or outside the jurisdiction of the country. Following precedents in other common law jurisdictions, the Commission recommends that a new provision be introduced as section 331(A), as follows-

“Money laundering 331A (1) Any person who engages in money laundering shall be guilty of an offence and shall be liable-

- (a) **in the case of a natural person, to a fine of K10,000,000 and imprisonment for fourteen years.**
- (b) **in the case of a body corporate, to a fine of K50,000,000.**
- (2) **For the purposes of this section-**
 - (a) **a person engages in money laundering if-**
 - (i) **the person engages, directly or indirectly, in a transaction involving property that the person knows to be tainted; or**
 - (ii) **the person receives, possesses, conceals, disposes of or brings into Malawi property that the person knows to be tainted;**
 - (b) **“tainted property” is property derived or realized, directly or indirectly, from unlawful activity either within or outside Malawi, but property ceases to be “tainted” when it passes into the hands of a person who acquires it in good faith, without knowledge of the illegality and for value; and**
 - (c) **a transaction includes a gift.**

(3) A person may be tried and punished for an offence against this section whether committed within or outside the Republic of Malawi.”.

It will be obvious that the high level of fines as proposed by the Commission in the above text is warranted by the nature of this offence.

CHAPTER XXXIII - FRAUDS BY TRUSTEES AND PERSONS IN A
POSITION OF TRUST, AND FALSE ACCOUNTING

Section 332

The Commission recommends that the provisions of the section be numbered as subsections (1) and (2).

In subsection (2), which defines the term "trustee", the Commission considered that the wording of this definition is rather restrictive by the use of the words "includes the following persons *and no others*". The Commission recommends that the words "and no others" be deleted.

Secondly, the Commission recommends that the definition of "trustee" should be expanded to include persons acting under powers of attorney and therefore that subsection(2) be amended by adding a new paragraph as follows-

“(e) persons acting under powers of attorney.”.

New section 336A

The Commission recommends that a new provision be introduced to cover fraudulent trading by companies. This is aimed to curb activities carried on with intention to defraud creditors of a company. The offence of “fraudulent trading” should be introduced as section 336A as follows-

“Fraudulent trading by company 36A. (1) If any business of a company is carried on with intent to defraud creditors of a company or creditors of any other person for any fraudulent purposes, every person who is or was knowingly a party to the carrying on of a business in that manner, shall be liable to a fine of K10,000,000 or and imprisonment for seven years.

(2) This section shall apply whether or not the company has been, or is in the course of being, wound-up.”.

Section 338

The Commission recommends that the words “the last preceeding section” in both paragraphs (a) and (b) be deleted and substituted with the words “**section 337**”.

Section 340

The Commission recommends that the words “the last preceeding section” in both paragraphs (a) and (b) be deleted and substituted with the words “**section 339**”.

Section 341

The Commission recommends that the words ", with or without corporal punishment" be deleted.

Section 342

The Commission recommends that the words ", with or without corporal punishment" be deleted.

Section 343

The Commission observed that the general punishment for the offence under this section of unlawful killing, wounding or maiming an animal should be prescribed as part of subsection (1) and not at the end of subsection (2) as has been done. The Commission therefore recommends that subsection (1) be amended by adding after the word "offence" the words "**and shall be liable to imprisonment for three years**".

In subsection (2), which specifies certain animals with respect to which a higher punishment of fourteen years imprisonment is prescribed, the Commission recommends that the animals kept for commercial or preservation purposes should be included.

Thus, subsection (2) should be amended by inserting after the words "the young of any such animal" the words "**or any animal kept for commercial or preservation purposes**".

The Commission also recommends that in subsection (2) the words "shall be guilty of felony and" be deleted since they are repetitive of the words already in subsection (1) creating the offence under this section.

The last sentence in subsection (2) should be deleted as a consequence of the amendment to subsection (1).

Section 344

In subsection (2), the Commission recommends that the words ", with or without corporal punishment" be deleted.

In subsection (3), the Commission recommends that the correct legislative drafting practice should be followed in the paragraphing of the subsection. Thus, subsection (3) should be amended so that it starts with the words "**3 If -**" and deleting the word "if" at the beginning of each of the paragraphs (a), (b) and (c).

In subsection 7(g), the Commission recommends that the words "as last aforesaid" be deleted and substituted with the words "**as mentioned in paragraph (f)**".

In paragraph (k), the Commission recommends that the words "as last aforesaid" be deleted and substituted with the words "**as mentioned in paragraph (j)**".

Section 348

The Commission considered that the protection afforded by this section to survey and boundary marks should extend to the survey and boundary marks made or erected for the purposes of any written law and not only to those made or erected by a Government department. The Commission therefore recommends that paragraph (a) of section 348 be amended by inserting after the words "for the purposes of any government survey" the words "**or for purposes of any written law**".

Fine: Delete "£20" and substitute "**K3,000**"

Section 349

Fine: Delete "£20" and substitute "**K3,000**"

Division XXXVI - Forgery, Coining and Counterfeiting

CHAPTER XXXV - PUNISHMENTS FOR FORGERY

Section 359

The Commission recommends that-

- (a) in paragraphs (d) and (e), the words "as last aforesaid" be deleted and substituted with the words "**as mentioned in paragraph (c)**";
- (b) the words "shall be liable to imprisonment for seven years" be deleted and substituted with the words "**shall be guilty of an offence and shall be liable to imprisonment for seven years**" so as to bring in the necessary words creating the offence.

Section 373

The Commission recommends that the provisions of the section be numbered as subsections (1), (2) and (3), with subsection (1) to consist of the provision commencing with the words "**Any person who**" and ending with the words "**shall be guilty of a felony**".

Section 374

The Commission recommends that in both paragraphs (d) and (e), the words “as aforesaid” be deleted and substituted with the words “**as mentioned in paragraph (c).**”.

Section 377

The Commission noted that the authority under this section to determine what are counterfeit notes or coins and to destroy them is vested in the Accountant General. The Commission sought the views of the Accountant General and the Governor of the Reserve Bank of Malawi matter as to whether or not that position should be maintained. On the basis of the response received from the Governor, the Commission considers that the appropriate institution to exercise this authority is the Reserve Bank of Malawi, being the authority with statutory powers to issue and manage legal tender in Malawi.

The Commission, therefore, recommends that section 377 be amended by deleting the reference to the “Accountant General” and replacing it with a reference to the “**Governor of the Reserve Bank of Malawi**”.

The Commission further recommends that section 377 be restructured into two subsections, to read as follows-

“Impounding
and destruct-
ion of
counterfeit
coin

377 (1) Any officer of the Government or the manager of any bank who receives, during the performance of his duties, any coin which he has reasonable ground for believing to be counterfeit coin shall impound such coin and transmit it to the Governor of the Reserve Bank who may cut, deface or destroy it with or without compensation, as he thinks fit, if in his opinion it is counterfeit.

(2) For the purposes of this section the decision of the Governor of the Reserve Bank that a coin is counterfeit and that compensation shall be granted or withheld shall, subject to the powers of review of the High Court, be final; and no person shall be entitled to claim and no proceedings or action shall be brought against the Governor of the Reserve Bank, the Government, the officer of the Government concerned, the manager of the bank concerned or his bank in respect of any loss or damage suffered by reason of such impounding and cutting, defacing or destruction.”.

Section 382

The Commission took the view that the offence of selling articles bearing designs in imitation of any currency was of a serious nature and should not be punished as a mere misdemeanour with a maximum penalty of only six months.

The Commission recommends that the section be amended by deleting the words “shall be guilty of a misdemeanour and shall be liable to imprisonment for six months” and substituting the words “**shall be guilty of an offence and shall be liable to imprisonment for three years.**”

Section 383

The Commission noted that the offence under this section is restricted to counterfeit coins. The Commission recommends that the offence should extend to any currency or bank notes. Thus, the section should be amended by inserting after the words “any counterfeit coin whatever” the words “**or any forged bank note or currency note.**”.

Section 384

The Commission recommends that the section be amended by deleting the words “the preceding Chapter” and substituting the words “**Chapter XXXVI**”.

Section 385

The Commission recommends that in paragraph (a) the words “for the purposes of the public revenue or of the Posts and Telegraphs Department in Malawi or in any part of the Commonwealth or in any foreign country” be deleted and substituted with the words “**for the purposes of the public revenue or for the purposes of Malawi Posts in Malawi or of any postal administration in any other country,**”. This in part takes account of the change in status of the administration of postal services in Malawi from a Government department to, at present, the Malawi Posts, a Corporation established under the Communications Act of 1998. The Commission also did not see any reason at this time for maintaining special reference to parts of the Commonwealth.

The Commission also recommends that-

- (a) in paragraph (b), the words “as aforesaid” be deleted and substituted with the words “**as mentioned in paragraph (a)**”;
- (b) in paragraphs (b), (c) and (g), the words “as aforesaid” be deleted and substituted with the words “**as mentioned in paragraph (a)**”;
- (c) in paragraph (h), the words “**or Malawi Posts**” be inserted after the word “Government” in both places where it appears;
- (d) the words “as aforesaid”, where they appear in the clause beginning “shall be guilty of”, be deleted and substituted with the words “**as mentioned in paragraph (a)**”.

Section 386

The Commission recommends that the provisions of the section be numbered as subsections (1) and (2).

In subsection (1), paragraph (a), the Commission recommends that the words “or of any part of the Commonwealth, or any foreign country” be deleted and substituted with the words “**or of any other country**”.

The Commission also recommends that in the penalty clause, the word “or” appearing before the words “to imprisonment” be deleted and substituted with the word “**and**”, consistent

with the drafting of penalty clauses in Malawi in accordance with section 54 of the General Interpretation Act, and that the words “as aforesaid” be deleted and substituted with the words “**as mentioned in paragraphs (a) and (b).**”

Section 386(1)

Fine: Delete “£50” and substitute “**K10,000**”

CHAPTER XXXIX - TRADE MARKS

Section 388

The Commission recommends that the provisions of this section be numbered as subsections (1) and (2), with subsection (1) commencing with the words “Any person who” and ending with the words “shall be guilty of a misdemeanour”, and subsection (2) commencing with the words “Every person committing” and ending with the words “in his possession or power”.

In subsection (2), the Commission recommends that the words “Every person committing any such misdemeanour as aforesaid forfeits to the Government-” be deleted and substituted with the words “**When any person is convicted of an offence under subsection (1), the court shall order the forfeiture of-**”; and in the same subsection, paragraphs (i), (ii) and (iii) should be numbered (a), (b) and (c) respectively, and in paragraph (c) as so numbered there should be inserted after the words “paragraphs (d), (e) and (g)”, the words “**(i) of subsection (1)**”.

The recommended amendments to section 388 are required for textual correctness and clarity and for ease of reference.

CHAPTER XL - PERSONATION

Section 389

The Commission recommends that the provisions of this section should be numbered as subsections (1) and (2).

Section 394

The Commission recommends that the words “the last preceding section” be deleted and substituted with the words “**section 393**”.

CHAPTER XLI - SECRET COMMISSIONS AND CORRUPT PRACTICES

Section 396

The Commission considered that the offence of corrupt practices under this section should not be punished as a mere misdemeanour and the Commission recommends that in subsections (1), (2) and (3), the words “shall be guilty of a misdemeanour” be deleted and substituted with the words “**shall be guilty of an offence.**”

Further, the penalty under subsection (4) should be brought into line with the penalty for other corruption offences under Chapter X.

The Commission, therefore, recommends that subsection (4) be deleted and substituted with the following-

“(4) Any person guilty of an offence under this section shall be liable to imprisonment for twelve years.”.

Section 397

The Commission recommends that the section be amended to provide for a higher punishment in terms of both the fine and the term of imprisonment so as to maintain the original design which rendered the offence under section 397 more serious than other offences in this Chapter. Thus, the section should be amended by deleting the words “shall be liable to a fine of K1,000 and to imprisonment for seven years” and substituting the words “**shall be liable to a fine of K1,000,000 and to imprisonment for fourteen years.**”.

Section 399

The Commission recommends that the title “Chief Public Prosecutor” should revert to the title of “**Director of Public Prosecutions**” as in the new Constitution, and therefore section 399 should be amended accordingly.

Division VIII - Attempts and Conspiracies to Commit Crimes, and Accessories After the Fact

CHAPTER XLII - ATTEMPTS

Section 400

The Commission recommends that the provisions of this section be numbered as subsections **(1)**, **(2)** and **(3)**.

CHAPTER XLIV - ACCESSORIES AFTER THE FACT

Section 407

The Commission recommends that the provisions of this section be numbered as subsections **(1)** and **(2)**.

SUBSIDIARY LEGISLATION

1. *Extended Definition of “Persons Employed in the Public Service”*

The Commission took note of a Subsidiary Order made under section (4) of the Penal Code which extends the definition of “persons employed in the public service” for the purposes of the offence of theft by public officers to include “officers, servants, employees and agents of the Malawi Congress Party”. The existence of this Order has its background in the old one-party system of Government when the character of the Party was the same as Government and in fact the Party was part of the Government machinery. The Commission considers that this position has no application under the new Constitution and recommends that the Order be repealed.

The Commission was, however, aware of the provisions of section 40 of the Constitution which provides for State funding of political parties represented in Parliament with more than ten percent of the national vote, and that it may be argued that the existing Order under section 4 of the Penal Code should be made to refer to all such parties.

On the other hand, the Commission considers that in the absence of statutory accounting procedures to address a number of issues such as the blending of State funds with funds from other sources, it would be untenable to subject the employees of these parties to the accounting standards required in respect of public funds. The Commission, therefore, maintains that the Order should be revoked.

2. *Urban Areas prescribed for purposes of Orders for the Removal of undesirable and dangerous persons*

The Commission also took note of the Order under section 185 of the Penal Code specifying certain Urban Areas out of which persons may be removed under court orders on grounds that they are undesirable or dangerous. Presently, the Areas specified are the Cities of Blantyre and Lilongwe, the Municipality of Zomba and the Township of Salima. The Commission was aware that several other areas have developed to similar status, such as Mzuzu, Karonga, Kasungu, Mponela, Dedza, Mangochi, Liwonde, Luchenza and Nchalo and that this Order needed to be updated accordingly.

The Commission, therefore, recommends that the Minister of Justice, as the Minister responsible for the administration of the Penal Code, in consultation with the Minister of Local Government, should take immediate steps to review the Order. In the view of the Commission, this is an important part of criminal justice law and that its implementation should not appear discriminatory in relation to areas of equal status.

3. *Banned Publications*

Again, with regard to Subsidiary Orders under the Penal Code, the Commission wishes to refer to the Prohibited Publications Order made under section 46. As the country is aware, several publications have been banned in Malawi under the authority of this law. In the light of the recommendation contained in this Report to review section 46 so as to make the exercise of the power under that section more transparent and accountable and to be on reasonable grounds, it is the view of the Commission that the existing list of banned publications will require to be extensively revised. The Commission would go so far as to suggest that once the recommendations of the

Commission have been enacted, the existing list of banned publications should be revoked completely and the exercise could be done afresh on the basis of the new law.

PENAL CODE (AMENDMENT) BILL, 1999

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Replacement of section 2 of the principal Act
3. Replacement of section 3 of the principal Act
4. Amendment of section 4 of the principal Act
5. Amendment of section 5 of the principal Act
6. Amendment of section 9 of the principal Act
7. Amendment of Section 10 of the principal Act
8. Replacement of section 12 of the principal Act
9. Amendment of section 13 of the principal Act
10. Amendment of section 14 of the principal Act
11. Replacement of section 16 of the principal Act
12. Insertion of new section 16A into the principal Act
13. Amendment of section 17 of the principal Act
14. Replacement of section 19 of the principal Act
15. Replacement of section 21 of the principal Act
16. Replacement of section 23 of the principal Act
17. Replacement of section 25 of the principal Act
18. Amendment of section 26 of the principal Act
19. Amendment of section 28 of the principal Act
20. Amendment of section 29 of the principal Act
21. Amendment of section 30 of the principal Act
22. Amendment of section 31 of the principal Act
23. Amendment of section 32 of the principal Act
24. Amendment of section 35 of the principal Act
25. Amendment of section 36 of the principal Act
26. Replacement of section 38 of the principal Act
27. Replacement of section 40 of the principal Act

28. Amendment of section 41 of the principal Act
29. Amendment of section 42 of the principal Act
30. Amendment of section 43 of the principal Act
31. Amendment of section 44 of the principal Act
32. Replacement

- 83 -

A BILL

entitled

An Act to Amend the Penal Code

ENACTED by the Parliament of Malawi as follows-

Short title 1. This Act may be cited as the Penal Code (Amendment) Act, 1999.

Replacement of
s. 2 of the
principal Act 2. The Penal Code (hereinafter referred to as the “principal Act”) is
amended by repealing section 2 and replacing it as follows -

"Saving of
certain
laws

2. (1) Nothing in this Code shall affect -

- (a) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in the Republic other than this Code;
- (b) the liability of a person to be tried or punished for an offence under the provisions of any law in force in relation to the jurisdiction of courts in respect of acts done beyond the ordinary jurisdiction of such courts;
- (c) the power of any court to punish a person for contempt of such court;
- (d) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code;

- (e) any power of the President to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or
- (f) any of the Acts or Regulations for the time being in force for the Defence Force or the Police Force of the Republic.

(2) Where a person commits an offence which is punishable under this Code and is also punishable under another Act or Regulation, he shall not be punished for that offence both under that Act, or Regulation and also under this Code."

Replacement of
s. 3 of the
principal Act

3. Section 3 of the principal Act is repealed and replaced as follows-

"General rule of construction of the Code 3. This Code shall be interpreted in accordance with the principles of legal interpretation that-

- (a) take full account of the principles and provisions enshrined in the Constitution; and
- (b) where applicable, have regard to common law and comparable English criminal law."

Amendment of
s. 4 of the

4. Section 4 of the principal Act is amended -

principal Act

- (a) in the definition of “Act” by deleting the words “orders, rules, or regulations” and substituting therefor the words “subsidiary legislation”;

- (b) by inserting the following definition of “husband” or “wife” after the definition of “harm”-
“husband” or “wife” includes a person living in a marriage relationship as recognized by section 22 (5) of the Constitution;”;

- (c) in the definition of “judicial proceedings” by deleting all the words appearing after the word “oath” and substituting therefor the words “or not;”;

- (d) in the definition of “offence” by deleting the word “is” and substituting therefor the word “means”;

- (e) in the definition of “person employed in the public service”-
 - (i) by deleting, in paragraph (c) thereof, the words “of the two last preceding paragraphs of this definition” and substituting therefor the words “paragraph (a) or (b)”;

 - (ii) by deleting, in paragraph (d) (ii) thereof, the words, “, including a Traditional Court”;

- (iii) by deleting, in paragraph (d) (iii) thereof, the words “armed forces” and substituting therefor the words “Defence Force of Malawi”;
- (iv) by deleting, in paragraph (d) (viii) thereof, the words “the National Assembly” and substituting therefor the word “Parliament”;

- (f) by rearranging the definitions “public”, “public way”, “public place” and “publicly” into their proper alphabetical sequence as follows:
“public”, “publicly”, “public place” and “public way”;

- (g) by deleting the definition of “utter” and substituting therefor the following -
“utter” includes using or dealing with or attempting to use or attempting to induce any person to use, deal with or act upon the thing in question;”.

Amendment of
s. 5 of the
principal Act

5. Section 5 of the principal Act is amended -

- (a) by inserting at the commencement thereof the words “Except as otherwise provided in this Code,”;

- (b) by deleting the words “makes any part of” and substituting therefor the words “takes any part in”.

Amendment of
s. 9 of the
principal Act

6. Section 9 of the principal Act is amended-

(a) by numbering the existing provisions as subsections (1), (2) and (3) as follows-

(i) by inserting the subsection number “(1)” before the words
“Subject to the express provisions”;

(ii) by inserting the subsection number “(2)” before the words
“Unless the intention to cause”;

(iii) by inserting the subsection number “(3)” before the words
“Unless otherwise expressly declared”;

(b) by adding the following new subsection as subsection (4) -

“(4) In determining whether a person has committed an offence a court shall not be bound to infer that he intended or foresaw a result of his actions by reason only of its being the natural and probable consequence of those actions, but shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances.”.

Amendment of
s. 10 of the
principal Act

7. Section 10 of the principal Act is amended by numbering the existing provisions as subsections (1) and (2) as follows-

(a) by inserting the subsection number “(1)” before the words “A person who”;

- (b) by inserting the subsection number “(2)” before the words “The operation of this rule”.

Replacement
of s. 12 of
the principal Act

8. Section 12 of the principal Act is repealed and replaced as follows-

“Insanity 12. Subject to the provision of this Code with regard to persons suffering from diminished responsibility, a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is, through any disease affecting his mind, incapable of understanding what he is doing, or knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.”.

Amendment of
s. 13 of the
principal Act

9. Section 13 of the principal Act is amended in subsection (2) by renumbering paragraph (b) as paragraph (c) and inserting a new paragraph (b) as follows -

“(b) the state of intoxication was caused by medicinal administration of a generally or specially prescribed drug whether that drug was self-administered or not; or”.

Amendment of
s. 14 of the
principal Act

10. Section 14 of the principal Act is amended -

- (a) by numbering the existing provisions as subsections (1), (2) and (3) as follows-
- (i) by inserting the subsection number “(1)” before the words “A person under the age of seven years”;
 - (ii) by inserting the subsection number “(2)” before the words “A person under the age of twelve years”;
 - (iii) by inserting the subsection number “(3)” before the words “A male person under the age of twelve years”;
- (b) by deleting the words “seven years” appearing in the newly numbered subsection (1) and substituting therefor the words “ten years”;
- (c) by deleting the words “twelve years” appearing in the newly numbered subsection (2) and substituting therefor the words “fourteen years”.

Replacement
of s. 16 of the
principal Act

11. Section 16 of the principal Act is repealed and replaced as follows-

“Compulsion

16. A person is not criminally responsible for an offence if

it is committed by two or more offenders, and if the act is done or committed only because during the whole of the time in which it is being done or committed the person is compelled to do or omit to do the act by threats on the part of the offender or offenders, instantly to kill him or his spouse, child or any person under his charge or to do him, his spouse, child or any person under his charge grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.”.

Insertion of new
s. 16A into
the principal Act

12. The principal Act is amended by inserting after section 16 a new section as section 16A-

“Superior
orders

16A. A person's conduct pursuant to an order of a government or of a superior, whether military or civilian, shall not free the person from criminal responsibility if the order was known to be unlawful or appeared to be manifestly unlawful.”.

Amendment of
s. 17 of the
principal Act

13. Section 17 of the principal Act is amended by deleting the word “English” appearing before the words “common law”.

Replacement
of s. 19 of the
principal Act

14. Section 19 of the principal Act is repealed and replaced as follows -

“Compulsion
by spouse

19. A spouse is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of his or her spouse; but on a charge against a spouse for any offence other than treason, murder or genocide it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the other spouse.”

Replacement
of s. 21 of the
principal Act

15. Section 21 of the principal Act is repealed and replaced as follows -

“Principal
offenders

21. (1) When an offence is committed, each of the

following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-

- (a) every person who actually does the act or makes the omission which constitutes the offence;
 - (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
 - (c) every person who aids or abets another person to commit the offence;
 - (d) any person who counsels or procures any person to commit the offence.
- (2) In a case arising under subsection (1) (d), the accused may be charged with himself committing the offence or with counselling or procuring its commission.

(3) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4) Any person who procures another to do or omit to do any act of such a nature that if he had himself done the act or made the omission the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may

be charged with himself doing the act or making the omission.”.

Replacement
of s. 23 of the
principal Act

16. Section 23 is repealed and replaced as follows -

“Counselling
another to
commit an
offence

23. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel, drawing such inference from the evidence as appears proper in the circumstances; and in either case the person who gave counsel is deemed to have counselled the other person to commit the

offence actually committed by him.".

Replacement
of s. 25 of the
principal Act

17. Section 25 of the principal Act is repealed and replaced as follows -

“Different
kinds of
punishments

25. The following punishments may be inflicted by a
court -

- (a) death;
- (b) imprisonment;
- (c) fine;
- (d) compensation;
- (e) finding security to keep the peace and be of good
behaviour; or to come up for sentence;
- (f) liability to police supervision;
- (g) forfeiture;
- (h) suspended sentence;
- (i) public work;
- (j) community service;
- (k) probation;
- (l) weekend or public holiday;
- (m) attendance centre orders;
- (n) any other punishment provided by this Code or by any
other written law.”.

Amendment
of s. 26 of the
principal Act

18. Section 26 of the principal Act is amended-

- (a) by deleting subsection (1) and substituting therefor the following-

“(1) When any person is sentenced to death the sentence shall direct that he shall suffer death by hanging within the prison in which he is detained.”;

- (b) in subsection (2), by deleting all the words appearing after the words “the President’s pleasure,” and substituting therefor the words “on the advice of the Board of Visitors

Cap. 26:03 appointed under the Children and Young Persons Act.”

Repeal of
s. 28 of the
principal Act

- 19. Section 28 of the principal Act is repealed.

Insertion of new
s. 28 into the
principal Act

- 20. The principal Act is amended by inserting therein a new section as section 28-

“Short
sentences of
imprisonment

28. (1) Where a court passes a sentence of imprisonment on an offender for a period of not exceeding three months, or where a convicted person is required to serve a sentence of such duration in lieu of payment of a fine, and the court is satisfied-

- (a) on an application made before it by or on behalf of the convicted person of the existence of the conditions set out in subsection (2); and
- (b) on a report from the Chief Commissioner of Prisons that satisfactory arrangements exist for the sentence to be served in the manner applied for,

it may order that the sentence be served at stated periods.

(2) The conditions required for the purposes of subsection (1) shall be that-

- (a) the convicted person was in employment at the time of the commission of the offence or that he is or was in employment at the time of conviction;
- (b) the convicted person would continue to be in such employment if it were not for such conviction and the obligation to serve the sentence of imprisonment;
- (c) the discontinuance of the convicted person from such employment would cause hardship to his dependants;
and
- (d) the convicted person consents to serve the sentence of imprisonment in the manner ordered by the court.

(3) Where an order under subsection (1) is made, the court shall cause a copy of the order to be served on the police officer who is in charge of the police station in the District in which the convicted person resides or will reside.

(4) A stated period for the purposes of this section shall be at the discretion of the court but shall not be less than twenty-four hours of continuous duration for any one week.

(5) When any convicted person as is mentioned in this section has failed to serve any stated portion of his sentence, the Chief Commissioner of Prisons may, on application made by way of summons, so inform the court which sentenced such person under subsection (1), and the court may thereupon, after hearing the convicted person, revoke the order for imprisonment at stated periods and substitute therefor a continuous sentence not exceeding the unserved portion of the sentence originally passed.

(6) The court may on application made by a convicted person vary the commencement or duration of a stated period."

Amendment of
s. 29 of the
principal Act

21. Section 29 of the principal Act is amended-

- (a) in subsection (2) (a),
 - (i) by inserting after the word "imprisonment", wherever it appears, the words ", community service or public work";
 - (ii) by deleting the word "term" appearing after the word "certain" and substituting therefor the word "period";

- (b) in the proviso appearing after paragraph (b)-
 - (i) by inserting, after the word "imprisoned", the words "or, shall do community service or public work";
 - (ii) by inserting, after the word "imprisonment", the words "or completed his community service or public work,";

- (c) in subsection (3) by deleting the scale appearing after the words "the following scale" and substituting therefor the following-

<i>“Amount</i>	<i>Maximum Period</i>
Not exceeding K1,000	1 Month
Exceeding K1,000 but not exceeding K5,000	3 Months
Exceeding K5,000 but not exceeding K10,000	6 Months
Exceeding K10,000 but not exceeding K20,000	8 Months
Exceeding K20,000	12 Months”;

(d) by adding the following new subsection as subsection (5) -

“(5) The Minister may, by Order published in the *Gazette*, amend the monetary sums prescribed in the scale in subsection (3).”.

Amendment of s. 30 of the principal Act

22. Section 30 of the principal Act is amended by inserting, after the section number “111”, the section number “, 331A”.

Amendment of s. 31 of the principal Act

23. Section 31 of the principal Act is amended by deleting subsection (2) and substituting therefor the following-

“(2) Any person who fails to comply with an order made under subsection (1) shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for six months.”.

Amendment of
s. 32 of the
principal Act

24. Section 32 of the principal Act is amended-

(a) by deleting the words "injured by his offence" and substituting therefor the words "who has suffered personal injury or loss of property by such offence";

(b) by numbering the existing section as subsection (1) thereof;

(c) by adding thereto the following new subsections as subsections (2) and (3)-

"(2) A person shall not be precluded from instituting civil proceedings but the court shall take cognisance of the earlier compensation awarded in criminal proceedings under subsection (1).

(3) Where a person dies as a result of an offence compensation under subsection (1) may be awarded by the court to any surviving spouse, child or dependant of the deceased person."

Amendment of
s. 35 of the
principal Act

25. Section 35 of the principal Act is amended by deleting the words “or of corporal punishment” appearing after the words “sentence of death”.

Amendment of
s. 36 of the
principal Act

26. Section 36 of the principal Act is amended in paragraph (a) by deleting the words “fine or corporal punishment” and substituting therefor the words “or fine”.

Replacement of
s. 38 of the
principal Act

27. Section 38 of the Principal Act is repealed and replaced as follows-

“Treason 38. (1) Any person who-

(a) by an overt act-

- (i) engages in armed hostilities against the Republic of Malawi;
- (ii) assists any State or group of persons engaged in armed hostilities against the Republic of Malawi;
- (iii) assists any armed forces or group of persons against whom the the Defence Force of Malawi is engaged in armed hostilities; or

- (iv) uses force or violence for the purpose of overthrowing the lawfully constituted Government of the Republic of Malawi;

- (b) recruits or trains persons for the implementation of anything mentioned in paragraph (a) or participates in any such recruitment or training,

- (c) conspires with any person to do anything mentioned in paragraph (a),

shall be guilty of treason and shall be liable to be punished with death or imprisonment for life.

(2) “Armed hostilities” includes any unlawful use of force constituting an act of rebellion against or calculated to undermine the authority of the Government or any arm of the Government.

(3) A person may be tried and punished for an offence against this section whether committed within or outside the Republic of Malawi.

(4) No person shall be convicted of treason on the evidence of one witness alone, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused."

Replacement of
s. 40 of the
principal Act

28. Section 40 of the Principal Act is repealed and replaced as follows-

"Promoting
war, etc
amongst groups

40. Any person who, without lawful authority, carries on or makes preparation for carrying on or aids in or advises the carrying on of or preparation for any war or war-like undertaking, violence, fighting or similar undertaking with, for, by, or against any ethnic, tribal, racial, religious, political or other group of people, shall be guilty of a felony and shall be liable to imprisonment for life."

Amendment of
s. 41 of the
principal Act

29. Section 41 of the Principal Act is amended in paragraph (a) by deleting the words "armed forces or police force of the Republic" and substituting therefor the words "Defence Force of Malawi or the Police Force".

Amendment of
s. 42 of the
principal Act

30. Section 42 of the Principal Act is amended by deleting the words "military forces of the Republic" and substituting therefor the words "Defence Force of Malawi".

- Amendment of s. 43 of the principal Act
31. Section 43 of the principal Act is amended by deleting the words “the said military forces” and substituting therefor the words “the Defence Force of Malawi”.
- Amendment of s. 44 of the principal Act
32. Section 44 of the principal Act is amended in paragraph (b) by deleting the words “the last preceding paragraph” and substituting therefor the words “paragraph (a)”.
- Replacement of s. 46 of the principal Act
33. Section 46 of the principal Act is repealed and replaced as follows-
- “Power to publications
46. If the minister has reasonable grounds to believe regulate that the publication or importation of any publication would be contrary to the public interest, he may, by Order published in the *Gazette*, prohibit the publication or importation of such publication.”.
- Amendment of s. 47 of the principal Act
34. Section 47 of the principal Act is amended-
- (a) in subsection (1)-
- (i) by inserting before the word “importation” the words “publication or”;
- (ii) by deleting “£400” and substituting therefor “K20,000”.

- (b) in subsection (2)-
 - (i) by inserting before the word "importation" the words "publication or",
 - (ii) by deleting "£200" and substituting therefor "K20,000".

Amendment of
s. 48 of the
principal Act

35. Section 48 of the principal Act is amended-

- (a) in subsection (1)
 - (i) by inserting before the word "importation" wherever it appears the words "publication or",
 - (ii) by deleting "£200" and substituting therefor "K20,000",
- (b) in subsection (2) by inserting before the word "imported" the word "published".

Amendment of
s. 49(1) of the
principal Act

36. Section 49 of the principal Act is amended in subsection (1) by inserting before the word "suspects" the word "reasonably".

Amendment of
s. 51 of the
principal Act

37. Section 51 of the principal Act is amended-

- (a) in subsection (1) by deleting "£400" and substituting therefor "K50,000";

(b) in subsection (2) by deleting “£200” and substituting therefor “K20,000”.

Amendment of s. 57 of the principal Act 38. Section 57 of the principal Act is amended by deleting the words “military forces in the Republic” and substituting therefor the words “Defence Force of Malawi”.

Amendment of s. 58 of the principal Act 39. Section 58 of the principal Act is amended by deleting the words “military forces in the Republic” and substituting therefor the words “Defence Force of Malawi”.

Amendment of s. 61 of the principal Act 40. Section 61 of the principal Act is amended by deleting the word “princes” appearing in the marginal note and substituting therefor the word “dignitaries”.

Amendment of s. 63 of the principal Act 41. Section 62 of the principal Act is amended in paragraph (a) by deleting the words “the dominions of any friendly state” and substituting therefor the words “any friendly state”.

Replacement of s. 63 of the principal Act 42. Section 63 of the principal Act is repealed and replaced as follows-

"Piracy 63. (1) Any person who commits piracy shall be guilty of an offence and shall be liable to death or imprisonment for life.

- (2) Piracy consists of any of the following acts-
- (a) any illegal acts of violence, detention or any act of depredation committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed-
 - (i) on the high seas against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
 - (b) any act of voluntary participation in the operation of a ship or aircraft with the knowledge of facts making it a pirate ship or aircraft;
 - (c) any act of inciting or intentionally facilitating an act described in paragraph (a) (i) or (ii).

(3) The acts of piracy, as defined in subsection (2), committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

(4) A ship or aircraft is considered to be a pirate ship or aircraft -

(a) if it is intended by the person in dominant control to be used for the purposes of committing one of the acts referred to in subsection (2); or

(b) if the ship or aircraft has been used to commit any such act as long as it remains under the control of the persons guilty of that act.

(5) For the purposes of any proceedings before a court in Malawi in respect of piracy, the provisions set out in subsection (2) shall be treated as constituting part of the law of nations and any such court having jurisdiction in respect of piracy committed on the high seas shall have jurisdiction in respect of piracy committed by or against a ship or aircraft wherever the piracy is committed."

Replacement
of s. 64 of the
principal Act

43. Section 64 of the principal Act is repealed and replaced as follows-

“Definition of
society and un-
lawful society

64. (1) A society includes any combination of persons,
whether the society be known by any name or not.

(2) A society is an unlawful society if formed for, or carries on, any
of the following purposes-

(a) levying war or encouraging or assisting any person to
levy war on the Government or the inhabitants of any
part of the Republic;

(b) killing or injuring or inciting to the killing or injuring
of any person;

(c) destroying or injuring or inciting to the destruction or
injuring of any property;

(d) committing or inciting to acts of violence or intimidation;

(e) interfering with, or resisting, or inciting to
interference with or resistance to the administration of
the law; or

- (f) disturbing or inciting to the disturbance of peace and order in any part of the Republic."

Amendment of
s. 67 (1) of the
principal Act

44. Section 67 of the principal Act is amended in subsection (1) by deleting the words "the two last preceding sections" and substituting therefor the words "sections 65 and 66".

Amendment of
s. 69 of the
principal Act

45. Section 69 of the principal Act is amended -
- (a) by deleting the marginal note and substituting therefor the following-
"Disposal of property of an unlawful society";
 - (b) in subsection (1)-
 - (i) by deleting all the words appearing before paragraph (a) and substituting therefor the following-
"When a society is found by a court to be an unlawful society, the following consequences shall ensue-";
 - (ii) by deleting, in paragraphs (a) to (e), the word "Minister" and substituting therefor the word "court";

(iii) by deleting, in paragraph (c), the word “he” and substituting therefor the word “it”;

(c) in subsection (2)

(i) by deleting the word “Minister” and substituting therefor the word “court”,

(ii) by deleting the word “him” and substituting therefor the word “it”.

Amendment of
s. 70 of the
principal Act

46. Section 70 of the principal Act is amended by deleting the words “the last preceding section” and substituting therefor the words “section 69” and by deleting the word “Minister” and substituting therefor the word “court”.

Amendment of
s. 71 of the
principal Act

47. Section 71 of the principal Act is amended by numbering the existing provisions as subsections (1), (2) and (3) as follows-

(a) by inserting the subsection number “(1)” before the words “Where three or more persons assemble”;

(b) by inserting the subsection number “(2)” before the words “It is immaterial”;

- (c) by inserting the subsection number "3" before the words "When an unlawful assembly".

Amendment of
s. 73 of the
principal Act

48. Section 73 of the principal Act is amended by deleting the words "a misdemeanour" and substituting therefor the words "an offence".

Amendment of
s. 74 of the
principal Act

49. Section 74 of the principal Act is amended by deleting the words "any military force in the Republic" and substituting therefor the words "the Defence Force of Malawi".

Amendment of
s. 77 of the
principal Act

50. Section 77 of the principal Act is amended by deleting the words "as is in section 74 mentioned" and substituting therefor the words "as mentioned in section 74".

Amendment of
s. 79 of the
principal Act

51. Section 79 of the principal Act is amended by deleting the words "the last preceding section" and substituting therefor the words "section 78".

Amendment of
s. 81(1) of the
principal Act

52. Section 81 of the principal Act is amended in subsection (1)-
- (a) by inserting the words "shall be guilty of an offence and" after the word "weapon";
 - (b) by deleting "£100" and substituting therefor "K10,000".

Amendment of
s. 82 of the
principal Act

53. Section 82 of the principal Act is amended by numbering the existing provisions as subsections (1) and (2) as follows-

- (a) by inserting the subsection number “(1)” before the words “Any person who”;
- (b) by inserting the subsection number “(2)” before the words “It is immaterial”.

Amendment of
s. 86 of the
principal Act

54. Section 86 of the principal Act is amended-

- (a) by numbering the existing provisions as subsections (1) and (2) as follows-
 - (i) by inserting the subsection number “(1)” before the words “Any person who-”;
 - (ii) by inserting the subsection number “(2)” before the words “If the offence is committed”;
- (b) by deleting the words “a misdemeanour” appearing in the newly numbered subsection (1) and substituting therefor the words “an offence”.

Amendment of
s. 87 (1) of the
principal Act

55. Section 87 of the principal Act is amended in subsection (1) by deleting the words “a misdemeanour” and substituting therefor the words “an offence”.

Amendment of
s. 88 (3) of the
principal Act

56. Section 88 of the principal Act is amended in subsection (3) by deleting “£500” and substituting therefor “K50,000”.

Amendment of
s. 89 of the
principal Act

57. Section 89 of the principal Act is amended by deleting “£300” and substituting therefor “K30,000”.

Amendment of
s. 90, 91 and 92
of the principal
Act

58. Section 90, 91 and 92 of the principal Act are amended by deleting the words “shall be guilty of a felony and shall be liable to imprisonment for a term of not less than five years and not more than twelve years” and substituting therefor the words “shall be guilty of a felony and shall be liable to imprisonment for twelve years.”.

Amendment of
s. 95 of the
principal Act

59. Section 95 of the principal Act is amended-

(a) by numbering the existing provisions as subsections (1), (2) and (3) as follows-

(i) by inserting the subsection number “(1)” before the words “Any person who”;

(ii) by inserting the subsection number “(2)” before the words “If the act is done”;

(iii) by inserting the subsection number “(3)” before the words “A prosecution for any offence”;

- (b) by deleting the words “of the two last preceding sections” appearing in the newly numbered subsection (3) and substituting therefor the words “section 93 or 94”.

Amendment of
s. 101 of the
principal Act

60. Section 101 of the principal Act is amended-

- (a) in subsection (1) by deleting all the words appearing after the words “shall be guilty of the misdemeanour termed perjury.”;
- (b) by renumbering subsection (2), (3) and (4) as subsections (3), (4) and (5), respectively;
- (c) by inserting therein a new subsection as subsection (2)-
 - “(2) For the purposes of subsection (1)-
 - (a) it is immaterial whether the testimony is given on oath or in any other manner authorized by law;
 - (b) the forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assents to the forms and ceremonies actually used;

- (c) it is immaterial whether the false testimony is given orally or in writing;
 - (d) it is immaterial whether the court or tribunal is properly constituted or is held in the proper place or not, if it actually acts as a court or tribunal in the proceedings in which the testimony is given;
 - (e) it is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.”;
- (d) by adding thereto a new subsection as subsection (6) as follows-
- "(6) Where, for the purposes of a judicial proceeding in Malawi, a person is lawfully sworn-
- (a) in a foreign jurisdiction under the authority of an Act of Parliament of that jurisdiction; or
 - (b) in a tribunal of any foreign state,

a statement made by such person (unless the Act of Parliament under which it was made otherwise specifically provides) shall be treated for the purposes of this section as having been made in the judicial proceeding in Malawi for which it was made.”.

Amendment of
s. 102 of the
principal Act

61. Section 102 of the principal Act is amended by deleting the words “This section” appearing at the commencement of the section and substituting therefor the words “Section 101”.

Amendment of
s. 105 of the
principal Act

62. Section 105 of the principal Act is amended by inserting the words “court or” before the word “tribunal”, and by deleting the words “a misdemeanour” and substituting therefor the words “an offence”.

Amendment of
s. 112 of the
principal Act

63. Section 112 of the principal Act is amended in paragraph (a) by deleting after the word “seized” the words “or molested”.

Amendment of
s. 113 of the
principal Act

64. Section 113 of the principal Act is amended-

(a) in subsection (1)

(i) by inserting the word “or” after the semicolon at the end of paragraph (i); and

(ii) by adding thereto the following new paragraph as paragraph

(j)-

“(j) obtains, discloses or solicits any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any judicial proceedings,”;

(b) in subsection (2) by deleting “£70” and substituting therefor “K10,000”;

(c) by adding thereto a new subsection as subsection (4) as follows-

“(4) Subsection(1)(j) shall not apply to any disclosure of any particulars-

(a) in the proceedings in question for the purpose of enabling the jury to arrive at their verdict, or in connection with the delivery of that verdict; or

- (b) in evidence in any subsequent proceedings for an offence alleged to have been committed in relation to the jury in the first mentioned proceedings, or in relation to the publication of any particulars so disclosed.”.

Amendment of
s. 114 of the
principal Act

65. Section 114 of the principal Act is amended-

- (a) by numbering the existing provisions as subsections (1) and (2) as follows-

- (i) by inserting the subsection number “(1)” before the words “Any person, who”;
- (ii) by inserting the subsection number “(2)” before the words “If the person rescued”;

- (b) by deleting the words “those specified above” appearing in paragraph (b) of the newly numbered subsection (1) and substituting therefor the words “those specified in paragraph (a)”.

Amendment of
s. 116 of the
principal Act

66. Section 116 of the principal Act is amended by deleting the words

“shall be guilty of a misdemeanour” and substituting therefor the words “shall be guilty of an offence and shall be liable to imprisonment for seven years”.

Amendment of
s. 122 of the
principal Act

67. Section 122 of the principal Act is amended by deleting “£150” and substituting “K10,000”.

Amendment of
s. 124 (1) of
the principal Act

68. Section 124 of the principal Act is amended in subsection (1) by deleting the words “shall be liable to imprisonment for five years” and substituting therefor the words “shall be guilty of an offence and shall be liable to imprisonment for five years”.

Amendment of
s. 125 of the
principal Act

69. Section 125 of the principal Act is amended by deleting the words “shall be liable to imprisonment for five years” and substituting therefor the words “shall be guilty of an offence and shall be liable to imprisonment for five years”.

Amendment of
s. 131 of the
principal Act

70. Section 131 of the principal Act is amended by numbering the existing provisions as subsections (1) and (2) as follows-

- (a) by inserting the subsection number “(1)” before the words “Whoever unlawfully hinders”;
- (b) by inserting the subsection number “(2)” before the words “In this section”.

Amendment of
s. 133 of the
principal Act

71. Section 133 of the principal Act is amended by deleting the words
“, with or without corporal punishment”.

Amendment of
s. 134 of the
principal Act

72. Section 134 of the principal Act is amended by deleting the words
“, with or without corporal punishment”.

Amendment of
s. 137 of the
principal Act

73. Section 137 of the principal Act is amended-

- (a) in subsection (1) by deleting the words “, with or without corporal punishment”;
- (b) in subsection (2) by deleting the words “thirteen years” and substituting therefor the words “sixteen years”.

Insertion of
new s. 137A
into the
principal Act

74. The principal Act is amended by inserting after section 137
a new section as section 137A-

“^{Indecent practices between females} 137A. Any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.”.

Amendment of
s. 138 of the
principal Act

75. Section 138 of the principal Act is amended-

- (a) in subsection (1) by deleting-
 - (i) the words “unlawfully and” appearing before the words “carnally knows”;
 - (ii) the words “thirteen years” and substituting therefor the words “sixteen years”;
 - (iii) the words “, with or without corporal punishment”;

- (b) in subsection (2) by deleting-
 - (i) the word “unlawful” appearing before the words “carnal knowledge”;
 - (ii) the words “thirteen years” and substituting therefor the words “sixteen years”;
 - (iii) the words “, with or without corporal punishment”;

- (c) by deleting the proviso appearing after subsection (2) and substituting therefor a new subsection as subsection (3) as follows-
 - “(3) It is a defence to a charge under this section if it is proved that-
 - (a) the girl consented; and

- (b) the person charged-
 - (i) was not more than twenty one years of age at the time of the commission of the offence and has not been previously charged with the same or similar offence; and
 - (ii) had reasonable cause to believe, and did believe, that the girl was sixteen years of age or more”.

Amendment of
s. 140 of the
principal Act

76. Section 140 of the principal Act is amended by deleting all the words after the words “in the Republic or elsewhere” appearing at the end of paragraph (d) and substituting therefor the words “shall be guilty of an offence and shall be liable to imprisonment for fourteen years”.

Amendment of
s. 141 of the
principal Act

77. Section 141 of the principal Act is amended by deleting the words “shall be guilty of a misdemeanour” and substituting therefor the words “shall be guilty of an offence and shall be liable to imprisonment for fourteen years”.

Amendment of
s. 142 of the

78. Section 142 of the principal Act is amended-

principal Act

- (a) by deleting the words “thirteen years” and substituting therefor the words “sixteen years” and by deleting the words “unlawfully and” appearing before the words “carnally known”;
- (b) by deleting the colon appearing after the words “five years” and substituting therefor a fullstop; and
- (c) by deleting the proviso appearing at the end thereof.

Amendment of
s. 143 of the
principal Act

79. Section 143 of the principal Act is amended-

- (a) by numbering the existing provisions as subsections (1), (2) and (3) as follows-
 - (i) by inserting the subsection number “(1)” before the words “Any person who”;
 - (ii) by inserting the subsection number “(2)” before the words “When a woman or girl”;
 - (iii) by inserting the subsection number “(3)” before the words “No legal proceedings”;
- (b) by deleting the words “shall be guilty of a misdemeanour” and substituting therefor the words “shall be guilty of an offence and shall be liable to imprisonment for five years”.

Amendment of
s. 144 of the
principal Act

80. Section 144 of the principal Act is amended-
- (a) by numbering the existing provisions as subsections (1), (2), (3) and (4) as follows-
 - (i) by inserting the subsection number “(1)” before the words “If it appears”;
 - (ii) by inserting the subsection number “(2)” before the words “A magistrate”;
 - (iii) by inserting the subsection number “(3)” before the words “A woman or girl”;
 - (iv) by inserting the subsection number “(4)” before the words “Any person authorized”;
 - (b) by deleting the proviso after the words “remove such woman therefrom” appearing at the end of the newly numbered subsection (4).

Amendment of
s. 145 of the
principal Act

81. Section 145 of the principal Act is amended in subsection (1) by deleting all the words appearing after the word “misdemeanour”.

Amendment of
s. 147 of the
principal Act

82. Section 147 of the principal Act is amended by deleting the words “shall be guilty of a misdemeanour” and substituting therefor the words “shall be guilty of an offence and shall be liable to imprisonment for seven years”.

Insertion of
the
principal Act

83. The principal Act is amended by inserting after section 147 a new s. 147A into section as section 147A-

“Promoting
prostitution, etc

- 147A. (1) Any person who-
- (a) owns, controls, manages, supervises or otherwise keeps, alone or in association with another person, a house or business for prostitution;
 - (b) procures, encourages, induces, or otherwise purposely causes another person to become or remain a common prostitute;
 - (c) solicits another person to patronize a prostitute;
 - (d) transfers or transports any person into or out of or within Malawi with the purpose to engage that other person in prostitution;
 - (e) rents or permits any place to be regularly used for prostitution or promotion of prostitution; or
 - (f) fails to disclose or notify the relevant authorities by any available means, of the existence of any house or business for prostitution,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

(2) For the purposes of this section-

(a) “prostitution”, means any sexual activity with another person for money or something of economic value, or the offer or acceptance of an offer made to engage in sexual activity in exchange for money or something of economic value; and

(b) “sexual activity” includes sexual intercourse whether in the form of genital, oral-genital, anal-genital contact or otherwise, whether between persons of the same or opposite sex, masturbation, touching of the genitals, buttocks, breasts, sadistic or masochistic abuse and other deviant sexual relations.”.

Amendment of
s. 148 of the
principal Act

84. Section 148 of the principal Act is amended by inserting the words “, false representation” after the words “false pretence” and by deleting the words “, with or without corporal punishment”.

Amendment of
s. 153 of the
principal Act

85. Section 153 of the principal Act is amended by deleting the words “, with or without corporal punishment”.

Amendment of s. 154 of the principal Act 86. Section 154 of the principal Act is amended by deleting the words “the last preceding section” and substituting therefor the words “section 153” and by deleting the words “, with or without corporal punishment”.

Amendment of principal Act 87. Section 155 of the principal Act is amended by deleting the words s. 155 of the “, with or without corporal punishment”.

Insertion of new s. 155A of the principal Act 88. The principal Act is amended by inserting after section 155 a new section as section 155A-

“Indecent assault against idiots and imbeciles 155A. Any person who indecently assaults a male person, knowing that person to be an idiot or imbecile, shall be guilty of an offence and shall be liable to imprisonment for seven years.”.

Amendment of s. 156 of the principal Act 89. Section 156 of the principal Act is amended by deleting the words “, with or without corporal punishment”.

Amendment of s. 157 of the principal Act 90. Section 157 of the principal Act is amended in subsection (1) by deleting the words “or mother” and substituting therefor the words “mother or grandmother” and by deleting the words “thirteen years” appearing in the proviso and substituting therefor the words “sixteen years”.

Amendment of
s. 158 of the
principal Act

91. Section 158 of the principal Act is amended by deleting the words “or son” and substituting therefor the words “son or grandson”.

Insertion of new
s. 159A into the
principal Act

92. The principal Act is amended by inserting after section 159 a new section as section 159A-

“Sexual
intercourse
with minors
under one's care
or protection

159A. Any person who has sexual intercourse with a person under the age of twenty-one years who-

(a) is the first mentioned person's stepchild, foster child, dependant or ward; or

(b) is, at the time of the intercourse, living with the first mentioned person as a member of that person's family or is under that person's care or protection,

shall be guilty of an offence and shall be liable to imprisonment for five years.”.

Amendment of
s. 160 of the
principal Act

93. Section 160 of the principal Act is amended by deleting the words “or 158” and substituting therefor the words “, 158 or 159A”.

Insertion of
new Chapter
XVA into the
principal Act

94. The principal Act is amended by inserting after Chapter XV a new Chapter as Chapter XVA-

“CHAPTER XVA - OFFENCES AGAINST MORALITY

RELATING TO CHILDREN

Definitions 160A In this Chapter-

“child” means a child under the age of sixteen years;

“sexual activity” means sexual contact other than sexual intercourse (whether between persons of the same or opposite sex) in the form of genital, oral-genital, anal-genital contact or otherwise, masturbation, touching of genitals, buttocks or breasts, sadistic or masochistic abuse and other deviant sexual behaviour;

“prohibited sexual act” includes sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, or nudity if the nudity is depicted for the purpose of sexual

stimulation or gratification of any person who may view such depiction;

“material” includes-

- (a) an object;
- (b) a still visual image of any kind, whether a drawing, painting, photograph, or other representation on a surface of any kind, and whether printed or not;
- (c) a moving visual image of any kind, whether produced from a cinematographic film, video tape or other medium; or
- (d) a hologram;

“offensive material” means material that-

- (a) describes, depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner that is likely to cause offence to a reasonable adult;

- (b) depicts a person (whether engaged in sexual activity or otherwise) who is, or who is apparently, a child under the age of sixteen years in a manner that is likely to cause offence to a reasonable adult;
- (c) describes, depicts, expresses, or otherwise deals with sexual activity of any kind between a human being and an animal;
- (d) promotes, incites, or instructs in matters of crime or violence, and includes a publication, the publication or importation of which is prohibited under this Code or under any other written law;

“public entertainment” means an entertainment to which the public or any section of the public is admitted or in connection with which a charge, whether for admission or otherwise, is made.

Sexual activity

160B (1) Any person who engages or indulges in
with a child
sexual activity with a child shall be guilty of an offence and
shall be liable to imprisonment for fourteen years.

(2) If the offence under subsection (1) is committed in
circumstances of aggravation, the offender shall be liable to
imprisonment for twenty-one years.

(3) For the purposes of subsection (2),
“circumstances of aggravation” means circumstances in
which-

- (a) at or immediately before or immediately after
the commission of the offence-
 - (i) the accused is armed with any
dangerous or offensive weapon or
instrument or pretends to be so armed;
 - (ii) the accused is in company with
another person or persons;

- (iii) the accused by his acts or conduct wounds, maims, disfigures or endangers the life of the victim;
- (iv) the accused does an act which is likely seriously and substantially to degrade or humiliate the victim; or
- (v) the accused threatens to kill the victim;

(b) the accused is a step parent, foster parent, teacher, guardian or is a person who has the guardianship or charge of the child or is a person with whom the child is living as part of the accused's family.

Indecent practice
in the presence
of or with a child

160C. Any person who, whether in public or private-

- (a) procures a child to commit any act of gross indecency with him or with another person; or

- (b) commits any act of gross indecency with a person of the same or opposite sex in the presence of a child,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Showing, selling,
exposing
offensive material
to a child

160D. Any person who, with intent to commit an offence, shows, sells, or exposes offensive material to a child, shall be guilty of an offence and shall be liable to imprisonment for seven years.

Recording a
child

160E. Any person who-

- (a) causes or permits a child to be engaged in a prohibited sexual act or simulation of such act if the person knows or has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner or may be part of an exhibition or performance;

- (b) photographs or films a child in a prohibited sexual act or in the simulation of such an act or uses any device to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act;
- (c) knowingly receives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, sends, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer any photograph film, video tape, computer programme, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such act;

- (d) knowingly possesses or knowingly views any photograph, film, video tape, computer programme, video game or any other reproduction or reconstruction which so depicts a child,

shall be guilty of an offence and shall be liable to imprisonment for fourteen years.

Procuring child
to take part
in public
entertainment

160F. (1) Any person who causes or procures any child, or being a parent or guardian of the child, allows the child to take part in any public entertainment-

- (a) of an immoral nature;
- (b) which is dangerous to life or prejudicial to the health, physical fitness and kind treatment of the child,

shall be guilty of an offence and shall be liable to a fine of K10,000 and to imprisonment for three years.

(2) If the person convicted of an offence under subsection (1) is the holder of a licence issued under a law regulating public entertainment or under any other relevant law, the court may also order the

cancellation of the licence or its suspension for such period as the court may think fit.

Knowledge of
age of child
immaterial

160G. It shall not be a defence to a charge for an offence under this Chapter that the accused did not know that the child in respect of whom the offence was committed was under the prescribed age of sixteen years, or believed that the child was not under that age."

Amendment of
s.164 of the
principal Act

95. Section 164 of the principal Act is amended -
- (a) by deleting the words "fourteen years" and substituting therefor the words "sixteen years";
 - (b) by deleting the words "shall be guilty of a misdemeanour" and substituting therefor the words "shall be guilty of an offence and shall be liable to imprisonment for seven years".

Amendment of
s.165 of the
principal Act

96. Section 165 of the principal Act is amended -
- (a) by deleting the words "child of tender years" and substituting therefor the words "child under the age of sixteen years";

- (b) by deleting the words "shall be guilty of a misdemeanour" and substituting therefor the words " shall be guilty of an offence and shall be liable to imprisonment for seven years".

Amendment of
s.167 of the
principal Act

97. Section 167 of the principal Act is amended -

- (a) by numbering the existing provisions as subsections (1) and (2) as follows -

- (i) by inserting the subsection number "(1)" before the words "Any person who";

- (ii) by inserting the subsection number "(2)" before the words "It is a defence to a charge";

- (b) by deleting the words "fourteen years" appearing in the newly numbered subsection (1) and substituting therefor the words "sixteen years".

Amendment of
s.168 of the
principal Act

98. Section 168 of the principal Act is amended by numbering the existing provision as subsections (1) and (2) as follows -

- (a) by inserting the subsection number "(1)" before the words "Any person who";

(b) by inserting the subsection number "(2)" before the words "It is immaterial".

Amendment of s.169 of the principal Act 99. Section 169 of the principal Act is amended in subsection (4) by deleting "£5" and "£20" and substituting therefor "K1,000" and "K2,000", respectively.

Amendment of s.173 of the principal Act 100. Section 173 of the principal Act is amended in subsection (2) by deleting "£50" and substituting therefor "K10,000".

Amendment of s.174 of the principal Act 101. Section 174 of the principal Act is amended in subsection (3) by deleting "£10" and substituting therefor "K2,000".

Amendment of s.176 of the principal Act 102. Section 176 of the principal Act is amended by deleting "K1,000" and substituting therefor "K10,000".

Amendment of s.177 of the principal Act 103. Section 177 of the principal Act is amended in subsection (1) by deleting "K400" and substituting therefor "K5,000".

Amendment of s.178 of the principal Act 104. Section 178 of the principal Act is repealed and replaced as follows -

"Opening of
postal article
suspected of
containing
chain letter

178 (1) If the Postmaster General or any other officer authorized by him in that behalf has reasonable grounds to believe that any postal article is, or contains, a chain letter sent in contravention of any of the provisions of section 177, he may apply to a court of a Resident Magistrate or First Grade Magistrate for a warrant to detain and open the postal article.

(2) Every application under this section shall be made in writing and on oath, setting out the facts relied upon.

(3) On an application made in accordance with this section, the court may grant the warrant if it is satisfied that there are reasonable grounds for believing that the postal article is, or contains, a chain letter.

(4) The court may order that any bank note, currency note, postal order, money order, coin, money or money's worth found in any such postal article so opened under subsection (1) shall be forfeited.

(5) In this section, the expression "postal article" includes any letter, printed paper, newspaper, parcel or other article whatsoever in course of transmission by post, and a telegram when conveyed by post."

- Replacement of s.179 of the principal Act
105. Section 179 of the principal Act is amended -
- (a) in subsection (1), by deleting the words "a fine of one thousand kwacha" and substituting therefor the words " a fine of K500,000";
 - (b) in subsection (5), by deleting the words "the Business Licensing Act" and substituting therefor the words "any written law".
- Amendment of s.180 of the principal act
106. Section 180 of the principal Act is amended -
- (a) by deleting paragraph (g);
 - (b) by deleting "K20" and "K50" and substituting therefor "K1,000" and "K3,000", respectively.
- Amendment of s.181 of the principal Act
107. Section 181 of the principal Act is amended -
- (a) by inserting, after the words "breach of the peace", the words "shall be guilty of an offence and";

(b) by deleting "K50" and substituting therefor "K3,000".

Amendment of
s.182 of the
principal Act

108. Section 182 of the principal Act is amended by inserting the words ", abusive, indecent or threatening " after the word "insulting".

Replacement
of s.183 of the
principal Act

109. Section 183 of the principal Act is repealed and replaced as follows -

“Nuisances
by drunken
persons, etc
Cap 50:07

183. (1) Every person found drunk and incapable in any public place, or on any premises licensed under the Liquor Act, shall be guilty of an offence and shall be liable to a fine of K1,000, and on a second or subsequent conviction shall be liable to a fine of K5,000.

(2) Every person who, in any public place or any premises licensed under the Liquor Act, while drunk conducts himself in a riotous or disorderly behaviour shall be guilty of an offence and shall be liable to a fine of K3,000.

(3) Every person who, in any public place or on any premises licensed under the Liquor Act, while drunk is in possession of any loaded firearm shall be liable to a fine of K10,000 and to imprisonment for twelve months.

(4) Any person who commits an offence against this section may be arrested without a warrant.”.

Amendment of
s.184 of the
principal Act

110. Section 184 (1) of the principal Act is amended in paragraph (i) of the proviso by deleting the words "Commissioner of Police" and substituting therefor the words "Inspector General of Police".

Amendment of
s.185 of the
principal Act

111. Section 185 of the principal Act is amended in subsection (1) -

(a) by inserting the subsection number (2) before the words "For the purposes of" and by deleting the words "paragraph (b) and substituting therefor the words "subsection (1) (b)";

(b) by deleting the numbering "(i)" and "(ii)" and substituting therefor "(a)" and "(b)", respectively;

(c) by renumbering the existing subsections (2), (3) and (4) as subsections (3), (4) and (5), respectively.

Amendment of
s.186 of the
principal Act

112. Section 186 of the principal Act is amended in subsection (4) by deleting the words "High Court" and substituting therefor the words "Chief Justice".

Amendment of
s.187 of the
principal Act

113. Section 187 of the principal Act is amended in subsection (1) by deleting the words "one month" and substituting therefor the words "fifteen days".

Amendment of
s.189 of the
principal Act

114. Section 189 of the principal Act is amended in subsection (2) by deleting "£10" and substituting therefor "K1,000"-

Amendment of
s.191 of the
principal Act

115. Section 191 of the principal Act is amended -

(a) in subsection (1) by deleting "£30" and substituting therefor "K3,000";

(b) in subsection (2) by deleting "£60" and substituting therefor "K5,000";

(c) in subsection (3) -

(i) by deleting the words "service of Malawi " and substituting therefor the words "Service of the Malawi Government".

(ii) by deleting "£100" and substituting therefor K"10,000".

Amendment of
ss.192 of the
principal Act

116. Section 192 of the principal Act is amended -

(a) by deleting the words “or negligently” and substituting therefor the words ",negligently or recklessly";

(b) by deleting the words "shall be guilty of a misdemeanour " and substituting therefor the words "shall be guilty of an offence and shall be liable to imprisonment for fourteen years".

Amendment of
s. 193, 194, 195
and 196 of the
principal Act

117. Sections 193, 194, 195 and 196 of the principal Act are

amended by deleting the words "shall be guilty of a misdemeanour" and

substituting therefor the words "shall be guilty of an offence and shall be liable to imprisonment for seven years".

Insertion of
new s.193 A
into the
principal Act

118. The principal Act is amended by inserting after section 193 a

new section as section 193 A -

“Importation
of adulterated
food or drinks

193A. Any person who imports any adulterated article of food or drink knowing it to be adulterated and intending to sell such article as food or drink or knowing that it is likely that such article will be sold as food or drink shall be guilty of an offence and shall be liable to imprisonment for seven years.”.

Insertion of
new s.195 A
into the
principal Act

119. The principal Act is amended by inserting after section 195 a
new section as section 195A -

"Importation
of adulterated
drugs

195A. Any person who imports any adulterated drug or
medical preparation knowing it to be adulterated and intending that it
shall be sold or used for, or knowing it to be likely that it will be sold
or used for, any medicinal purposes as if it had not undergone such
adulteration shall be guilty of an offence and shall be liable to
imprisonment for seven years.”.

Amendment of
s.203 of the
principal Act

120. Section 203 of the principal Act is amended by deleting "(a)" and
"(b)".

Amendment of
s.204 of the
principal Act

121. Section 204 of the principal Act is amended in subsection (1) -
(a) by deleting paragraph (c);
(b) by renumbering paragraphs (d), (e), (f) and (g) as paragraphs (c), (d),
(e) and (f), respectively.

Amendment of
s.210 of the
principal Act

122. Section 210 of the principal Act is amended by deleting the
words "shall be sentenced to death" and substituting therefor the words "shall be
liable to be punished with death or with imprisonment for life".

Amendment of
s.214 of the
principal Act

123. Section 214 of the principal Act is amended -

- (a) by numbering the existing provisions as subsections (1), (2), (3), (4), (5) and (6) as follows -
 - (i) by inserting the subsection number "(1)" before the words "The term provocation";
 - (ii) by inserting the subsection number "(2)" before the words "When such an act";
 - (iii) by inserting the subsection number "(3)" before the words "A lawful act is not provocation";
 - (iv) by inserting the subsection number "(4)" before the words "An act which a person does";
 - (v) by inserting the subsection number "(5)" before the words "An arrest which is unlawful";
 - (vi) by inserting a subsection number "(6)" before the words "For the purposes of this section";
- (b) by deleting the words "and includes" in the newly numbered subsection (1).

Insertion of
new s.195 A
into the
principal Act

124. The principal Act is amended by inserting after section 214 a new section as section 214 A -

“Diminished
responsibility

214A. (1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind or other inherent cause induced by disease or injury, as has substantially impaired his mental responsibility for his acts in doing or being a party to the killing.

(2) On a charge of murder it shall be for the defence to prove that the person charged is, by virtue of this section, not liable to be convicted of murder.

(3) A person who, but for this section would be liable, whether as a principal or otherwise, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to the killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to the killing.”.

Insertion of
new Chapter
XIXA into the
principal Act

125. The principal Act is amended by inserting after Chapter XIX a
new Chapter as Chapter XIXA -

"CHAPTER XIXA - GENOCIDE

Genocide 217. (1) A person commits the offence of genocide if he does any of the
following acts with intent to destroy, in whole or in part, a national,
ethnic, tribal, racial or religious group-

- (a) killing members of the group; or
- (b) causing serious bodily or mental harm to members
of the group; or
- (c) deliberately inflicting on the group conditions of life
calculated to bring about its physical destruction in
whole or in part; or
- (d) imposing measures intended to prevent births
within the group; or
- (e) forcibly transferring children of the group to another
group.

(2) A person guilty of the offence of genocide shall on conviction-

(a) if the offence consists of the killing of any person, be liable to be punished with death or imprisonment for life;

(b) in any other case, be liable to imprisonment for twenty-one years.

(3) A person may be tried and punished for the offence of genocide whether committed within or outside the Republic.”.

Amendment of
s. 219 of the
principal Act

126. Section 219 of the principal Act is amended-

(a) by deleting the marginal note and substituting therefor the words "Duty of parent, etc";

(b) by deleting the words "head of family" and substituting therefor the words "parent, guardian or other person";

(c) by deleting the words "fourteen years" and substituting therefor the words "sixteen years".

Repeal of
s.224 of the
principal Act

127. Section 224 of the principal Act is repealed .

Replacement of
principal Act

128. Section 232 of the principal Act is repealed and replaced as follows - s.232 of the

“Concealing
birth of child
232. If any woman shall be delivered of a child, every person who, by any secret disposition, endeavours to conceal the birth of the child shall be guilty of an offence and shall be liable to imprisonment for five years.”

Insertion of
new s.232A
into the
principal Act

129. The principal Act is amended by inserting a new section as section 232A -

"Abandonment
of child at
birth
232A. Any woman who, being delivered of a child, abandons the child at birth, whether such child dies or lives, shall be guilty of an offence and shall be liable to imprisonment for seven years.”

Amendment
of s.233 of the
principal Act

130. Section 233 of the principal Act is amended by deleting the words ", with or without corporal punishment".

Amendment
of s.235 of the
principal Act

131. Section 235 of the principal Act is amended by inserting the words "unlawfully" at the commencement of paragraphs (d), (e) and (f).

Amendment of
s.237 of the
principal Act

132. Section 237 of the principal Act is amended -
- (a) by inserting after the word "railway" wherever it appears the words "or road";
 - (b) by deleting the words ", with or without corporal punishment".

Insertion of
new Chapter
into the
principal Act

133. The principal Act is amended by inserting a new Chapter as
Chapter XXIIA -

" CHAPTER XXIIA - OFFENCES ENDANGERING
THE ENVIRONMENT

“Endangering
the
environment

245A. Any person who in such a manner as to endanger
or to be likely to cause harm to the environment -

- (a) manages hazardous materials, processes and wastes in an environmentally unsound manner;
- (b) mislabels wastes, pesticides or chemicals;
- (c) aids or abets the illegal trafficking in wastes, chemicals, pesticides, hazardous processes or substances; or

- (d) discharges or emits any pollutant into the environment otherwise than in accordance with the provisions of the Environmental Management Act, 1998,

shall be guilty of an offence and shall be liable to a fine of K1,000,000 and to imprisonment for ten years.”.

Amendment
of s.246 of the
principal Act

134. Section 246 of the principal Act is amended by deleting the words "shall be guilty of a misdemeanour" and substituting therefor the

words "shall be guilty of an offence and shall be liable to imprisonment for seven years".

Amendment
of s.247 of the
principal Act

135. Section 247 of the principal Act is amended by deleting the words "shall be guilty of a misdemeanour and shall be liable to imprisonment for six months" and substituting therefor the words "shall be guilty of an offence and shall be liable to imprisonment for five years".

Amendment
of s.248 of the
principal Act

136. Section 248 of the principal Act is amended by deleting the words " and shall be liable to a fine of £100 or to imprisonment for six months".

Amendment of
s.249 of the
principal Act

137. Section 249 of the principal Act is amended by inserting after the word "railway" the words " or road".

Amendment of
s.250 of the
principal Act

138. Section 250 of the principal Act is amended by inserting after the words "any navigator" the words "shall be guilty of an offence and".

Amendment of
s.251 of the
principal Act

139. Section 251 of the principal Act is amended by deleting the words " shall be guilty of a misdemeanour" and substituting therefor the words "shall be guilty of an offence and shall be liable to imprisonment for seven years".

Amendment of
s.252 of the
principal Act

140. Section 252 of the principal Act is amended by deleting the words " shall be liable to a fine" and substituting therefor the words "shall be guilty of a misdemeanour".

Amendment of
s. 254 of the
principal Act

141. Section 254 of the principal Act is amended by deleting the words "is guilty of misdemeanour, and shall be liable to imprisonment for five years with or without corporal punishment" and substituting therefor the words "shall be guilty of an offence and shall be liable to imprisonment for five years".

Amendment of
s.255 of the
principal Act

142. Section 255 of the principal Act is amended by deleting the words "shall be guilty of misdemeanour" and substituting therefor the words "shall be guilty of an offence".

Amendment of
s.256 of the
principal Act

143. Section 256 of the principal Act is amended by deleting the words "a misdemeanour" and substituting therefor the words "an offence".

Amendment of
s.258 of the
principal Act

144. Section 258 of the principal Act is repealed and replaced as follows -

“Definition of
kidnapping

258. Any person who unlawfully takes or induces from lawful guardianship any child under the age of sixteen years or any person of unsound mind out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person of unsound mind from lawful guardianship.”.

Amendment of
s.261 of the
principal Act

145. Section 261 of the principal Act is amended by deleting the words " imprisonment for ten years" and substituting therefor the words "imprisonment for life".

Amendment of
s.262 of the
principal Act

146. Section 263 of the principal Act is amended by inserting before the words "or slavery" the words ", or ransom" .

Amendment
of s. 265 of the
principal Act

147. Section 265 of the principal Act is amended by deleting the words " fourteen years " and substituting therefor the words " sixteen years".

Amendment of
s. 266 of the
principal Act

148. Section 266 of the principal Act is amended-

- (a) by deleting the words "a misdemeanour" and substituting therefor the words "an offence";
- (b) by deleting "£700" and substituting therefor "K100,000".

Amendment of
s. 270 of the
principal Act

149. Section 270 of the principal Act is amended by numbering the existing provisions as subsections (1), (2), (3), (4), (5), (6), (7) and (8) as follows

-

- (a) by inserting the subsection number "(1)" before the words "Every inanimate thing whatever";
- (b) by inserting the subsection number "(2)" before the words "Every inanimate thing which";
- (c) by inserting the subsection number "(3)" before the words "Every tame animal,";
- (d) by inserting the subsection number "(4)" before the words "Animals wild by nature," where they first appear;
- (e) by inserting the subsection number "(5)" before the words "Animals wild by nature" where they appear a second;

- (f) by inserting the subsection number "(6)" before the words "Animals wild by nature," where they appear a third time;
- (g) by inserting the subsection number "(7)" before the words "Wild animals in the enjoyment of";
- (h) by inserting the subsection number "(8)" before the words "Everything produced by".

Amendment of
s.282 of the
principal Act

150. Section 282 of the principal Act is amended -

- (a) by deleting the comma at the end of paragraph (h) and substituting therefor a semi-colon;
- (b) by inserting after paragraph (h) the following new paragraph as paragraph (i) -
 - "(i) if the thing stolen is a vessel, an aircraft, a vehicle or a draught,".

Amendment of
s.283 of the
principal Act

151. Section 283 of the principal Act is amended -

- (a) by deleting subsection (4);
- (b) by renumbering the existing subsections (5), (6) and (7) as subsections (4), (5) and (6), respectively.

Amendment of
s.289 of the
principal Act

152. Section 289 of the principal Act is amended by deleting the words ", and its value exceeds K10".

Amendment of
s.296 of the
principal Act

153. Section 296 of the principal Act is amended -

(a) by renumbering the existing subsection (2) as subsection (3);

(b) by inserting the following new subsection (2) -

"(2) Any person, being such a mortgagor as mentioned in subsection (1), who destroys, breaks, injures, kills, or otherwise damages any mortgaged goods with intent to deprive the mortgagee of his security or any part thereof, or to defeat or otherwise impair the security, shall be guilty of a misdemeanour.";

(c) by inserting the following new subsection as subsection (4) -

"(4) The consent of the mortgagee, as referred to in subsection (1), may be either express or implied from the

nature
of the
propert
y
mortga
ged.”.

Insertion of
new s.298A
into the
principal Act

154. The principal Act is amended by inserting the following new sections as sections 298A and 298B -

“Fraudulent appropriation of water”
298A. Any person who fraudulently abstracts or diverts to his own use or the use of any other person water from any pipes or apparatus shall be guilty of a felony and shall be liable to imprisonment for five years.

Fraudulent appropriation of telecommunication service
298B. Any person who dishonestly obtains a telecommunication service for his own use or for the use of any other person with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence and shall be liable to imprisonment for ten years.”.

Amendment of s.299 of the principal Act
155. Section 299 of the principal Act is amended by deleting "£50" and substituting therefor "K10,000".

Amendment of s.301 of the principal Act
156. Section 301 of the principal Act is amended-
(a) by numbering the existing provisions as subsections (1) and (2) as follows -
(i) by inserting the subsection number "(1)" before the words "Any person who";
(ii) by inserting the subsection number "(2)" before the words "If the offender is armed";

- (b) by deleting the words ",with or without corporal punishment" in the newly numbered subsection (2).

Amendment of
s.302 of the
principal Act

157. Section 302 of the principal Act is amended-

- (a) by numbering the existing provisions as subsections (1) and (2) as follows -

- (i) by inserting the subsection number "(1)" before the words "Any person who";

- (ii) by inserting the subsection number "(2)" before the words "If the offender is armed";

- (b) by deleting the words ",with or without corporal punishment" in the newly numbered subsection (2).

Amendment of
s.305 of the
principal Act

158. Section 305 of the principal Act is amended-

- (a) by numbering the existing provisions as subsections (1), (2) and (3)

as follows -

- (i) by inserting the subsection number "(1)" before the words "Any person who";

- (ii) by inserting the subsection number "(2)" before the words "In any other case";

(iii) by inserting the subsection number "(3)" before the words "It is immaterial"

(b) in the newly numbered subsection (2) by inserting after the words "In any other case" the words "not mentioned in subsection (1),".

Amendment of
s.308 of the
principal Act

159. Section 308 of the principal Act is amended-

(a) by numbering the existing provisions as subsections (1), (2) and (3)

as follows -

(i) by inserting the subsection number "(1)" before the words "Any person who breaks";

(ii) by inserting the subsection number "(2)" before the words "A person is deemed";

(iii) by inserting the subsection number "(3)" before the words "A person who obtains".

Amendment of
s.309 of the
principal Act

160. Section 309 of the principal Act is amended by numbering

the existing provisions as subsections (1) and (2) as follows -

- (a) by inserting the subsection number "(1)" before the words "Any person who-";
- (b) by inserting the subsection number "(2)" before the words "If the offence is committed";

Amendment of
s.310 of the
principal Act

161. Section 310 of the principal Act is amended by numbering the existing provisions as subsections (1) and (2) as follows -

- (a) by inserting the subsection number "(1)" before the words "Any person who -";
- (b) by inserting the subsection number "(2)" before the words "If the offence ";

Amendment of
s. 311 of the
principal Act

162. Section 311 of the principal Act is amended by deleting "(1) and "(2)" and substituting therefor "(a)" and "(b)".

Amendment of
s.313 of the
principal Act

163. Section 313 of the principal Act is amended by numbering the existing provisions as subsections (1) and (2) as follows -

- (a) by inserting the subsection number "(1)" before the words "Any person who -";
- (b) by inserting the subsection number "(2)" before the words "If the offender ";

Amendment of
s.314 of the
principal Act

164. Section 314 of the principal Act is amended by numbering the existing provisions as subsections (1) and (2) as follows -

- (a) by inserting the subsection number "(1)" before the words "Any person who -";
- (b) by inserting the subsection number "(2)" before the words "If the property ";

Amendment of
s.317 of the
principal Act

165. Section 317 of the principal Act is amended in subsection (1) by deleting "XIX" and substituting therefor "XXIX".

Amendment of
s.319 of the
principal Act

166. Section 319 of the principal Act is amended -

- (a) by inserting after the words "anything capable of being stolen" the words "or any services";
- (b) by inserting the subsection number "(1)" before the words "Any person who ";
- (c) by inserting the following new subsection (2) -
“(2) It is an obtaining of service where the ther is induced to confer a benefit by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for with money or money’s worth.”.

Insertion of new
s. 319A, 319B,
319C and 319D
into the
principal Act

167. The principal Act is amended by inserting the following new sections as sections 319A, 319B, 319C and 319D -

“Fraud other
than false
pretence

319A. Any person who by deceit or other fraudulent means-

- (a) obtains property from any person;
- (b) induces any person to deliver property to another person;
- (c) gains a benefit, pecuniary or otherwise, from any person;
- (d) causes a detriment, pecuniary or otherwise, to any person;
- (e) induces any person to do any act that the person is lawfully entitled to abstain from doing ; or
- (f) induces any person to abstain from doing any act that the person is lawfully entitled to do,

shall be guilty of an offence and shall be liable for imprisonment for seven years.

Evasion of 319B. (1) Where a person by any deception-
liability by
false pretence

- (a) dishonestly secures the remission of the whole or any part of existing liability to make a payment, whether his own or another's; or
- (b) with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor or any person claiming payment on behalf of the creditor to wait for payment (whether or not the due date for payment is deferred) or to forgo payment; or
- (c) dishonestly obtains any exemption from or abatement of liability to make a payment,

he shall be guilty of an offence and shall be liable to imprisonment for five years.

(2) For the purposes of this section, “liability” means legally enforceable liability; and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

(3) For the purposes of subsection (1)(b), a person induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is to be treated not as being paid but as being induced to wait for payment.

(4) For the purposes of subsection (1)(c), “obtains” includes obtaining for another or enabling another to obtain.;

“Making off

319C (1) Any person who knowing that payment on without payment

the spot for any goods supplied, work done or service provided is required or expected of or from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount due shall be guilty of an offence and shall be liable to a fine of K5,000 and to imprisonment for twelve months.

(2) For purposes of this section, "payment on the spot" includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) shall not apply where the supply of the goods or where the service provided is such that payment is not legally enforceable.;

Passing
cheques

319D. (1) Any person who obtains any chattel, money ^{valueless} money, valuable security, credit, benefit or advantage by passing a cheque which is not paid on presentation shall be guilty of an offence and shall be liable to a fine of K5,000 and to imprisonment for twelve months.

(2) It is a defence to a charge for an offence under subsection (1) where it is proved that the accused-

- (a) had reasonable grounds for believing that the cheque would be paid in full on presentation; and
- (b) had no intention to defraud.

(3) The fact that at the time when the cheque was passed there were some funds to the credit of the account on which the cheque was drawn is not of itself a defence.”.

Amendment of
s. 320 and 321
of the principal
Act

168. Sections 320 and 321 of the principal Act are amended by deleting the words "a misdemeanour" and substituting therefor the words " an offence".

Amendment of
s.321 of the
principal Act

169. Section 328 of the principal Act is amended by inserting the following new subsection as subsection (4)-

“(4) For the purposes of this section, the term “receives” or “retains” includes dishonestly undertaking or assisting in the retention, removal, disposal or realisation of stolen property by or for the benefit of another person or arranging to doing so.”.

Amendment of
s.330 of the
principal Act

170. Section 330 of the principal Act is amended -

- (a) in subsection (1) by deleting the words "the last preceding section" and substituting therefor the words "section 329";
- (b) in subsection (2) -
 - (i) by deleting the words "in the last preceding subsection mentioned" and substituting therefor the words "mentioned in subsection (1)";
 - (ii) by deleting "£20" and substituting therefor "K3,000";
- (c) in subsection (3) by inserting the word "also" before the words "to be".

Insertion of
new s.331A
into the
principal Act

171. The principal Act is amended by inserting the following new section as section 331A -

“Money
laundering

331A. (1) Any person who engages in money laundering shall be guilty of an offence and shall be liable-

- (a) in the case of a natural person, to a fine of K10,000,000 and imprisonment for fourteen years.

- (b) in the case of a body corporate, to a fine of K50,000,000.

(2) For the purposes of this section-

- (a) a person engages in money laundering if-
 - (i) the person engages, directly or indirectly, in a transaction involving property that the person knows to be tainted; or
 - (ii) the person receives, possesses, conceals, disposes of or brings into Malawi property that the person knows to be tainted;

- (b) “tainted property” is property derived or realized, directly or indirectly, from unlawful activity either within or outside Malawi, but property ceases to be “tainted” when it passes into the hands of a person who acquires it in good faith, without knowledge of the illegality and for value; and

(c) a transaction includes a gift.

(3) A person may be tried and punished for an offence against this section whether committed within or outside the Republic of Malawi."

Amendment of
s.332 of the
principal Act

172. Section 332 of the principal Act is amended -

(a) by numbering the existing provisions as subsections (1) and (2) as follows -

(i) by inserting the subsection number "(1)" before the words "Any person who -";

(ii) by inserting the subsection number "(2)" before the words "For the purposes of this section ";

(b) in the newly numbered subsection (2)-

(i) by deleting the words "and no others" in the definition of "trustees";

(ii) by deleting the full stop at the end of paragraph (d) and substituting therefor a semicolon.

- (iii) by inserting the following new paragraph as paragraph (e)-
"(e) persons acting under powers of attorney";

Insertion of
new s.336A
into the
principal Act

173. The principal Act is amended by inserting the following new section as section 336A -

"Fraudulent
trading by
a company

336A. (1) If any business of a company is carried on with intent to defraud creditors of a company or creditors of any other person for any fraudulent purposes, every person who is or was knowingly a party to the carrying on of a business in that manner shall be guilty of an offence and shall be liable to a fine of K10,000,000 or and imprisonment for seven years.

(2) This section shall apply whether or not the company has been, or is in the course of being, wound-up."

Amendment of
s.338 of the
principal Act

174. Section 338 of the principal Act is amended in paragraphs (a) and (b) by deleting the words "the last preceding section and substituting therefor the words "section 337".

Amendment of
s.340 of the
principal Act

175. Section 340 of the principal Act is amended in paragraphs (a) and (b) by deleting the words "the last preceding section and substituting therefor the words "section 339".

Amendment of
ss.341 and 342
of the principal

176. Sections 341 and 342 of the principal Act is amended by deleting the words ", with or without corporal punishment".

Amendment of
s.343 of the
principal Act

177. Section 343 of the principal Act is amended -

- (a) in subsection (1) by inserting after the word "offence" the words "and shall be liable to imprisonment for three years;
- (b) in subsection (2) -
 - (i) by inserting after the words "the young of any such animal" the words "or any animal kept for commercial or conservation purposes";
 - (ii) by deleting the words "shall be guilty of a felony and" and the words "In any other case the offender shall be liable to imprisonment for three years".

Amendment of
s.344 of the
principal Act

178. Section 344 of the principal Act is amended -

- (a) in subsection (2) by deleting the words ", with or without corporal punishment";

- (b) in subsection (3) -
 - (i) by deleting "(3) (a) If" and substituting therefor "(3) If -";
 - (ii) by inserting the paragraph number "(a)" before the words "the property in question is a bank or wall of a river";
 - (iii) by deleting the word "if" in paragraphs (b) and (c).

- (c) in subsection (7)-
 - (i) in paragraph (g) by deleting the words "as last aforesaid" and substituting therefor the words "as mentioned in paragraph (f)";
 - (ii) in paragraph (k) by deleting the words "as last aforesaid" and substituting therefor the words "as mentioned in paragraph (j)".

Amendment of
s.348 of the
principal Act

179. Section 348 of the principal Act is amended -

- (a) in paragraph (a) by inserting after the words " for the purposes of a Government survey" the words "or for the purposes of any written law" ;

- (b) by deleting "£20" and substituting therefor "K3,000".

Amendment of
s.349 of the
principal Act

180. Section 349 of the principal Act is amended by deleting "£20" and substituting therefor "K3,000".

Amendment of
s.359 of the
principal Act

181. Section 359 of the principal Act is amended -

- (a) in paragraphs (d) and (e) by deleting the words "as last aforesaid" and substituting therefor the words "as mentioned in paragraph (c)";
- (b) by deleting the words " shall be liable to imprisonment for seven years" and substituting therefor the words " shall be guilty of an offence and shall be liable to imprisonment for seven years".

Amendment of
s.373 of the
principal Act

182. Section 373 of the principal Act is amended by numbering the existing provisions as subsections (1), (2) and (3) as follows-

- (a) by inserting the subsection number "(1)" before the words "Any person who";
- (b) by inserting the subsection number "(2)" before the words " If the offence is committed with respect to current coin";

- (c) by inserting the subsection number "(3)" before the words "If the offence is committed with respect to current coin".

Amendment of
s.374 of the
principal Act

183. Section 374 of the principal Act is amended in paragraphs (d) and (e) by deleting the words "as last aforesaid" and substituting therefor the words "as mentioned in paragraph (c)";

Amendment of
s.377 of the
principal Act

184. Section 377 of the principal Act is amended -

- (a) by deleting the words "Accountant General" wherever they appear and substituting therefor the words "Governor of the Reserve Bank of Malawi";

- (b) by numbering the existing provision as subsections (1) and (2) as follows -

- (i) by inserting the subsection number "(1)" before the words "Any officer";
- (ii) by inserting the subsection number "(2)" before the words "For the purposes of";
- (iii) by deleting the words "shall be final," and substituting therefor the words "shall, subject to judicial review, be final;".

Amendment of
s.382 of the
principal Act

185. Section 382 of the principal Act is amended by deleting the words "shall be guilty of a misdemeanour" and substituting therefor the words " shall be guilty of an offence and shall be liable to imprisonment for three years".

Amendment of
s.383 of the
principal Act

186. Section 383 of the principal Act is amended by inserting after the words "any counterfeit whatever" the words " or any forged bank note or currency note".

Amendment of
s.384 of the
principal Act

187. Section 384 of the principal Act is amended by deleting the words " the preceding Chapter" and substituting therefor the words " "Chapter XXXVI".

Amendment of
s.385 of the
principal Act

188. Section 385 of the principal Act is amended -
(a) in paragraph (a) by deleting the words " for the purposes of the public revenue or of the Post and Telegraphs Department in Malawi or in any part of the Commonwealth or in any foreign country" and substituting therefor the words "for the purposes of the public revenue or for the purposes of Malawi Posts or of any postal administration in any other country";

- (b) in paragraphs (b) (c) and (g) by deleting the words "as aforesaid" and substituting therefor the words "as mentioned in paragraph (a)";
- (c) in paragraph (h) by inserting after the word "Government" wherever it appears the words "or Malawi Posts";
- (d) by deleting the words "as aforesaid" appearing after paragraph (h) and substituting therefor the words " as mentioned in paragraph (a)".

Amendment of
s.386 of the
principal Act

189. Section 386 of the principal Act is amended -

- (a) by numbering the existing provisions as subsections (1) and (2) as follows -
 - (i) by inserting the subsection number "(1)" before the words "Any person who,";
 - (ii) by inserting the subsection number "(2)" before the words "For the purposes of this section ";

- (b) in the newly numbered subsection (1)-
 - (i) paragraph (a) by deleting the words "or of any part of the Commonwealth, or any foreign country" and substituting therefor the words "or of any other country";
 - (ii) by deleting "£50" and substituting therefor "K10,000";
 - (iii) by deleting the word "or" appearing before the words "to imprisonment" and substituting therefor the word "and";
 - (iv) by deleting the words "as aforesaid" and substituting therefor the words "as mentioned in paragraphs (a) and (b)".

Amendment of
s.388 of the
principal Act

190. Section 388 of the principal Act is amended -

- (a) by numbering the existing provisions as subsections (1) and (2) as follows -
 - (i) by inserting the subsection number "(1)" before the words "Any person who";
 - (ii) by inserting the subsection number "(2)" before the words "Every person committing".

- (b) in the newly numbered subsection (2) -
 - (i) by deleting the words "Every person committing any such misdemeanour as aforesaid forfeits to the Government -" and substituting therefor the words "When any person is convicted of an offence under subsection (1), the court shall order the forfeiture of -";
 - (ii) by deleting the numbering "(i)", "(ii)" and "(iii)" and substituting therefor "(a)", "(b)" and "(c)", respectively;
 - (iii) in the newly numbered paragraph (c) by inserting the words
"of subsection (1)" after the words "
paragraphs (d), (e) and (g)".

Amendment of
s.389 of the
principal Act

191. Section 389 of the principal Act is amended -

- (a) by numbering the existing provisions as subsections (1) and (2) as follows -
 - (i) by inserting the subsection number "(1)" before the words
"Any person who";
 - (ii) by inserting the subsection number "(2)" before the words " If
the representation".

Amendment of s.394 of the principal Act

192. Section 394 of the principal Act is amended by deleting the words "the last preceding section" and substituting therefor the words "section 393".

Amendment of s.396 of the principal Act

193. Section 396 of the principal Act is amended -

(a) in subsections (1), (2) and (3) by deleting the words " shall be guilty of a misdemeanour" and substituting therefor the words "shall be guilty of an offence";

(b) by deleting subsection (4) and substituting therefor the following new subsection (4) -

"(4) Any person guilty of an offence under this section shall be liable to imprisonment for twelve years".

Amendment of s.397 of the principal Act

194. Section 397 of the principal Act is amended by deleting the words "shall be liable to a fine of K1,000 and to imprisonment for seven years" and substituting therefor the words "shall be liable to a fine of K1,000,000 and to imprisonment for fourteen years".

Amendment of s.399 of the principal Act

195. Section 399 of the principal Act is amended by deleting the words "Chief Public Prosecutor" and substituting therefor the words "Director of Public Prosecutions".

Amendment of s.400 of the principal Act

196. Section 400 of the principal Act is amended by numbering the existing provisions as subsections (1), (2) and (3) as follows -

- (a) by inserting the subsection number "(1)" before the words "When a person";
- (b) by inserting the subsection number "(2)" before the words "It is immaterial" where they first appear;
- (c) by inserting the subsection number "(3)" before the words "It is immaterial" where they appear a second time.

Amendment of
s.407 of the
principal Act

197. Section 407 of the principal Act is amended by numbering the existing provisions as subsections (1) and (2) as follows -

- (a) by inserting the subsection number "(1)" before the words " A person who ";
 - (b) by inserting the subsection number "(2)" before the words "A wife does not become".
-