

Malawi

Extradition Act

Chapter 8:03

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Malawi

Extradition Act

Chapter 8:03

Assented to on 2 April 1968

Commenced on 13 April 1972

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to make provision for the extradition of offenders from and to Malawi, and for matters connected therewith and incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Extradition Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**court**” means a subordinate court of a magistrate of the first grade or any higher grade;

“**designated country**” where the agreement between such country and Malawi so provides, shall include any colony, protectorate, trust territory or other dependency of such country;

“**fugitive offender**” means a person accused or convicted of a relevant offence committed according to the law of a designated country, who is in or is suspected of being in or on his way to Malawi;

“**relevant offence**” means a relevant offence within the meaning of [section 5](#) or an offence deemed to be a relevant offence by section 6 (1) of the Hijacking Act.

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“**warrant**”, in the case of a designated country includes any judicial document authorizing the arrest of a person accused or convicted of a crime in accordance with the law of that country.

(2) For the purposes of this Act person convicted of an offence in his absence shall be deemed to be a person accused of that offence.

Part II – Arrangements for surrender of fugitive offenders

3. Extradition arrangements

(1) The Minister may enter into arrangements with the government of any country providing, subject to provisions of this Act, for the surrender on a basis of reciprocity, of fugitive offenders, and providing for any matters which, in the opinion of the Minister are incidental thereto.

(2) Where the Minister has entered into an arrangement with the government of any country in accordance with subsection(1) he may, by order, designate such country, hereinafter referred to

as a designated country, as a country to which this Act shall apply subject to such conditions, exceptions, adaptations or modifications as may be specified in the order.

- (3) The countries specified in the First Schedule shall be deemed to be designated countries to which the whole of this Act (other than Part IV) applies unless or until the Minister, by order, otherwise directs, and the Minister shall be deemed to have entered into appropriate arrangements with such countries in accordance with subsection (1).

4. Surrender of fugitive offenders

Subject to the provisions of this Act, any fugitive offender from a designated country may be arrested, detained and surrendered to such country in the manner provided by this Act, whether or not the relevant offence in respect of which his extradition is sought was committed before or after the commencement of this Act.

5. Relevant offences

- (1) For the purposes of this Act an offence of which a fugitive offender is accused or has been convicted in a designated country is a relevant offence if—
- (a) it is an offence which, however described in the law of the country concerned, falls within any of the descriptions set out in the Second Schedule to this Act, and is punishable under that law with imprisonment for a term of twelve months or any greater punishment; and
 - (b) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Malawi if it took place in Malawi or, in the case of an extra-territorial offence, in corresponding circumstances outside Malawi.
- (2) In determining for the purposes of this section whether an offence against the law of the designated country falls within a description set out in the Second Schedule, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under that law shall be disregarded.
- (3) The descriptions set out in the Second Schedule include in each case offences of attempting or conspiring to commit, of assisting, counselling or procuring the commission of, or being accessory before or after the fact to, the offences therein described, and of impeding the apprehension or prosecution of persons guilty of those offences.
- (4) References in this section to the law of any country include references to the law of any part of that country.

6. General restrictions on surrender

A fugitive offender shall not be surrendered under this Act to a designated country, or committed to or kept in custody for the purposes of such surrender, if it appears to the Minister, to the court of committal, or to the High Court or the Supreme Court of Appeal on an application for directions in the nature of habeas corpus or for the review of the order of committal—

- (a) that the offence of which the fugitive offender is accused or was convicted is an offence of a political character;
 - (b) that the request for his surrender (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;
 - (c) that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.
- (2) A fugitive offender shall not be surrendered under this Act to any designated country, or committed to or kept in custody for the purposes of such surrender, if it appears as aforesaid that if charged

with that offence in Malawi he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

- (3) A fugitive offender shall not be surrendered under this Act to any designated country, or be committed to or kept in custody for the purposes of such surrender, unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Malawi, be dealt with in that country for and in respect of any offence committed before his surrender under this Act other than —
- (a) the offence in respect of which his surrender under this Act is requested;
 - (b) any lesser offence proved by the facts proved before the court of committal; or
 - (c) any other offence being a relevant offence in respect of which the Minister may consent to his being so dealt with.
- (4) Any such arrangement as is mentioned in subsection (3) may be an arrangement made for the particular case or an arrangement of a more general nature, and for the purposes of subsection (3) a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.
- (5) The reference in this section to an offence of a political character does not include an offence against the life or person of the Head of the Commonwealth or of the Head of any designated country or any related offence referred to in [section 5](#) (3).

Part III – Proceedings for surrender

7. Authority to proceed

- (1) Subject to the provisions of [section 8](#) (1) (b) and [section 15](#), a fugitive offender shall not be, dealt with under this Act except in pursuance of a direction by the Minister, hereinafter referred to as an authority to proceed, issued as a result of a request made to him through diplomatic channels, by or on behalf of the government of the designated country in which the fugitive offender to be surrendered is accused or was convicted.
- (2) There shall be furnished with any request made for the purposes of this section on behalf of any designated country—
- (a) in the case of a fugitive offender accused of an offence, a warrant for his arrest issued in that country;
 - (b) in the case of a fugitive offender unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country, and a statement of the amount, if any, of that sentence which has been served,
- together, in each case, with particulars of the fugitive offender whose surrender is requested and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under [section 8](#) of this Act.
- (3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to him that an order for the surrender of the fugitive offender could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

8. Issue of warrant of arrest

- (1) A warrant for the arrest of a fugitive offender may be issued by a court—
- (a) on the receipt of the authority to proceed issued by the Minister under [section 7](#);

- (b) without such authority to proceed, upon information that the said fugitive offender is in or is believed to be in or on his way to Malawi.
- (2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the court authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence, eras the case maybe, of person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of the court.
- (3) Where a warrant is issued under subsection (1) (b) the court by whom it is issued shall forthwith give notice to the Minister, and transmit to him the information and evidence, or certified copies thereof, upon which it was issued, and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the fugitive offender concerned, cancel the warrant, and if the fugitive offender has been arrested thereunder, discharge him from custody.
- (4) A warrant of arrest issued under this section may, without being endorsed, be executed in any part of Malawi and may be so executed by the person to whom it is directed or by any police officer.

9. Proceedings for committal

- (1) A person arrested in pursuance of a warrant issued under [section 8](#) shall, unless previously discharged under [section 8](#) (3), be brought as soon as practicable before a court, which shall receive evidence in the same manner and shall have the same jurisdiction and powers in respect thereof as in a preliminary inquiry.
- (2) The court shall receive any evidence which may be tendered to show that the case is one to which the relevant provisions of [section 6](#) apply, or that the offence of which the person arrested is accused is not a relevant offence.
- (3) Where the person arrested is in custody by virtue of a warrant of arrest issued under [section 8](#) (1) (b) and no authority to proceed has been received, in respect of him, the court may fix a reasonable period (of which notice shall be given to the Minister) after which he will be discharged from custody unless such an authority to proceed has been received.
- (4) Where an authority to proceed has been issued in respect of the person arrested and the court is satisfied, after hearing any evidence tendered in support of the request for the surrender of that person, or on behalf of that person, that the offence to which the said authority relates is a relevant offence and is further satisfied that—
 - (a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the court;
 - (b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court shall, unless his committal is prohibited by any other provision of this Act commit that person to custody to await his surrender, thereunder, but if the court is not so satisfied or if the committal of that person is so prohibited, the court shall discharge him from custody.

10. Habeas corpus etc

- (1) Where a fugitive offender is commuted to custody under [section 9](#) the court shall inform that the he will not be surrendered until after the expiration of fifteen days and that he has the right to apply to the High Court for the issue of directions in the nature of habeas corpus or for review of the order of committal.
- (2) A fugitive offender committed to custody under [section 9](#) shall not be surrendered under this Act—
 - (a) in any case, until the expiration of the period of fifteen days beginning with the day on which the order for his committal is made;

- (b) if an application is made to the High Court for the issue of directions in the nature of habeas corpus, or for review of the order of committal, so long as proceedings on that application are pending.
- (3) On any such application to the High Court the High Court may, without prejudice to any other jurisdiction of the High Court, order the person committed to be discharged from custody if it appears to the High Court that—
 - (a) by reason of the trivial nature of the offence of which he is accused or was convicted; or
 - (b) by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or
 - (c) because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to surrender him.
- (4) On any such application the High Court may receive additional evidence relevant to the exercise of their jurisdiction under subsection (3) or under [section 6](#).
- (5) For the purposes of, this section proceedings on any such application shall be treated as pending until any appeal to the Supreme Court of Appeal in those proceedings is disposed of, and such an appeal shall be deemed to be disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if the appeal is not brought or the application made within that time.

11. Order for surrender to requesting country

- (1) Where a fugitive offender is committed in custody under [section 9](#) to await his surrender, and is not discharged by order of the High Court, the Minister may by warrant direct that he be surrendered to the country by which the request for his surrender was made unless the surrender of the fugitive offender is prohibited, or prohibited for the time being under [section 6](#) or this section, or unless the Minister decides under this section to make no such direction in his case.
- (2) A warrant shall not be issued by the Minister under this section in the case of a fugitive offender who is serving a sentence of imprisonment or detention, or is charged with an offence, in Malawi—
 - (a) in the case of a person serving such a sentence, until the sentence has been served;
 - (b) in the case of a person charged with an offence in Malawi until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment, until the sentence has been served.
- (3) The Minister shall not direct the surrender of any fugitive offender under this section if it appears to him, on the grounds referred to in [section 10](#) (3) that it would be unjust or oppressive to surrender him.
- (4) The Minister may decide to issue no warrant under this section in the case of a fugitive offender accused or convicted of a relevant offence which is not punishable with death in Malawi if that person could be or has been sentenced to death for that offence in the country by which the request for his surrender is made.
- (5) The Minister may decide to issue no warrant under this section for the surrender of a fugitive offender committed in custody in consequence of a request made on behalf of any designated country if another request for his surrender under this Act has been made on behalf of another designated country and it appears to the Minister, having regard to all the circumstances of the case, and in particular—
 - (a) the relative seriousness of the offences in question;
 - (b) the date on which each request was made; and

- (c) the nationality or citizenship of the fugitive offender concerned, and his ordinary residence, that preference should be given to the other request.
- (6) Notice of the issue of a warrant by the Minister under this section shall forthwith be given to the fugitive offender to be surrendered thereunder.

12. Discharge in case of delay in surrendering

- (1) If any fugitive offender committed in custody to await his surrender under this Act is still in custody after the expiration of the following period, that is to say—
 - (a) in any case, the period of two months beginning with the first day on which, having regard to [section 10](#) (2), he could have been surrendered;
 - (b) where a warrant for his surrender has been issued under [section 11](#), the period of one month beginning with the day on which that warrant was issued,he may apply to the High Court for his discharge.
- (2) If upon any such application the High Court is satisfied that reasonable notice of the proposed application has been given to the Minister, it may, unless sufficient cause is shown to the contrary, order the applicant to be discharged from custody and, if a warrant for his surrender has been issued under [section 11](#), quash that warrant.

13. Evidence

- (1) In any proceedings under this Act, including proceedings for the issue of directions in the nature of habeas corpus in respect of a fugitive offender in custody thereunder—
 - (a) a document, duly authenticated, which purports to set out evidence given on oath in a designated country shall be admissible as evidence of the matters stated therein;
 - (b) a document, duly authenticated which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in a designated country shall be admissible in evidence;
 - (c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, a designated country, shall be admissible as evidence of the fact and date of the conviction.
- (2) A document shall be deemed to be duly authenticated for the purposes of this section—
 - (a) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge, or magistrate or officer in or of the designated country concerned to be the original document containing or recording that evidence or a true copy of such a document;
 - (b) in the case of a document which purports to have been received in evidence as aforesaid or to be a copy of document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received;
 - (c) in the case of a document which certifies that a person was convicted as aforesaid, if the document purports to be certified as aforesaid,and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister, permanent secretary or other officer administering a department of the government of the designated country concerned.
- (3) Nothing in this section shall prejudice the admission in evidence of any document which is admissible in evidence apart from this section.

14. Custody

- (1) Any fugitive offender remanded or committed to custody under [section 9](#) shall be committed to the like institution as a person charged with an offence before the court of committal.
- (2) Where a fugitive offender, being in custody in any part of Malawi, whether under this Act or otherwise, is required to be removed in custody by whatever means under this Act to another part of Malawi, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.
- (3) A warrant under [section 11](#) for the surrender of a fugitive offender to any designated country shall be sufficient authority for all persons to whom it is directed, and for all police officers to receive that fugitive offender, keep him in custody and convey him into the jurisdiction of that country.

Part IV – Reciprocal backing of warrants

15. Application of this Part

Where the Minister is satisfied that reciprocal provision has been or will be made by or under the law of any designated country for the backing of warrants issued in Malawi and their execution in that country and that it is appropriate to do so, he may, by order, declare that this Part shall apply in the case of that country subject to such conditions, exceptions, adaptations or modifications as may be specified in the order and thereupon the provisions of this Part shall apply accordingly in relation to fugitive offenders from that country notwithstanding anything to the contrary in Part III.

16. Backing of warrant issued in another country

- (1) Where a warrant has been issued in a designated country to which this Part applies for the arrest of a fugitive offender and he is or is believed to be in or on the way to Malawi, a court may, if it is satisfied that the warrant was issued by a person having lawful authority to issue it, endorse such warrant.
- (2) An endorsement of a warrant under this section shall be signed by a magistrate of the court and shall authorize all or any of the persons named in the endorsement and every police officer to execute the warrant by arresting the person named therein and bring him before a court.
- (3) A warrant endorsed under this section shall be sufficient authority to arrest, within the jurisdiction of the court endorsing the warrant, the person named in the warrant and to bring him before a court.
- (4) This Part shall apply whatever the date of the warrant and whether the relevant offence concerned is alleged to have been committed before or after the commencement of this Act or the application of this Part to the designated country concerned.

17. Provisional warrant

- (1) Notwithstanding that a warrant for the arrest of a fugitive offender issued in a designated country to which this Part applies may not yet have been endorsed in accordance with [section 16](#), a court may issue a provisional warrant for the arrest of such fugitive offender on such information and under such circumstances as would, in its opinion, justify the issue of a warrant if the relevant offence of which the fugitive offender is accused were an offence punishable by the law of Malawi and had been committed within its jurisdiction; and such warrant may be endorsed in the manner provided in the Criminal Procedure and Evidence Code, and may be executed accordingly.

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- (2) Where a person is arrested under such a provisional warrant—
 - (a) no order may be made under [section 18](#) for his surrender to the designated country in which the original warrant was issued unless the original warrant is produced and endorsed in accordance with this Part; and
 - (b) he shall be discharged unless the original warrant is produced and endorsed within such time as the court thinks reasonable in the circumstances.

18. Surrender of prisoner

- (1) Subject to the provisions of [section 6](#), where a person arrested under a warrant endorsed in accordance with [section 16](#) or a provisional warrant issued under [section 17](#) is brought before a court, and in the case of a person arrested under a provisional warrant, the original warrant has been produced and endorsed, the court may if it is satisfied—
 - (a) that the warrant is duly authenticated in the manner provided in [section 13](#) and was issued by a person having lawful authority to issue the same; and
 - (b) by evidence on oath, that the prisoner is the person named or otherwise described in the warrant,
order the prisoner to be surrendered to the designated country in which the original warrant was issued, and for that purpose to be delivered into the custody of the person to whom the warrant is directed or any one or more of them and to be held in custody and conveyed to that country.
- (2) A person to whom the warrant is directed and the person so authorized may receive, hold in custody and convey the prisoner named or described in the warrant into the jurisdiction of the designated country concerned.
- (3) A court shall, so far as is necessary for the exercise of the powers conferred by this section, have the same powers, including the power to remand and admit to bail, as it has in the case of a person arrested under a warrant issued by him.
- (4) In proceedings, under this section, the court shall receive any evidence which may be tendered to show that the case is one to which the relevant provisions of [section 6](#) apply.

19. Review etc.

- (1) Where a court orders the surrender of a fugitive offender under [section 18](#), it shall so notify the Minister and shall comply with the provisions of [section 10](#) as though it were committing the fugitive offender to custody under [section 9](#), and the provisions of [section 10](#) shall apply to the fugitive offender as if he were being so committed.
- (2) If, in any proceedings under this Part which are brought to his attention, the Minister is of opinion that the offence is one of a political character, he may order the fugitive offender arrested under this Part to be discharged from custody and may quash any order for his surrender.

20. Discharge of fugitive offender

Where a fugitive offender, ordered to be surrendered under this Part is not conveyed out of Malawi within one month of the date of the order or, if proceedings are commenced under [section 10](#), within one month of the first day on which, having regard to the provisions of [section 10](#) he could be surrendered, a court may—

- (a) upon application by or on behalf of the fugitive offender;
- (b) upon proof that reasonable notice of the intention to make the application has been given to the Minister; and
- (c) unless sufficient cause is shown to the contrary, order the fugitive offender to be released.

Part V – Fugitive offenders surrendered to Malawi

21. Trial of fugitive offender surrendered to Malawi

Where in pursuance of an agreement under this Act, a fugitive offender is surrendered by a designated country to Malawi, the offender shall not, until he has been restored or had an opportunity of returning to that country, be dealt with in Malawi for and in respect of an offence committed before his surrender other than—

- (a) the offence in respect of which his surrender was requested;
- (b) any lesser offence proved by the facts proved for the purpose of his surrender; or
- (c) any other relevant offence in respect of which the appropriate authorities in the designated country concerned may consent to his being so dealt with.

22. Sending back of person not prosecuted within six months or acquitted

Where a person surrendered to Malawi in pursuance of an arrangement made or deemed to be made under [section 3](#), either is not prosecuted for the offence in respect of which he has been so surrendered within six months after his arrival in Malawi or is acquitted of that offence, then the Minister may, if he thinks fit, on the request of such person cause him to be returned to the country from which he was surrendered free of cost and with as little delay as possible.

Part VI – General

23. Escape by fugitive offender

Where a person, in custody under the provisions of this Act by breach of prison or otherwise, from such custody he may be retaken in the same manner, and shall be subject to the same penalties, as in the case of a person accused of a like offence in Malawi.

24. Search warrants

Where a warrant is issued or endorsed under this Act for the arrest of any fugitive offender accused of an offence of theft or receipt of stolen property, or any other offence in respect of property a court shall have the like power to issue a warrant to search for the property as if the offence had been committed within the jurisdiction of the court.

25. Handing over of property

- (1) Where a fugitive offender is surrendered to a designated country in pursuance of this Act, any court may order that any property within its jurisdiction which may serve as proof of the relevant offence in respect of which he is surrendered, and which was seized under the authority of a search warrant issued under [section 24](#) or which was in the possession of such fugitive offender at the time of his arrest, shall be handed to the appropriate authorities of the designated country.
- (2) If any property which is the subject of an order made under subsection (1) is—
 - (a) property liable to seizure or forfeiture in accordance with or under any written law; or
 - (b) property in respect of which any person in Malawi claims any title or interest,the court making the order may direct that the property be handed over to the aforesaid appropriate authorities on condition that it is returned to Malawi at the conclusion of the proceedings relating to the offence in respect of which the surrender is requested.

26. Rules and rules of courts

- (1) The Minister may make rules prescribing all matters which by this Act are required or permitted to be prescribed, forms of warrants, orders and other documents to be used for the purposes of this Act, and providing for any other matters which in his opinion are necessary or convenient for the better carrying out of or giving effect to the provisions of this Act.
- (2) The Chief Justice may make rules of court for the purpose of appeals to the High Court under this Act.

First Schedule (Section 3(3))

Designated countries

1. The United Kingdom
2. The Republic of South Africa
3. Southern Rhodesia

Second Schedule (Section 5)

Relevant offences

1. Murder of any degree
2. Manslaughter or culpable homicide
3. An offence against the law relating to abortion
4. Maliciously or willfully wounding or inflicting grievous bodily harm
5. Assault occasioning actual bodily harm
6. Rape
7. Unlawful sexual intercourse with a female
8. Indecent assault
9. Procuring, or trafficking in, women or young persons for immoral purposes
10. Bigamy
11. Kidnapping, abduction or false imprisonment, or dealing in slaves
12. Stealing, abandoning, exposing or unlawfully detaining a child
13. Bribery
14. Perjury or subornation of perjury or conspiring to defeat the course of justice
15. Arson or fire-raising
16. An offence concerning counterfeit currency
17. An offence against the law relating to forgery
18. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud
19. Burglary, housebreaking or any similar offence
20. Robbery

21. Blackmail or extortion by means of threats or by abuse of authority
22. An offence against bankruptcy law or company law
23. Malicious or willful damage to property
24. Acts done with the intention of endangering vehicles, vessels or aircraft
25. An offence against the law relating to dangerous drugs or narcotics
26. Piracy
27. Revolt against the authority of the master of a ship or the commander of an aircraft
28. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals or currency
29. Specified offences under the Firearms Act
30. Any other offence specially agreed to be a relevant offence under an extradition arrangement entered into by the Minister under section 3

[19 of 1960]