# LABOUR RELATIONS ACT

(NO. 16 OF 1996)

The Malawi Gazette Supplement, dated 5th July, 1996, containing an Act (No. 4C)

MALAWI GOVERNMENT

(Published 5th July, 1996)

Act

No. 16 of 1996

I assent

BAKILI MULUZI
PRESIDENT
23rd May, 1996

ARRANGEMENT OF SECTIONS

SECTION

PART I – PRELIMINARY
1. Short title and commencement
2. Interpretation
3. Application

PART II – FREEDOM OF ASSOCIATION
4. Freedom of association
5. Rights of trade unions and employers' organizations
6. Protection of employees
7. Protection in respect of organizations
8. Remedies

PART III – TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS
9. Appointment of Registrar and Assistant Registrar
10. Register
11. Registration
12. Effect of registration
13. Rules of trade unions and employers' organizations
14. Alteration of rules
15. Change of name
16. Amalgamation
17. Deposit and safeguard of funds
18. Annual return
19. Retention of documents
20. Disqualification for office
21. Cancellation of registration
22. Reasons for decisions
23. Remedies
24. Appeals

PART IV–COLLECTIVE BARGAINING AND ORGANIZATIONAL RIGHTS
25. Enterprise-level bargaining
26. Sectoral-level bargaining
27. Establishment of industrial councils
28. Composition of industrial councils
29. Meetings of industrial councils
30. Functioning of industrial councils
31. Duty to negotiate in good faith
32. Terms of collective agreements
33. Enforceability of collective agreements
34. Submission of collective agreements
35. Access to employers' premises
36. Trade union subscriptions
37. Leave for information
38. Disclosure of trade union activities
39. Successor rights and obligations
40. Right to choose a representative
41. Review of thresholds

PART V – DISPUTE SETTLEMENT

42. Definition of disputes
43. Reporting of disputes
44. Conciliation procedure
45. Unresolved disputes
46. Strike or lockout procedures
47. Strike or lockout in essential services
48. Status of collective agreement and employment contract
49. Civil immunity
50. Right to return to employment
51. Temporary replacement labour
52. Refusal to do strikers' work
53. Peaceful picketing
54. Injunction in respect of strike or lockout

PART VI – TRIPARTITE LABOUR ADVISORY COUNCIL

55. Establishment of the Council
56. Officers of the Council
57. Term of office
58. Functions of the Council
59. Meetings of the Council
60. Quorum
61. Procedure
62. Allowances and expenses

PART VII – INDUSTRIAL RELATIONS COURT

63. Constitution and operation of the Industrial Relations Court
64. Jurisdiction
65. Appeals
66. Composition

67. Quorum and decision
68. Appointment and vacation of office
69. Appointment of officers and staff
70. Allowances and expenses of members
71. Procedure and evidence
72. Costs
73. Representation of parties
74. Failure to attend
75. Enforcement of orders

PART VIII – MISCELLANEOUS

76. Procedures
*77.* Notification of registration, etc., in the *Gazette*
78. Regulations
79. Repeal and savings

**An Act to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and the promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development.**

ENACTED by the Parliament of Malawi as follows-

## PART I – PRELIMINARY

**1.** This Act may be cited as the Labour Relations Act , 1996, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette.*

**2.**- (1) In this Act, unless the context otherwise requires-

"collective agreement" means a written agreement between an employer, or an employers' organization authorized by the employer, and a trade union concerning terms and conditions of employment and any other matter of mutual interest;

"Council" means the tripartite Labour Advisory Council appointed under section 55;

"employee" means-

*(a)* a person who offers his or her services under an oral or written contract of employment, whether express or implied;

*(b)* a person who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor; and

*(c)* where appropriate, a former employee;

"employer" means any person or undertaking, corporation, company, public authority or body of persons who or which employs an employee, and includes the heirs, successors and assigns of an employer;

"employers' organization" means any combination established by employers, the principal purposes of which are the representation and promotion of employers' interests and the regulation of relations between employers and employees;

"essential services" means services, by whomsoever rendered, and whether rendered to the Government or to any other person, the interruption of which would endanger the life, health or personal safety of the whole or part of the population;

"Industrial Relations Court" means the Industrial Relations Court established under section 110 (2) of the Constitution;

"lockout" means closing a place of employment, a suspension of work by an employer, or a refusal by an employer to continue to employ or re-engage any number of his or her employees, done to compel his or her employees, or to aid another employer to compel his or her employees, to agree to terms or conditions of, or affecting employment;

"organization" means a trade union or employers' organization;

"Registrar" means the Registrar of Trade Unions and Employers' Organizations appointed under section 9;

"sector" means an industry or a service;

"strike" means concerted action resulting in a cessation of work, a refusal to work or to continue to work by employees, or a slowdown or other concerted activity of employees that is designed to or does limit production or services, but does not include an act or omission required for the safety or health of employees, or a refusal to work under section 52;

"trade union" means any combination of persons, the principal purposes of which are the representation and promotion of employees' interests and the regulation of relations between employees and employers, and includes a federation of trade unions but not an organization or association that is dominated by an employer or employers' organization;

(2) This Act shall be interpreted so as to give effect to the Constitution and the obligations of any international treaty, including any international labour conventions entered into or ratified by Malawi.

(3) Any contractual term in restraint of any right recognized by this Act shall be void, whether agreed to before or after the coming into force of the Act.

**3.** – (1) Subject to subsection (2), this Act applies to the private sector and the Government, including any public authority or enterprise.

(2) This Act does not apply to members of the armed forces, the prison service or the police, except those employed in a civilian capacity.

## PART II – FREEDOM OF ASSOCIATION

**4.** Every person shall have the right to freedom of association, which shall include the freedom to establish and join organizations of his or her own choosing.

**5.** Every organization has the right to-

(a) draw up its constitution and rules, and elect its officers and representatives;
(b) organize its administration and activities, and formulate its programmes;
(c) take part in the formation, and become a member, of any federation of trade unions or employers' organizations and participate in its lawful activities;
(d) affiliate to and participate in the affairs of international workers' or employers' organizations, to make financial and other contributions to such organizations and to receive financial and other assistance from them

**6.** – (1) No person shall, in respect of any employee or any person seeking employment-

(a) require that he or she not be or not become a member of a trade union or require him or her to relinquish such membership;

(b) dismiss or prejudice such person because of trade union membership or participation in the formation or the lawful activities of a trade union;

(c) dismiss or prejudice such person because of his or her exercise or anticipated exercise of any right recognized by this Act or any other Act relating to employment, or for participating in any proceedings pursuant to those Acts;

(d) prevent or attempt to prevent such person from exercising any right recognized by this Act or any other Act relating to employment, or from participating in any proceedings under those Acts;

(e) threaten such person with any disadvantage for exercising any right recognized by or for participating in any proceedings under this Act or any other Act relating to employment;

(f) promise such person any benefit or advantage for not exercising any right recognized by or not participating in any proceedings under this Act or any other Act relating to employment;

(g) dismiss or prejudice such person for refusing to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work constitutes an essential service.

(2) Where it is shown that an employee was dismissed or otherwise prejudiced and it is alleged that such dismissal or prejudice is contrary to subsection (1), the burden is on the employer to prove that the act was not committed in breach of the subsection.

**7. –** (1) Any person eligible for membership of an organization pursuant to its constitution or rules, has a right to membership of that organization and to remain a member as long as he or she complies with the rules of the organization.

(2) No organization may discriminate in its constitution, rules or through its actions against any person on the grounds of race, colour, nationality, ethnic or social origin, national extraction, religion, political opinion, language, sex, marital status, family responsibilities, age, disability, property or birth.

(3) Subsection (2) shall not be construed so as to preclude any provision programme or activity aimed at ameliorating the conditions of disadvantaged individuals or groups, including those disadvantaged on the grounds enumerated in subsection (2).

**8. –** (1) Any complain of infringement of the rights or protection contained in this Part may be presented to the Industrial Relations Court.

(2) Subject to subsection (3), the Industrial Relations Court shall make such order as it deems necessary to secure compliance with this Part, including an order for reinstatement of an employee, the restoration to him or her of any benefit or advantage, and an order for the payment of compensation.

(3) Where an employee is dismissed contrary to section 6, reinstatement will be ordered if so requested by the employee, along with any other remedy that the Industrial Relations Court deems appropriate, unless reinstatement is clearly not practicable.

PART III – TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS

**9.** – (1) There shall be the office of the Registrar of trade Unions and Employers' Organizations, which shall be a public office.

(2) The Minister may appoint one or more Assistant Registrars and other officers as may be required for the purposes of this Part.

**10.** – (1) The Registrar shall keep and maintain a register of trade unions and employers' organizations containing the prescribed particulars relating to them and any alteration or change.

(2) A copy of any entry in the register, certified by the Registrar, shall be proof of the facts specified therein, until the contrary is shown.

**11. –** (1) The rights and benefits conferred by this Act upon organizations may be exercised only if those organizations are registered in accordance with this Part.

(2) Any seven or more members of an unregistered trade union, or two or more members of an unregistered employers' organization, any of whom may be officers of the organization, may apply to the Registrar for registration in the prescribed form, and the application shall be accompanied by-

(*a*) two certified copies of the organization's rules; and

(*b*) the prescribed fee

(3) If, after having considered the application, the Registrar is satisfied that-

(*a*) there has been compliance with subsection (2);

(*b*) the applicant is a trade union or an employers' organization;

(*c*) the name does not so closely resemble that of another trade union or employers' organization so as to mislead or cause confusion;

(*d*) the rules submitted comply with section 12; and

(*e*) the applicant's constitution or rules do not discriminate contrary to section 7,

the Registrar shall register the applicant in the register of trade unions and employers' organizations.

(4) The Registrar shall notify an applicant of the registration or refusal of registration within thirty days of receiving the application.

(5) If the Registrar is not satisfied that the applicant has complied with the provisions of subsection (3), he or she shall the applicant, stating the reasons for refusal and providing the applicant with an opportunity to amend its application accordingly within thirty days of such notice.

(6) The Registrar may require an applicant to provide further information for

the purpose of being satisfied that an application for registration complies with the provisions of this Act.

(7) Whenever the Registrar has registered an organization he or she shall issue to the applicant a certificate of registration, and that certificate, unless proven to have been cancelled or withdrawn, shall be conclusive evidence that the organization has been duly registered

(8) An organization is deemed to be registered from the date of its entry in the register.

(9) Subject to subsection (10), any organization that was registered under the provisions of the Trade Union Act, immediately before the commencement of this Act, shall be deemed to be registered under this Act.

(10) An organization registered pursuant to subsection (9), shall submit to the Registrar proof of compliance with the requirements of this Part in the prescribed form within six months of coming into force of the Act.

**12. –** (1) Upon registration, every organization shall be a body corporate with the capacity to contract and to hold property, and to sue and be sued.

(2) Unless expressly provided in the rules of a registered organization, no person shall, by reason only that he or she is a member or officer of such organization, be liable for any of the obligations and liabilities of the organization.

**13. –** (1) The rules of every registered organization shall include provision for the following-

(*a*) the name of the organization;

(*b*) the principal objectives of the organization;

(*c*) the registered office to which all communications and notices may be addressed;

(*d*) the qualifications for membership;

(*e*) the grounds on which an officer or member may be suspended or expelled from office or membership;

(*f*) the fines and forfeitures that may be imposed on any member;

(*g*) the procedure to be followed when it is proposed to impose any fine or forfeiture or suspend or expel an officer or member, including provision that the affected person be fully informed in writing of the allegations, and that he or she shall have a reasonable opportunity to be heard and to appeal;

(*h*) the membership fees and other subscriptions payable, and the maximum period of arrears permitted, if any, before a member loses his or her good standing;

(*i*) any other circumstances under which a member shall cease to be entitled to the benefits of membership;

(*j*) where any financial benefit to members is provided for, the conditions under which a member may become entitled to the benefit;

(*k*) periodic elections to all offices and for the appointment of a temporary replacement if an officer becomes disqualified from holding office or incapacitated;

(*l*) the nomination of candidates for election as officers

(*m*) positions as officers reserved for women at least in proportion to the female membership of the organization or twenty per cent of the positions,

whichever is lower;

(*n*) the holding of a secret ballot for the election of officers whenever more or one candidate has been nominated for any office;

(*o*) the powers, functions and duties of officers;

(*p*) the convening and conduct of meetings of members or representatives of the members, the quorum, if any, required at such meetings, the vote required for different decisions, and the keeping of minutes of the meetings;

(*q*) a general meeting open to all members or representatives of members to be held at least once every two years;

(*r*) the manner of altering the rules;

(*s*) the custody and investment of the organization's funds, the designation of the officer or officers responsible, and the annual audit of its accounts;

(*t*) the inspection of the register of members and other books of the organization by any member in good standing; and

(*u*) the manner of dissolving the organization and the disposal of the funds available at the time of the dissolution.

(2) Every member of an organization is entitled to receive free of charge a copy of the rules of the organization, and the organization shall deliver a copy to every member who requests it.

(3) The Registrar shall give a copy of the rules of a registered organization to any person on demand on payment of the prescribed fee.

**14. –** (1) A Registered organization may, by a resolution duly passed by a majority of those voting, alter its rules.

(2) Within one month of an alteration being made, the organization shall send to the Registrar two copies of the resolution to alter the rules, along with a statement signed by an official of the organization certifying that there has been compliance with the rules of the organization regulating such alterations.

(3) The Registrar shall register the altered rules and issue to the organization a certificate stating that the alteration has been registered, unless the altered rules do not comply with sections 7 and 13.

(4) The alteration of the rules shall take effect from the date of registration, unless a later date is specified in the rules.

**15. –** (1) A registered organization may, by a resolution duly passed by a majority of those voting, change the name under which it is registered.

(2) Within one month of a change being made, the organization shall send to the Registrar two copies of the resolution to change the name of the organization along with a statement signed by an official of the organization certifying that there has been compliance with the ruled of the organization governing such change.

(3) The Registrar, if satisfied that the altered rules comply with section 11 (3) (*c*) shall register the new name and issue to the organization a new certificate of registration.

(4) The change of name shall take effect from the date of registration.

**16. –** (1) Any organization may, by resolution duly passed by a majority of those voting, amalgamate with one or more trade unions or employers' organizations, as the case may be, whether or not the other organizations are registered.

(2) Within one month of the amalgamation, the organizations that have amalgamated shall send to the Registrar two copies of their respective resolutions to amalgamate and the rules of the amalgamated organization, along with a statement signed by an official of each organization certifying that there has been compliance with the rules of the organizations governing amalgamation.

(3) The Registrar is satisfied that there has been compliance with this section and section 11 (3) (*b*) to (*e*), shall register the amalgamated organization and make the necessary alterations to the register.

(4) The provisions of section 11 (4) to (8) shall apply to applications for amalgamation.

(5) Upon amalgamation, all assets, rights, obligations, and liabilities of the organizations which have amalgamated shall devolve to the amalgamated organization.

**17. –** (1) A registered organization shall, in accordance with generally accepted accounting practice, principles and procedures-

(*a*) keep books and records of accounts of its income, expenditure, assets and liabilities;

(*b*) prepare annual financial statements consisting of an income and expenditure statement for the financial year having ended and a balance sheet showing its assets, liabilities and financial position at the end of that financial year, and

(*c*) have its books and records of accounts and financial statements audited annually by an auditor appointed by the organization, who shall not be a member of that organization.

(2) An organization shall maintain in a separate fund all moneys received or paid by the organization in respect of any contributory, provident or pension fund.

**18. –** (1) Within six months after the end of its financial year, an organization shall submit to the Registrar a return containing the following-

(a) the audited financial statements referred to in section 17;

(b) a list of the names and postal addresses of its officers; and

(c) the number of members of the organization.

(2) Every member of the organization is entitled to receive free of charge a copy of the annual return and the organization shall deliver a copy to every member who requests it.

(3) The Registrar shall give a copy of the annual return of an organization to any person on demand on the payment of the prescribed fee.

**19.** Every organization shall keep, for at least three years-

(a) a list of its members;

(b) the minutes of its meetings; and

(c) used ballot papers.

**20.** No person who has been convicted of any crime involving fraud or dishonesty shall, within five years of the date of such conviction, be an officer of an organization or a person employed in collecting the funds of an organization.

**21.** – (1) The registration and the certificate of registration of an organization shall be cancelled by the Registrar-

(*a*) at the request of the organization upon its dissolution, after making such

inquiries as the Registrar considers necessary; or

(*b*) by order of the Industrial Relations Court, if the organization is unable to continue to function as a trade union or employers' organization for any reason that cannot be remedied.

(2) Whenever the Registrar reasonably believes that an organization is unable to continue to function as a trade union or employers' organization or has ceased to exist, he or she shall notify the organization in writing that cancellation of the registration is being considered, state the reasons and give the organization thirty days to show cause why its registration should not be cancelled.

**22.** – (1) Any person who is aggrieved by a decision of the Registrar made pursuant to this Part, may within thirty days of receiving written notification of the decision, apply in writing to the Registrar for a statement of his or her reasons for the decision.

(2) The Registrar shall, within thirty days of receipt of such application, furnish the applicant with a statement of reasons.

**23. –** (1) Upon the application of any member or officer of an organization, the Industrial Relations Court may make any order that it deems necessary to prevent or stop a contravention of any provision of the rules of the organization.

(2) Upon the application of a member or officer of an organization, the Industrial Relations Court may make any order that it deems necessary to secure compliance with sections 17 and 18.

**24.** – (1) Any person who is aggrieved by a decision of the Registrar may, within sixty days of the date of the decision, appeal against the decision to the Industrial Relations Court.

(2) Any person who is aggrieved by the failure of the Registrar to make a decision within the time required by the Act may apply to the Industrial Relations Court for a decision.

PART IV – COLLECTIVE BARGAINING AND ORGANIZATIONAL RIGHTS

**25.** – (1) Where at least twenty percent of-

(a) employees of an employer at one or more workplaces; or

(b) a particular category or categories of employees of the employer having a significant community of interest,

are members of a particular trade union or more than one acting jointly, the employer shall recognize that trade union or those trade unions for the purpose of collective bargaining.

(2) For the purposes of subsection (1), senior managerial staff shall not be considered employees.

(3) Where at least twenty percent of senior managerial staff of an employer at one or more workplaces are members of a particular trade union or more than one acting jointly, the employer shall recognize that trade union or those trade unions for the purposes of collective bargaining.

(4) Where there is a dispute as to the right of a trade union to be recognized for the purposes of collective bargaining, either party may refer the dispute to –

(a) The Industrial Relations Court where the employer is the Government, including any public authority or commercial enterprise in which the

Government has a controlling interest;

(b) The Principal Secretary responsible for labour in all other cases.

(5) The Principal Secretary responsible for labour may make inquiries he or she deems necessary to determine the matter, and may require the parties to provide any further relevant information.

(6) Where a trade union has the right to be recognized for the purpose of collective bargaining, either party may give notice of collective bargaining and the collective bargaining shall take place within sixty days of the other party receiving the notice, unless the parties agree otherwise.

**26. –** (1) A trade union, or more than one acting jointly, representing employees in a sector, may request one or more duly authorized employers' organizations representing employers in that sector to enter into collective bargaining.

(2) An employers' organization, or more than one acting jointly, representing employers in a sector, may request one or more duly authorized trade unions representing employees in that sector to enter into collective bargaining.

(3) The respondent organization, shall give the requesting party a written reply within sixty days of receiving the request.

(4) Where one trade union, or more than one acting jointly, representing at least fifteen percent of employees in a sector, has made a written request to enter into collective bargaining, and the employers' organization has failed to reply within sixty days of receiving the request, or has replied to the effect that the request has been refused, the trade union may apply in the prescribed form to the Minister requesting the establishment of an industrial council.

(5) Where one employers' organization, or more than one acting jointly, representing employers employing at least fifteen percent of employees in a sector, has made a written request to enter into collective bargaining, and the trade union has failed to reply within sixty days of receiving the request, or has replied to the effect that the request has been refused, the employers' organization may apply in the prescribed form to the Minister requesting the establishment of an industrial council.

**27.–** (1) If the Minister is satisfied that there has been compliance with section 26 (4) or (5), he or she may establish an industrial council.

(2) The Minister may require the parties to provide any further relevant information.

(3) The Minister shall notify the relevant parties of his or her decision within twenty-one days of receiving the application.

(4) A decision to establish an industrial council shall be published in the *Gazette* and in at least one newspaper in general circulation in Malawi, along with a description of the sector, the relevant parties, and an invitation to the other trade unions and employers' organizations in the sector to apply to participate in the council.

**28. –** (1) Subject to subsection (2), the members of an industrial council shall include-

(a) The organizations applying under section 26 (4) or (5) and the respondent organizations;

(b) Any other duly authorized organizations representing employees or

employers in the sector requesting admission to the council, except where the Minister considers it inappropriate to include an organization in the industrial council due to the description of the sector or the fact that the organization is not sufficiently representative.

(2) An organization may apply to the Minister for an exemption from participating in the bargaining council on behalf of some or all of its members, based on the fact that effective collective bargaining is already taking place vis-à-vis those employers or trade union or that it is impracticable for that organization to be involved.

(3) An organization that has not been included in the industrial council or has been refused an exemption may apply to the Industrial Relations Court for a review of the decision within thirty days of receiving the decision of the Minister.

**29. –** (1) Where an industrial council has been established, a first meeting of the parties shall be convened by the Minister within sixty days of such agreement or establishment, unless the parties agree otherwise.

(2) At the first meeting of the industrial council, the parties shall draw up an agreement to regulate the procedures of the industrial council.

(3) The agreement referred to in subsection (2) shall provide for-

(a) the appointment of representatives of the parties to the industrial council, half of whom shall represent the trade unions and the other half the employers' organizations that are party to the industrial council;

(b) the manner in which decisions are to be made; and

(c) the admission of additional trade unions and employers' organizations as parties to the industrial council.

(4) The parties shall meet once a year, unless the parties agree otherwise.

**30.** The functions of the industrial council may include any matters agreed by the parties, including-

(a) negotiating wages and conditions of employment;

(b) the establishment of dispute resolution machinery;

(c) the development of an industrial policy for the industry concerned.

**31.** All parties to the negotiation of a collective agreement shall bargain in good faith and make every reasonable effort to conclude a collective agreement.

**32. –** (1) A collective agreement shall-

(a) be in writing and signed by the parties to the agreement;

(b) contain the date on which it is to become effective;

(c) contain procedures for the avoidance and settlement of disputes arising out of the interpretation, application and administration of the agreement, which may include a reference to conciliation or arbitration; and

(d) provide for such other matters as may be agreed between the parties.

(2) The provisions of collective agreements shall not be less advantageous to employees than the provisions of this Act or regulations made thereunder or any other written law.

**33. –** (1) A collective agreement shall be binding upon-

(a) the parties to the agreement;

(b) the employees who are or become members of a trade union party to the agreement to the extent that the agreement relates to them;

(c) the employers who are or become members of an employers' organization party to the agreement to the extent that the agreement relates to their employees.

(2) The terms of the collective agreement shall be deemed to be incorporated into the employment contract of each employee who is covered by the collective agreement.

(3) Nothing in this Part shall affect the validity of a collective agreement in force immediately prior to the coming into force of this Act, and such agreement shall remain in force until it expires or is replaced by another collective agreement.

**34.** The parties to a collective agreement shall deposit a copy of the collective agreement with the Register.

**35. –** (1) An employer shall not deny any officer or authorized representative of a trade union such access to the employer's premises as is reasonable and necessary for the lawful activities of the trade union.

(2) In granting access, an employer may impose reasonable conditions as to time and place-

(a) to avoid undue disruption of operations; or

(b) in the interest of safety.

(3) Prior to granting access, an employer may require the officer or trade union representative requesting access to provide proof of his or her identity and credentials.

**36. –** (1) An employee who is a member of a trade union may submit directly to his or her employer, or through his or her trade union, written authorization for the periodic deduction from the employee's wages of subscriptions payable to that trade union.

(2) An employee may revoke the authorization by giving one month's written notice to the employer and the trade union.

(3) An employer shall make the authorized deductions of subscriptions and shall promptly remit the funds collected to the trade union, along with-

(a) a list of the names of employees from whom wage deductions of subscriptions have been made on behalf of that trade union; and

(b) a detailed account of the amount collected and remitted.

(4) Nothing in this section shall prevent an employer and a trade union from agreeing on a reasonable fee for the services of deducting trade union subscriptions.

**37. –** (1) An employee who is an officer of a trade union is entitled to take reasonable time off during working hours for the purposes of carrying out trade union activities.

(2) An employee who is an officer of a trade union is entitled to take a reasonable leave of absence for training and secondment purposes related to trade union activities.

(3) Where a dispute arises as to the entitlements to and conditions of leave under subsection (1) or (2), the matter shall be referred to the Industrial Relations Court for determination.

**38. –** (1) Whenever an employer is engaged in collective bargaining with a

trade union, the employer shall disclose to the trade union all relevant information so as to allow the trade union to engage effectively in such collective bargaining.

(2) Without limiting the generality of subsection (1), when a party to collective bargaining alleges financial incapacity as a ground for inability to agree to any terms or conditions or alterations thereof, such party shall fully disclose to the other party its financial position, including all relevant accounting documents.

(3) A party shall not be required to disclose

(a) information that is legally privileged;

(b) information that constitutes an invasion of privacy of an employee, without the consent of that employee;

(c) trade or commercial secrets.

(4) Any information disclosed for the purpose of collective bargaining, which is not publicly available, shall be treated as confidential by the party receiving the information, and shall not be disclosed to any third party without the prior consent of the party providing the information.

(5) Parties to the negotiation of a collective agreement shall not make any false or fraudulent misrepresentations in regard to matters relevant to the negotiations.

**39. –** (1) If a business or part of it is sold, leased, transferred or otherwise disposed of-

(a) the purchaser, lessee or transferee, as the case may be, is bound by all the proceedings under this Act that were commenced before the date of the disposition; and

(b) if a collective agreement is in force, it continues to bind the purchaser, lesser or transferee, as the case may be, to the same extent as if it had been signed by the purchaser, lessee or transferee.

(2) Where a dispute arises regarding the application of this section, an affected party may apply to the Industrial Relations Court for a determination of the matter.

(3) In determining a dispute under this section, the Industrial Relations Court shall determine the rights, privileges and duties that have been acquired or retained in the light of the new circumstances.

**40.** An employee has a right to be assisted by a representative of his or her choice, including an officer of an unregistered trade union, in an individual grievance or disciplinary matter.

**41. –** (1) Twenty-four months of the coming into force of this Act, the Council shall review the percentages set out in sections 25 and 26, and may make recommendations to the Minister for the revision of the percentages.

(2) Subject to subsection (3), the Minister may, on the recommendation of the Council, by notice published in the *Gazette*, amend the percentages set out in sections 25 and 26.

(3) The percentages set out in sections 25 and 26 shall not be increased to more than forty percent.

## PART V – DISPUTE SETTLEMENT

**42.** In this Part, “dispute” means any dispute or difference between an employer or employers’ organization and employees of a trade union, as to the employment or non-employment, or the terms of employment, or the conditions of labour or

the work done or to be done, of any person, or generally regarding the social or economic interests of employees.

**43.** – (1) Any dispute, whether existing or imminent, may be reported to the Principal Secretary responsible for labour by, or on behalf of, any of the parties to the dispute.

(2) Every party reporting a dispute shall send a copy of such report to the party to the dispute.

(3) The Principal Secretary responsible for labour shall acknowledge in writing the receipt of any report within seven days.

**44. –** (1) If a dispute is reported to the Principal Secretary responsible for labour and he or she is satisfied that the dispute settlement procedures established in a collective agreement covering the parties to the dispute have been exhausted, unless all parties have consented to waive those procedures, the Principal Secretary responsible for labour or any person authorized by him or her to do so, shall endeavour to conciliate the parties, subject to subsection (2).

(2) Where one of the parties to the dispute is the Government, including any public authority or commercial enterprise in which the Government has a controlling interest, the parties shall agree upon a conciliator, who shall endeavour to conciliate the parties.

(3) Where the parties are not able to agree on a conciliator under subsection (2) within seven days of the dispute being reported, the Industrial Relations Court shall, on the application of either party designate an independent arbitrator.

(4) The conciliation under subsections (1) and (2) shall be completed within twenty-one days of the receipt of the report, unless the parties to the dispute agree to extend the time.

(5) A dispute shall be deemed to be unresolved if a party fails to attend or the parties fail to reach agreement on the settlement of the dispute within the time prescribed in subsection (4).

(6) Where a settlement of the dispute has been affected pursuant to this section, it shall be recorded in writing and signed by the parties and the conciliator or arbitrator, as the case may be.

(7) The settlement agreement referred to in subsection (6) shall become binding on the parties on the date it is signed, unless the agreement states otherwise.

**45.** – (1) If a dispute is unresolved and concerns-

(a) the interpretation or application of any statutory provision or any provision of a collective agreement or contract of employment; or

(b) an essential service,

either party to such dispute, or the Principal Secretary responsible for labour in the case of paragraph (b), may apply to the Industrial Relations Court for determination of the dispute.

(2) If a dispute is unresolved and concerns matters other than those referred to in subsection (1)-

(a) where the parties to the dispute agree, the dispute shall be referred to the Industrial Relations Court for determination; or

(b) either or both parties may give notice in accordance with section 46 (3)

that they intend to strike or lockout.

(3) If there is a question as to whether an unresolved dispute is covered under subsection (1) or (2), either party or the Principal Secretary Responsible for labour may apply to the Industrial Relations Court for a determination.

(4) In an application under subsection (3), the Industrial Relations Court shall determine the question in a summary manner, whether or not by way of hearing witnesses.

(5) Subject to section 65 (2), the decision of the Industrial Relations Court shall be final.

**46. –** (1) Subject to subsections (2) and (3), where there is an unresolved dispute under section 45 either party may take action by way of a strike or lockout anytime after the dispute is deemed to be unresolved.

(2) A party may not take action by way of strike or lockout if-

(a) the procedures set out in section 44 have not been complied with; or

(b) the dispute has been referred for determination under section 45 (1) or section 45 (2) (a).

(3) A party to a dispute intending to strike or lockout, shall give notice in writing to the other party and the Principal Secretary responsible for labour at least seven days before taking such action.

**47. –** (1) An employer or employee carrying on or engaged in an essential service shall not strike or lock out in connection with any such essential service.

(2) The Minister may at any time apply to the Industrial Relations Court for a determination as to whether a threatened or actual strike or lockout involves an essential service.

(3) On an application under subsection (2), the Industrial Relations Court may, if it deems appropriate, enjoin the action concerned, subject to section 54.

**48.** Where action in pursuance of a strike or lockout takes place in conformity with this Act-

(a) the provisions of a collective agreement, if any, between the parties shall not be deemed to have been reached by reason only of such action;

(b) the contract of employment with respect to each employee involved in the strike or lockout shall not be deemed to have been breached by reason only of such action.

**49.** No civil proceedings shall be brought against any employee, employer, organization or federation of organizations, or officer or member of such organizations, in respect of any strike or lockout in conformity with this Act, or any act not constituting a criminal offence committed by such person or organization in furtherance of such strike or lockout.

**50. –** (1) If an employee who has participated in a strike in conformity with this Act or who has been locked out by his or her employer, presents himself or herself for work after the end of the strike or lockout, the employer shall, with is a reasonable period, reinstate such employee in the employment that he or she held immediately prior to the strike or lockout, unless material changes to the employers' operations have resulted in the abolition of such employment.

(2) Nothing in this section exempts an employer from ensuring that any termination of employment satisfies the requirements of the Employment Act.

**51. –** (1) An employer shall not employ a person to perform the work of an employee participating in a strike or who is locked out unless such work is necessary to maintain minimum maintenance services.

(2) For purposes of subsection (1), where minimum maintenance services are not defined in the collective agreement between the parties, they shall be those services the interruption of which would result in material damage to a working area or machinery.

**52.** An employee has the right to refuse to do any work normally done by an employee or employees who are on strike or locked out, except in the case of an essential service.

**53.** – (1) Where such presence is in furtherance of a lawful strike or a lockout, it shall be lawful for a person to be at or near his or her place of work or former place of work or a place of business of the employer or former employer for the purposes of peacefully communicating information or peacefully persuading any one-

(a) not to enter that place of work or business;
(b) not to work;
(c) not to deal in or handle the employers' products;
(d) not to do business with that employer.

(2) The right contained in subsection (1) shall extend to any officer of a trade union or employers' organization whose members are acting in furtherance of such strike or lockout.

**54. –** (1) A party to a dispute may apply to the Industrial Relations Court alleging a violation of sections 46 to 53.

(2) The Industrial Relations Court shall not grant an injunction against any person instigating, participating in or otherwise supporting a strike or lockout or any act in furtherance of a strike or lockout unless-

(a) the application for an injunction has been served on the other parties to the proceedings;
(b) service has been effected at least forty-eight hours before the hearing of the application, save where the Industrial Relations Court is satisfied that the acts in question would endanger the life, safety or health of any person; and
(c) the other parties have been afforded a reasonable opportunity to be heard.

PART VI – TRIPARTITE LABOUR ADVISORY COUNCIL

**55.** – (1) The Minister shall appoint a Tripartite Labour Advisory Council (in this Part otherwise referred to as the "Council") consisting of-

(a) four persons appointed by the Minister;
(b) four persons nominated by the most representative trade union or trade unions and appointed by the Minister;
(c) four persons nominated by the most representative organization or organizations of employers and appointed by the Minister.

(2) At least one woman shall be nominated under each subsection (1) (a), (b) and (c).

(3) Any vacancies on the Council shall be filled by the Minister in accordance with subsection (1)

**56.** – (1) One of the members appointed pursuant to section 55 (1) (a) shall be appointed Chairperson of the Council.

(2) In the absence of the Chairperson, one of the members appointed pursuant to section 55 (1) (a) shall act as Chairperson.

(3) An officer of the Ministry of Labour shall be appointed as Secretary of the Council.

**57.** Members of the Council shall be appointed for a term of three years and shall be eligible for reappointment.

**58.** – (1) The Council shall advise the Minister on all issues relating to labour and employment, including the promotion of collective bargaining, the labour market, human resources development and the review of the operation and enforcement of the Act and any other Act relating to employment.

(2) The Council shall also advise the Minister with respect to matters concerning the activities of the International Labour Organization, including the following-

(a) Government replies to questionnaires concerning items on the agenda of the International Labour Conference and Government comments on proposed texts to be discussed by the Conference;

(b) Proposals to be made to the competent authorities in connection with submission of Conventions and recommendations pursuant to Article 19 of the Constitution of the International Labour Organization;

(c) The re-examination at regular intervals of unratified Conventions and of Recommendations to which effect has not yet been given by Malawi, and consideration of what measures might be taken to promote their implementation or ratification;

(d) Questions arising out of reports to be made to the International Labour Office pursuant to Article 22 of the Constitution of the International Labour Organization;

(e) Proposals for the denunciation of ratified labour conventions.

**59.** – (1) The Council shall meet at least once a year.

(2) Meetings of the Council shall be convened by the Chairperson as directed by the Minister or at the request of any five members of the Council.

**60.** Three members of the Council shall constitute a quorum, as long as one representative from each of the Government, trade unions and employers' organizations is present.

**61.** – (1) The Council may regulate its own procedure.

(2) The Council may establish standing or ad hoc committees to assist it.

(3) For the purposes of subsection (2), the Council may invite non-members to sit on the committees of the Council in an advisory capacity.

**62.** The members of the Council shall be paid allowances and reimbursed reasonable expenses, as prescribed by the Minister.

PART VII – THE INDUSTRIAL RELATIONS COURT

**63.** The Industrial Relations Court shall be constituted and operated in accordance with this Act.

**64.** The Industrial Relations Court shall have original jurisdiction to hear and

determine all labour disputes assigned to it under this Act or any other written law.

**65.** – (1) Subject to subsection (2), decisions of the Industrial relations Court shall be final and binding.

(2) A decision of the Industrial Relations Court may be appealed to the High Court on a question of law or jurisdiction within thirty days of the decision being rendered.

(3) The lodging of an appeal under subsection (2), shall not stay the execution of an order or award of the Industrial Relations Court, unless the Industrial Relations Court or the High Court directs otherwise.

**66.** – (1) The Industrial Relations Court shall consist of-

(a) the Chairperson who shall be appointed by the Chief Justice, on the recommendation of the Judicial Service Commission;

(b) the Deputy Chairperson who shall be appointed by the Chief Justice, on the recommendation of the Judicial Service Commission;

(c) five persons nominated by the most representative organization of employees (the "employees' panel"), and appointed by the Minister;

(d) five persons nominated by the most representative organization of employers (the "employers' panel"), and appointed by the Minister.

(2) At least one woman shall be represented on the panels under subsection (1) (c) and (d).

(3) If within thirty days of receiving a request, no list of nominees or an incomplete list is supplied for the purposes of subsection (1) (c) or (d) by the most representative organization of employees or employers, the Minister may appoint such persons to the incomplete panel as he or she deems appropriate.

**67.** – (1) Subject to subsection (3), a sitting of the Industrial Relations Court shall be constituted by the presence of the Chairperson or the Deputy Chairperson and one member from the employees' panel and one member from the employers' panel, as chosen by the Chairperson.

(2) Subject to subsection (3), the decision of a majority of the members in a sitting shall be the decision of Industrial Relations Court.

(3) Where the dispute involves only a question of law, a sitting of the Industrial Relations Court may be constituted by the presence of the Chairperson or Deputy Chairperson sitting alone.

(4) Every decision, including any dissenting opinion, shall be issued to the parties within twenty-one days of the closing of the final sitting on the matter.

**68.** – (1) The members of the Industrial Relation Court shall be appointed for a period of three years and shall be eligible for reappointment.

(2) A members of the employers' panel or employees' panel may resign from office by notice in writing addressed to the Minister.

(3) Any vacancies on the Industrial Relations Court shall be filled in accordance with section 66 within thirty days from the date on which the vacancy occurs.

**69. –** The chief Justice shall appoint a Registrar of the Industrial Relations Court.

(2) The other staff of the Industrial Relations Court shall be appointed in

accordance with the Public Service Act.

**70. –** The members of the employers' panel or employees' panel shall be paid allowances and reimbursed reasonable expenses, as prescribed by the Minister.

**71.-** (1) The Chief Justice, on the advice of the Chairperson of the Industrial Relations Court, may make rules for the purpose of regulating the procedures of the Industrial Relations Court and such rules shall have regard to the need for informality, economy and dispatch in proceedings of the Industrial Relations Court.

(2) The Industrial Relation Court shall not be bound by the rules of evidence in civil proceedings.

(3) The Industrial Relations Court may order the giving or production of, and receive in evidence, any statement, document, information or matter which, in the opinion of the Court, may assist to deal with matters before the Court, whether or not such evidence would otherwise be admissible in a court of law.

(4) The Industrial Relations Court may dispense with any evidence on any matter on which the parties to the proceedings have agreed on by the Council.

(5) The Industrial Relations Court, in arriving at any decision, may take into consideration any existing code of industrial practice agreed on by the Council.

**72. –** (1) Subject to subsection (2), the Industrial Relations Court shall not make any order as to costs.

(2) The Industrial Relations Court may make an order as to costs where a party fails to attend, without good cause, any conciliation meeting convened under this Act, or where the matter is vexatious or frivolous.

**73.** – (1) A party to any proceedings before the Industrial Relations Court may-

(a) appear personally;

(b) be assisted or represented by a member or official of an organization of which he or she is a member, an officer of a trade union or employers' organization, a co-employee, labour officer or any other person that a party so appoints; or

(c) with leave of the Industrial Relations Court, be represented by a legal practitioner.

(2) Leave shall be granted under subsection (1) (c) where the other party is, or is presented by, a legal practitioner by virtue of subsection (1) (a) or (b).

**74. –** If a party fails to attend or to be represented at the proceedings of the Industrial Relations Court without good cause, the Industrial Relations Court may proceed in the absence of that party or representative.

**75. –** Any decision or order of the Industrial Relations Court shall have the same force and effect as any other decision or order of a competent court and shall be enforceable accordingly.

## PART VIII - MISCELLANEOUS

**76. –** (1) Where no procedures are specifically set out in this Act any person or organization alleging a violation of a provision of the Act may apply to the Principal Secretary responsible for labour for conciliation.

(2) If the matter is not resolved through conciliation within fourteen days of an application being made to the principal Secretary responsible for labour, the person or organization may bring the matter to the Industrial Relations Court for appropriate relief.

**77. –** The registrar shall publish the following information in the Gazette –

(a) registration or a refusal to register an organization.

(b) cancellation of registration of an organization.

(c) registration of the change of name or amalgamation affecting any organization;

(d) receipt of a collective agreement.

**78. –** The Minister may make regulations for carrying the purposes and provisions of this Act into effect and prescribed for the matter which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

**79. –** (1) The Trade Union Act and the Trade Disputes (Arbitration and Settlement) Act are repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act-

(a) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this act;

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Passed in Parliament this nineteenth day of April, one thousand, nine hundred and ninety-six.

R.L. GONDWE
*Clerk of Parliament*