

Malawi

## Hijacking Act

### Chapter 7:03

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Hijacking Act  
 Contents

Part I – Preliminary ..... 1

    1. Short title ..... 1

    2. Interpretation ..... 1

Part II – Air transportation ..... 2

    3. Offences against aircraft and penalty for such offences ..... 2

    4. Acts in relation to aircraft taking place outside Malawi ..... 3

    5. Jurisdiction in regard to offences under section 4 (2) ..... 3

    6. Extradition ..... 3

    7. Powers of commander of aircraft and certain other person ..... 4

    8. Admissibility of certain statements as evidence ..... 5

    9. Aircraft to which Part shall not apply ..... 6

Part III – Land and water transportation ..... 6

    10. Offences against motor vehicles, trains and vessels and penalty ..... 6

    11. Acts taking place outside Malawi on board vessels ..... 6

    12. Acts taking place outside Malawi on motor vehicles or trains ..... 6

    13. Jurisdiction in regard to offence under section 12 ..... 7

Part IV – Miscellaneous ..... 7

    14. Consent of the Director of Public Prosecutions ..... 7

    15. Provisions of Act to be additional ..... 7

# Malawi

## Hijacking Act

### Chapter 7:03

Commenced on 31 December 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 provide for the prevention and punishment of unlawful acts against aircraft, motor vehicles, trains and vessels and, in relation to aircraft, to give effect to the Convention on Offences and certain other Acts Committed on board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation; and for purposes connected therewith or incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Hijacking Act.

#### 2. Interpretation

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

“**aircraft**” means any machine that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the surface of the earth;

“**commander**” in relation to an aircraft means the member of the crew designated as commander of that aircraft by the operator thereof, or failing such a person, the person who is for the time being the pilot in command of the aircraft;

“**Convention country**” means a country in which either the Convention on Offences and certain other Acts Committed on board Aircraft signed at Tokyo on 14th September, 1963, or the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16th December, 1970, or the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971, is for the time being in force;

“**Immigration officer**” bears the meaning ascribed to that term in section 2 of the Immigration Act;

*[Cap 15:03]*

“**Malawian aircraft**” means an aircraft registered in Malawi and includes any aircraft that is operated by joint air transport operating organizations or international operating agencies established by the Government mid any other Convention country if such last-mentioned aircraft has been declared by the Minister, by notice published in the *Gazette*, to be a Malawian aircraft;

“**Malawian vessel**” means a vessel registered under Part I of the Inland Waters Shipping Act;

*[Cap 71.01]*

“**motor vehicle**” bears the meaning ascribed to that term by the Road Traffic Act;

*[Cap 69.01]*

“**oath**” includes an affirmation or declaration in the case of persons allowed by the law of any country concerned to affirm or declare instead of swearing;

“**pilot in command**”, in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft;

“**train**” means any railway engine, carriage, wagon or truck or other railway rolling stock no matter how propelled whether as a single unit or as a combination of units;

“**vessel**” includes a ship, boat and every other kind of vessel used in navigation either on the sea or in inland waters.

- (2) For the purposes of this Act an aircraft shall be deemed to be in flight—
- (a) at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation or, if the aircraft makes a forced landing until the competent authorities of the country in which the landing takes place take over the responsibility for the aircraft and for the persons and property on board;
  - (b) during any period when it is on the surface of the sea or land but not within the territorial limits of any country.
- (3) For the purposes of this Act an aircraft shall be deemed to be in service—
- (a) from the beginning of the preflight preparation of such aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; and
  - (b) at any time when it is deemed to be in flight under the provisions of subsection (2).
- (4) For the purposes of this section the territorial waters of any State shall be treated as part of its territory.

## Part II – Air transportation

### 3. Offences against aircraft and penalty for such offences

Any person, whatever his nationality, who unlawfully—

- (a) on board any aircraft in flight—
  - (i) by use of force or by threats of any kind, seizes that aircraft or exercises control of it;
  - (ii) assaults any person, if such assault is likely to endanger the safety of that aircraft;
  - (iii) assaults or interferes with any member of the crew of that aircraft in the performance of his duties;
- (b) destroys an aircraft in service or causes damage to such aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (c) places, or causes to be placed, on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight or to cause damage to it which is likely to endanger its safety in flight;
- (d) destroys or damages air navigation facilities or interferes with their operation if such destruction, damage or interference is likely to endanger the safety of an aircraft in flight;
- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight;
- (f) falsely alleges that any other person is about to commit a contravention of paragraph (a) (i) or (c) or has committed a contravention of paragraph (c);

- (g) performs any other act which jeopardizes or may jeopardize the safety of an aircraft in flight or of persons or property therein or which may jeopardize good order and discipline on board an aircraft in flight,

shall commit an offence and shall be liable to imprisonment for life.

#### 4. Acts in relation to aircraft taking place outside Malawi

- (1) Any act taking place on board a Malawian aircraft in flight elsewhere than in or over Malawi and which, if taking place in or over Malawi would be an offence under the law in force in Malawi shall constitute that offence and shall be deemed to have been committed also in any place in Malawi:

Provided that this section shall not apply, to any act which is expressly or impliedly authorized by or under that law when taking place outside Malawi.

- (2) Any act referred to in [section 3](#) and committed outside Malawi on board any aircraft in flight, other than a Malawian aircraft, and any act of violence against passengers or crew committed on any such aircraft by a person in connexion with an act referred to in subparagraph (i) of paragraph (a) of [section 3](#) shall—

- (a) if such aircraft lands in Malawi with the person who committed such act still on board;
- (b) if such aircraft is leased without crew to a lessee who has his principal place of business or, if he has no such place of business, his permanent residence in Malawi; or,
- (c) if that person is present in Malawi,

be deemed to have been committed also in Malawi.

#### 5. Jurisdiction in regard to offences under section 4 (2)

Any offence referred to in [section 4\(2\)](#) shall for the purposes of jurisdiction be deemed to have been committed in any place where the accused happens to be.

#### 6. Extradition

- (1) Every offence referred to in [section 3](#) shall be deemed to be a relevant offence within the meaning ascribed to that term by section 2 of the Extradition Act, for the purposes of the extradition of any person from Malawi to any Convention country which is also a designated country within the meaning ascribed to that term by the said section 2 of the Extradition Act, 1968.

*[Cap. 8:03]*

- (2) For the purposes of the application of the said Extradition Act, to an offence committed on board an aircraft in flight—

- (a) any unregistered in any Convention country shall, at any time while the aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country;
- (b) If such aircraft lands in any other Convention country with the offender still on board, the offence shall be deemed to have been committed also in that country;
- (c) If such aircraft was leased without crew to a lessee who has his principal place of business or, if he has no such place of business, his permanent residence in any other Convention country, the offence shall be deemed to have been committed also in that country.

*[Cap. 8:03]*

## 7. Powers of commander of aircraft and certain other person

- (1) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board that aircraft—
  - (a) that he has done or is about to do any act on the aircraft in flight which jeopardizes or may jeopardize—
    - (i) the safety of the aircraft or of persons or property on board the aircraft;
    - (ii) good order and discipline on board the aircraft; or
  - (b) that he has done on the aircraft in flight any act which in the opinion of the commander is a serious offence under the law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination, then, subject to the provisions of subsection (3), the commander may take with respect to that person such reasonable measures, including restraint of his person, as may be necessary—
    - (i) to protect the safety of the aircraft or of persons or of property on board the aircraft;
    - (ii) to maintain good order and discipline on board the aircraft; or
    - (iii) to enable the commander to disembark or deliver that person in accordance with subsection (4).
- (2) Any member of the crew of an aircraft and any other person on board may, at the request or with the authority of the commander of the aircraft, and any such member shall, if so required by the commander, render assistance in restraining any person whom the commander is entitled, under subsection (1), to restrain, and at any time while an aircraft is in flight any such member or person may, without obtaining the authority of the commander, take with respect to any person on board the aircraft any measures such as are mentioned in the said subsection (1) which he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or of property on board the aircraft.
- (3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsections (1) and (2) shall not be continued after the time when the aircraft first thereafter ceases to be in flight, unless before or as soon as is reasonably practicable after that time the commander of the aircraft causes notice of the fact that a person on board the aircraft is under restraint and of the reasons therefor to be sent to an appropriate authority of the country in which the aircraft so ceases to be in flight, and may, if such notice has been so sent, be continued after that time—
  - (a) for any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able, with any requisite consent of the appropriate authorities, to disembark or deliver the person under restraint in accordance with subsection (4); or
  - (b) if the person under restraint agrees to continue his journey under restraint on board that aircraft.
- (4) The commander of an aircraft—
  - (a) if, in the case of any person on board the aircraft, he has reasonable grounds—
    - (i) to believe as mentioned in subsection (1) (a), and
    - (ii) to believe that it is necessary so to do in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft,may disembark that person in any country in which that aircraft may be; and

- (b) if, in the case of any person on board the aircraft, he has reasonable grounds to believe as mentioned in subsection (1) (b), may deliver that person—
  - (i) in Malawi to a police officer or immigration officer; or
  - (ii) in any other Convention country, to an officer there having functions corresponding to the functions in Malawi of such a police officer or immigration officer.
- (5) The commander of an aircraft—
  - (a) if he disembarks any person in accordance with subsection (4) (a), in the case of a Malawian aircraft, in any country, or, in the case of any other aircraft, in Malawi, shall report the disembarkation, and the reasons therefor, to—
    - (i) an appropriate authority in the country of disembarkation; and
    - (ii) the appropriate diplomatic or consular office of the country of nationality of that person;
  - (b) if he intends to deliver any person in accordance with subsection (4) (b) in Malawi, or, in the case of a Malawian aircraft, in any other Convention country, shall before or as soon as reasonably practicable after landing, give notice of his intention and of the reasons therefor—
    - (i) where the country in question is Malawi, to a police officer or to an immigration officer, or, in the case of any other country, to an officer there having functions corresponding to the functions in Malawi of such a police officer or immigration officer; and
    - (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of that person.
- (6) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (5) shall commit an offence and be liable to a fine not exceeding two thousand Kwacha.
- (7) The provisions of subsections (1) to (4) shall apply for the purposes of any proceedings before a court in Malawi.

## 8. Admissibility of certain statements as evidence

- (1) Where in any proceedings before any court in Malawi for an offence committed on board an aircraft the evidence of any person is required and the court is satisfied that that person cannot be found in Malawi, there shall be admissible in evidence before such court any statement in writing relating to the subject matter of those proceedings previously made on oath by that person outside Malawi and which was so made—
  - (a) in the presence of the person charged with the offence; and
  - (b) in any other Convention country to an officer having functions corresponding to the functions in Malawi either of a judge, magistrate or consular officer.
- (2) Any such statement shall be authenticated by the signature of the officer before whom it was made, who shall certify that the person charged was present at the taking of the statement.
- (3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such statement or to have given such a certificate, and such certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the statement.
- (4) Nothing in this section contained shall prejudice the admission as evidence of any statement which is admissible in evidence apart from this section.

## 9. Aircraft to which Part shall not apply

This Part shall not apply to aircraft used in military, customs or police services.

## Part III – Land and water transportation

### 10. Offences against motor vehicles, trains and vessels and penalty

Any person, whatever his nationality, who unlawfully—

- (a) by use of force or by threats of any kind seizes or exercises control of any motor vehicle, train or vessel;
- (b) for the purpose, or in the course, of seizing or exercising control contrary to paragraph (a), assaults any person;
- (c) places, or causes to be placed, on any motor vehicle, train or vessel, by any means whatsoever, a device or substance which is likely to destroy it or to cause damage to it which is likely to endanger its safety in use;
- (d) destroys or damages navigation facilities intended for use by vessels or interferes with their operation if such destruction, damage or interference is likely to endanger the safety of vessels in use;
- (e) falsely alleges that any other person is about to commit a contravention of paragraph (a) or (b) or has committed a contravention of paragraph (c),

shall commit an offence and shall be liable to imprisonment for life.

### 11. Acts taking place outside Malawi on board vessels

- (1) Any act taking place on board a Malawian vessel on waters outside Malawi waters and which, if taking place on Malawi waters, would be an offence under the law in force in Malawi shall constitute that offence and shall be deemed to have been committed also in any place in Malawi:

Provided that this subsection shall not apply to any act which is expressly or impliedly authorized by or under that law when taking place outside Malawi.

- (2) Any act referred to in [section 10](#) and committed outside Malawi on board any vessel, other than a Malawian vessel, and any act of violence against passengers or crew committed on any such vessel by a person in connexion with an act referred to in paragraph (a) of [section 10](#) shall—
  - (a) if such vessel comes into Malawi with the person who committed such act still on board;
  - (b) if such vessel is chartered without crew to a person who has his principal place of business or, if he has no such place of business, his permanent residence in Malawi; or,
  - (c) if such first-mentioned person is present in Malawi, be deemed to have been committed also in Malawi.

### 12. Acts taking place outside Malawi on motor vehicles or trains

Any act referred to in [section 10](#) and committed outside Malawi and any act of violence against the person in control of, or the passengers or crew of, any motor vehicle or train committed in or on such motor vehicle or train in connexion with an Act referred to in paragraph (a) of [section 10](#) shall—

- (a) if such motor vehicle or train comes into Malawi with the person who committed such act still on or in such motor vehicle or train; or
- (b) if such person is present in Malawi, be deemed to have been committed also in Malawi.



**13. Jurisdiction in regard to offence under section 12**

Any offence referred to in [section 12](#) shall for the purposes of jurisdiction be deemed to have been committed in any place where the accused happens to be.

**Part IV – Miscellaneous****14. Consent of the Director of Public Prosecutions**

Except with the consent of the Director of Public Prosecutions, no proceedings for any offence under the law in force in Malawi committed—

- (a) on board any aircraft while in flight elsewhere than in or over Malawi;
- (b) on board any vessel while on waters other than Malawi waters; or
- (c) in, or on, any motor vehicle or train outside Malawi,

shall be instituted but the foregoing provisions of this section shall not prevent the arrest, or the issue of a warrant for arrest, of any person in respect of any offence, or the remanding in custody or on bail of any person charged with any offence.

**15. Provisions of Act to be additional**

The provisions of this Act shall be in addition to and not in derogation of any provisions of any other law for the time being in force in Malawi relating to piracy.