

Malawi

## Traditional Courts Act

### Chapter 3:03

Legislation as at 31 December 2014

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# Malawi

## Traditional Courts Act

### Chapter 3:03

There are multiple commencements

Provisions	Status
Section 25, section 40	commenced on 15 June 1962. <i>Note: See G.N. 88/1962.</i>
Section 1, section 27, section 39	commenced on 1 August 1962. <i>Note: See G.N. 108/1962.</i>
Section 38A, 38B	commenced on (unknown date).

*[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.]*

*[8 of 1962; 24 of 1962; 23 of 1963; 56 of 1966; 1 of 1969; 31 of 1969; 23 of 1970; 38 of 1970; 5 of 1976; 19 of 1992; G.N.137/1966; G.N.66/1967]*

**An Act to make provision for the establishment and constitution of Traditional Courts and for the proper administration of justice by such Courts in Malawi**

#### 1. Short title

This Act may be cited as the Traditional Courts Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**African**” means—

- (a) any member of an indigenous race of Africa; and
- (b) any person who resides in Malawi as a member of such race;

“**Chief Traditional Courts Commissioner**” means the Chief Traditional Courts Commissioner appointed under [section 25](#), and includes the Senior Traditional Courts Commissioner and a Traditional Courts Commissioner acting within any area assigned to him under that section;

“**Traditional Court**” means a court established under this Act;

“**member**” means a member of a Traditional Court, and includes a Chairman of such court.

#### 3. Establishment of Traditional Courts

- (1) The Minister may, by warrant under his hand, establish such Traditional Courts as he shall think fit.
- (2) Every Traditional Court shall exercise the jurisdiction conferred upon it by or under this Act within such area and to such extent as may be specified in the warrant.

- (3) The Minister shall assign to each Traditional Court such name as he may think fit.
- (4) Every warrant issued under this section shall be operative from the date thereof.
- (5) The Minister may, at any time by supplementary warrant, suspend, cancel or vary any warrant issued under this section.

[19 of 1992]

- (6) The Minister shall cause particulars of—
  - (a) the name and area of jurisdiction of every Traditional Court; and
  - (b) the suspension, cancellation or variation of any warrant, to be notified in the *Gazette*.

#### 4. Constitution and membership of Traditional Courts

- (1) A Traditional Court shall consist of a Chairman appointed by the Minister and such other members, if any, as the Minister may appoint, and shall sit with at least one assessor selected by the Chairman from a panel of assessors appointed by the Minister under subsection (2).
- (2) In respect of every Traditional Court the Minister shall appoint a panel of assessors.
- (3) The Minister may from time to time vary the composition of any panel appointed by him under subsection (2).
- (4) Notwithstanding subsection (1), the Minister may by order in writing addressed to any Traditional Court direct—
  - (a) that such court may, at the discretion of the Chairman, sit without any assessor for the hearing of such cases or classes of case as may be specified in such order;
  - (b) that no member of such court other than the Chairman shall sit on such court except under an order made under paragraph (c);
  - (c) that subject to such conditions as the Minister may impose in the order, any member specified in such order may sit as Chairman of the court in the absence of the Chairman.
- (5) The Minister may from time to time revoke the appointment of any Chairman or member of a Traditional Court appointed under this section.

#### 5. Suspension and dismissal of members

Subject to this Act and any rules made thereunder, the Minister may dismiss or may suspend for such time as he thinks fit any member of a Traditional Court who shall appear to have abused his power, or to be unworthy or incapable of exercising the same justly, or for other sufficient reason, and notice of such suspension or dismissal shall be published in the *Gazette*. Upon such dismissal or for the period of his suspension, the member shall be disqualified from using any powers or jurisdiction as a member of the court.

#### 6. Court staff

- (1) The Minister may appoint or authorize the appointment of suitable persons as court clerks and other officers of any Traditional Court.
- (2) Subject to this Act and any rules made thereunder, the Minister may terminate or authorize the termination of any appointment made under this section.

#### 7. Sessions

A Traditional Court shall hold sessions at such times and places as may be necessary for the convenient and speedy despatch of the business of the court:

Provided that the Minister may direct sessions to be held at such times and places as he shall think fit.

## 8. Civil jurisdiction of Traditional Courts

Subject to this Act, every Traditional Court shall have and may exercise civil jurisdiction to the extent set out in its warrant, over causes and matters in which all the parties are Africans and the defendant was, at the time when the cause of action arose, resident or being within the jurisdiction of the court:

Provided that notwithstanding anything contained in this or any other Act, such jurisdiction shall, within the limits specified in the warrant of the court concerned, extend to the hearing and determination of suits for the recovery of civil debts due to the Government, to any local authority or to the office of any Chief under any law:

Provided further that civil proceedings relating to immoveable property shall be taken in the Traditional Court within the area of whose jurisdiction the property is situated.

## 9. Criminal jurisdiction of Traditional Courts

Subject to this Act, every Traditional Court shall have and may exercise criminal jurisdiction to the extent set out in its warrant. Such jurisdiction shall extend to the hearing, trial and determination of all criminal charges and matters in which the defendant is an African and is accused of having, wholly or in part within the jurisdiction of the court, committed or been accessory to the committing of an offence.

## 10. Extension of jurisdiction

Notwithstanding any other provision of this Act, the Minister may, by order published in the *Gazette*, direct that the jurisdiction of any Traditional Court, either civil or criminal or both, shall extend to the hearing of causes and matters in which any or all of the parties are non-Africans:

Provided that in respect of any cause or matter involving an issue to be determined by customary law, any jurisdiction conferred under this section shall extend to the determination of such cause or matter only where it is shown that every non-African who is a party has voluntarily assumed a right, liability or relationship which is the subject matter of the dispute and which would have been governed by the customary law concerned if all the parties had been Africans.

## 11. Cases excluded from the ordinary jurisdiction of a Traditional Court

Subject to any express provision conferring jurisdiction, no Traditional Court shall have jurisdiction in—

- (a) any proceedings in connexion with marriage, other than a marriage contracted under or in accordance with Islamic or customary law or the African Marriage (Christian Rites) Registration Act, except where both parties are of the same religion and the claim is one for bride-price founded on customary law only;

[Cap. 25:02]

- (b) any other class of proceedings which the Minister may, by notice published in the *Gazette*, exclude from the jurisdiction of Traditional Courts or any particular Traditional Court or class of Traditional Court specified in such notice.

[31 of 1969]

## 12. Law to be administered

Subject to this Act, a Traditional Court shall administer—

- (a) the provisions of any Act which the court is by or under such Act authorized to administer;
- (b) the provisions of any law which the court may be authorized to administer by an order of the Minister made under [section 13](#);

- (c) the provisions of all rules, orders, regulations or by-laws made under the Local Government (District Councils) Act and in force in the area of the jurisdiction of the court;

[Cap. 22:02]

- (d) the customary law prevailing in the area of the jurisdiction of the court, so far as it is not repugnant to justice or morality or inconsistent with the Constitution or any written law in force in Malawi:

Provided that no criminal proceedings shall be taken and no criminal penalty be imposed otherwise than in respect of an offence constituted under an Act or under any rule, regulation, order or by-law made thereunder.

### 13. Power of Minister to empower a Traditional Court to enforce specified laws

The Minister may, by order published in the *Gazette*, confer upon all or any Traditional Courts jurisdiction to enforce all or any of the provisions of any law specified in such order, subject to such restrictions and limitations, if any, as the Minister may specify.

### 14. Orders in cases of a criminal nature

- (1) Subject to this or any other law and to the limits specified in its warrant a Traditional Court may in cases of a criminal nature pass any of the following sentences authorized by law—
  - (a) death;
  - (b) imprisonment;
  - (c) the performance of public work;
  - (d) corporal punishment;
  - (e) fine.
- (2) Subject to any written law, it shall be lawful for a Traditional Court to pass any sentence combining any of the sentences specified in paragraphs (b) to (e) of subsection (1).
- (3) A Traditional Court may order that any fine which it shall impose shall be paid at such time or times or by such instalments or in kind or otherwise as it shall think just, and in default of the payment of any fine or of any instalment of the same when due, the court may order that the amount of the fine or of the instalment, as the case may be, shall be levied by the sale of any property belonging to the offender.
- (4) Where a Traditional Court makes an order for the payment of a fine it shall have the power to direct by its sentence that in default of the payment of the fine the offender shall suffer such period of imprisonment as will satisfy the justice of the case:

Provided that—

- (a) no such period of imprisonment shall be in excess of the maximum period which the court is empowered by its warrant to impose;
  - (b) subject to the express provisions in this or any other law, in no case shall the imprisonment exceed such maximum as may be laid down in any rules made by the Minister.
- (5) The imprisonment which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.
- (6) Where a term of imprisonment is imposed by a court in default of the payment of a fine, that term shall, on the payment or levy of a part of such sum, be proportionately reduced.
- (7) When a person is convicted of any offence, the court may, except where the punishment is one fixed by law, instead of passing sentence under subsection (1), order such person to enter into a bond, with or without sureties in such amount as the court thinks fit, that he shall keep the peace and be

of good behaviour for a time to be fixed by the court, and sections 123, 125 and 341 of the Criminal Procedure and Evidence Code shall apply *mutatis mutandis* to any bond entered into under this subsection.

[Cap. 8:01]

- (8) Notwithstanding any other provision of this section, where in any trial (other than a trial in which the accused is charged with an offence punishable with death or imprisonment for any period exceeding five years) the court thinks that the charge is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge, after such admonition or caution to the offender as to the court seems fit.

[31 of 1969]

## 15. Suspension of sentence

- (1) Whenever a person is convicted before any Traditional Court for any offence, the court may pass a sentence of imprisonment, if such sentence is authorized by law, but, in its discretion, order the operation of the whole or any part of the sentence to be suspended for a period not exceeding three years on such conditions, relating to compensation to be made by the offender for damage or pecuniary loss, or to good conduct, or to any other matter whatsoever, as the court may specify in the order.
- (2) Where the operation of a sentence has been suspended under subsection (1) and the offender has, during the period of the suspension, observed all the conditions specified in the order, the sentence shall not be enforced.
- (3) If the conditions of any order made under subsection (1) are not fulfilled, the offender may upon the order of the trial court be arrested without warrant and brought before the said court to be committed to undergo the sentence of imprisonment originally imposed:

Provided that the said court may in its discretion grant an order further suspending the operation of the sentence subject to such conditions as might have been imposed at the time of the passing of the sentence.

[31 of 1969]

## 16. Compensation to injured or aggrieved persons

- (1) Where a Traditional Court convicts any person, it may, in addition to any other punishment, or in substitution for any punishment other than one fixed by law, adjudge that such person pay reasonable compensation to, or to any member of the family of, any person injured by the act or omission in respect of which such conviction was made. If any person in whose favour compensation is awarded under this section accepts such compensation he shall not have or maintain any suit for the recovery of damage for loss or injury sustained by him by reason of such act or omission. For the purposes of this section punishment for an offence under section 283 of the Penal Code is one fixed by law.

[Cap. 7:01]

- (2) Any compensation awarded by a court under this section may be ordered to be paid at such time or times or by such instalments as it shall think just, and in default of the payment of any compensation or any instalment of the same when due, the court may order that the amount of the compensation or the instalment, as the case may be, shall be levied by the sale of any property belonging to the person ordered to pay the compensation.

[23 of 1970]

## 17. Awards in cases of a civil nature

- (1) A Traditional Court in cases of a civil nature may—
  - (a) award compensation (which may include an amount for costs and expenses incurred by a successful party or his witnesses);
  - (b) order the restitution of any property;
  - (c) order the specific performance of any contract;
  - (d) make any other order which the justice of the case may require.
- (2) An award of compensation or other order under subsection (1) may provide for—
  - (a) payment in money or in kind;
  - (b) the time or times for making payment or doing any other act;
  - (c) instalments;
  - (d) any other manner of compliance therewith as the Court may think just.
- (3) In case of any default in the performance of or compliance with such award or other order in accordance with the terms thereof, the Court may order—
  - (a) that any property, referred to in an order for restitution or an order for specific performance of a contract or other order for delivery or transfer of property, may be seized and transferred to the person entitled to receive it;
  - (b) that payment of any sum of money due be enforced by the seizure of any property belonging to the person ordered to make the payment and—
    - (i) by the sale thereof; or
    - (ii) the transfer thereof to the person entitled to receive the payment at a value fixed by the Court;
  - (c) that the payment of compensation in kind be enforced by the seizure of property of that kind belonging to the person ordered to pay the compensation and the transfer thereof to the person entitled to receive the compensation.

## 18. Places of imprisonment

Every person sentenced by a Traditional Court to imprisonment or taken in the execution of the process of such court shall be detained in a place authorized by the Minister as a prison for the purposes of this Act.

## 19. Contempt of court

Any person subject to the jurisdiction of a Traditional Court who, without lawful excuse—

- (a) shall omit to produce or deliver up any document or thing on the order of such court;
- (b) shall refuse to answer any question asked by the court, provided that it is not a question to a person other than the accused, the answer to which might tend to incriminate him;
- (c) shall refuse to sign any statement which the court lawfully requires him to sign;
- (d) intentionally insults the court or any member thereof; or
- (e) intentionally interrupts the proceedings of the court,

shall be guilty of contempt of court and shall be liable to a fine of £25 and to imprisonment for six months.

## **20. Wilful refusal to pay compensation**

Any person subject to the jurisdiction of a Traditional Court who without lawful excuse and having the means to pay any compensation awarded against him refuses or wilfully fails to make such payment after due notice shall be liable to a fine of £20 and to imprisonment for six months.

## **21. Power to summon witnesses**

- (1) Every Traditional Court shall have power to summon before the court any person within the jurisdiction of the court for the purpose of giving evidence.
- (2) Any person who without reasonable excuse shall fail to obey any summons lawfully issued under this section may be arrested and brought before the court and shall be liable to a fine of £10 and to imprisonment for three months.

## **22. Provision for summoning witnesses, etc., outside the area of jurisdiction**

The Minister may by order confer upon any Traditional Court such powers as he may think necessary to secure the appearance before any such court of any person outside the area of the jurisdiction of such court when the appearance of any such person shall be required as a defendant or witness in any proceedings within the jurisdiction of such court.

## **23. Practice and procedure**

The practice and procedure of Traditional Courts shall be regulated in accordance with such rules as may be made in that behalf by the Minister under [section 40](#).

## **24. Representation of parties**

- (1) No legal practitioner may appear or act for any party in any matter before a Traditional Court unless the Minister has, by order in writing, authorized legal practitioners to appear or act in respect of proceedings before the court concerned either generally or in any particular case or class of case, and any such order may at any time be revoked by the Minister.
- (2) A Traditional Court may permit the husband or wife or guardian or any servant or the master of any plaintiff or defendant who shall give satisfactory proof that he or she has authority in that behalf to appear or act for such plaintiff or defendant.

## **25. Appointment of Chief Traditional Courts Commissioner and other officers**

- (1) The Minister may appoint a Chief Traditional Courts Commissioner, a Senior Traditional Courts Commissioner, and such Traditional Courts Commissioners and Traditional Courts Officers as he may think fit.
- (2) Subject to the directions of the Minister, the Chief Traditional Courts Commissioner may assign to a Traditional Courts Commissioner an area or areas within which he shall perform his functions.

## **26. Functions of Chief Traditional Courts Commissioner**

- (1) The functions of the Chief Traditional Courts Commissioner shall include—
  - (a) the advising of the Minister in respect of the constitution, jurisdiction and membership of Traditional Courts and Traditional Appeal Courts;
  - (b) the organization, guidance and supervision of Traditional Courts and Traditional Appeal Courts;

- (c) the organization and supervision of courses of instruction for members, officers and staff of Traditional Courts;
  - (d) such other powers and duties as may from time to time be assigned to him by the Minister.
- (2) Every Traditional Courts Commissioner shall perform such functions as may be assigned to him from time to time by the Chief Traditional Courts Commissioner, subject to the general or special directions of the Minister.
- (3) The Chief Traditional Courts Commissioner shall exercise the functions conferred upon him by or under this Act in conformity with such general or special directions as may be given by the Minister.

## **27. Adjudication without authority**

Any person who shall exercise or attempt to exercise judicial powers within the area of the jurisdiction of a duly constituted Traditional Court, except in accordance with any Act, or who shall sit as a member of such court without due authority, shall be liable, on conviction before the High Court or before a court of a Resident Magistrate or a magistrate of the first or second grade, to a fine of £50 and to imprisonment for twelve months.

## **28. Members of Traditional Courts taking rewards**

Whoever, being or expecting to be a member of a Traditional Court, accepts or obtains or agrees to accept, or attempts to obtain from any person for himself or for any other person, any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any act as a member of such court, or for showing, as a member of such court, favour or disfavour to any person, shall be liable to a fine of £100 and to imprisonment for two years.

## **29. Taking reward for influencing courts**

Whoever accepts or obtains, or agrees to accept, or attempts to obtain from any person for himself or for any other person, any gratification or reward whatever whether in money or otherwise, for inducing by corrupt or illegal means, or by personal influence, any Traditional Court, or any member thereof, to do or forbear to do any act which such court or member is authorized to do in the exercise of lawful jurisdiction, or to show favour or disfavour to any person, shall be liable to a fine of £100 and to imprisonment for two years.

## **30. Penalty for false evidence**

Whoever in any proceeding before a Traditional Court gives evidence, whether upon oath or otherwise, which he knows to be false, or believes to be false, or does not believe to be true, shall be liable to a fine of £100 and to imprisonment for two years.

## **31. Proceedings on transfer**

When a case is transferred from a Traditional Court to a subordinate court, whether for trial or retrial, by an order under [section 32](#), the Traditional Court shall report the proceedings to the subordinate court, and thereupon the subordinate court shall proceed to the trial or retrial of the case as though, in a criminal proceeding, a complaint of acts constituting the offence had been made to the court and, in a civil proceeding, as though a plaint herein had been filed in the court.

### 32. Powers of Chief Traditional Courts Commissioner to order retrial or transfer of cases

- (1) The Chief Traditional Courts Commissioner shall at all times have access to Traditional Courts and to the records of such courts, and, on the application of the court or any person concerned or on his own motion, may—
- (a) order any case to be retried either before the same Traditional Court or before any other Traditional Court;
  - (b) order the transfer of any cause or matter, either before trial or at any stage of the proceedings, whether before or after sentence is passed or judgment given, to a subordinate court having jurisdiction within the area concerned;
  - (c) subject to such conditions as to costs, security or otherwise as to him appear just, direct a Traditional Appeal Court to extend the time for appeal in any case to which the provisions of [section 34](#) (1) do not apply;  
*[1 of 1969]*
  - (d) vary the judgment of a Traditional Court directing the payment of money by providing for payment by instalments or by reducing the instalments and extending the period for payment;
  - (e) in respect of any sentence or order passed or made, set aside such sentence or order and substitute therefor any other sentence or order which was within the competence of the original court to pass or make:

Provided that no sentence or order shall be made to the prejudice of a convicted person unless he has had an opportunity of making representations on his behalf.

- (2) In the case of any cause or matter involving an issue of customary law the Chief Traditional Courts Commissioner may order that either before trial or at any stage of the proceedings before judgment is given such cause or matter may either—
- (a) be transferred to another Traditional Court for the purposes of taking evidence relating to any issue specified in the order of transfer and of determining such issue; or
  - (b) be transferred to such other Traditional Court for hearing and final determination of the cause or matter concerned.
- (3) In the case of a cause or matter transferred under subsection (2) (a), the Traditional Court to which the cause or matter has been transferred shall, after taking the evidence and determining the issues concerned, return the cause or matter to the court originally exercising jurisdiction, with a record of the evidence and the determination concerned. Thereupon the court originally exercising jurisdiction shall, after considering such record, proceed with the resumed trial and final determination of the cause or matter concerned.
- (4) Any order of retrial or transfer made under subsection (1) or under subsection (2) (b) shall have the effect of setting aside any judgment or sentence given or passed in the matter by the court from which the retrial or transfer is ordered, and the court to which the retrial or transfer has been committed shall begin the trial afresh.
- (5) Provided that the Chief Traditional Courts Commissioner is satisfied that the order is in the interests of the proper administration of justice, a cause or matter may be transferred by an order under subsection (2) whether under [section 8](#) the defendant was resident within the jurisdiction of the court to which the cause or matter is transferred or not.
- (6) Nothing in this section other than the provisions giving the Chief Traditional Courts Commissioner access to Traditional Courts and their records shall apply to any case before a Regional Traditional Court or the National Traditional Appeal Court. In this subsection the terms “Regional Traditional

Court” and “National Traditional Appeal Court” bear the meanings ascribed to them by [section 34](#) (4).

*[38 of 1970]*

### 33. Traditional Appeal Courts

- (1) The Minister may, by warrant under his hand, establish such Traditional Appeal Courts as he shall think fit.
- (2) Every Traditional Appeal Court shall consist of a Chairman to be appointed by the Minister and such other members as the Minister may appoint.
- (3) The Minister shall assign to each Traditional Appeal Court such name as he may think fit.
- (4) Every Traditional Appeal Court shall exercise the jurisdiction conferred upon it by or under this Act within such area as may be specified in the warrant.
- (5) The Minister may at any time suspend, cancel or vary any warrant issued under this section.
- (6) Every Traditional Appeal Court established under this section shall be a court of appeal from such Traditional Courts in the area within which it is authorized to exercise jurisdiction as may be specified in its warrant.
- (7) The provisions of [section 5](#) relating to the suspension and dismissal of members of Traditional Courts shall apply in the like manner to members of Traditional Appeal Courts appointed under this section.
- (8) The Minister may appoint such member of a Traditional Appeal court as he thinks fit to be Deputy Chairman of the Traditional Appeal Court concerned, and every member so appointed may, in the absence of the Chairman from the court for any reason, or in any case where an appeal before the court is an appeal from a judgment, sentence or order made by the Chairman sitting as a court of first instance, sit as Chairman of such court.

### 34. Appeals

- (1) Any person aggrieved by any judgment in any proceedings, civil or criminal, before a Traditional Appeal Court, a Regional Traditional Court, or a District Traditional Court may within thirty days of the delivery of such judgment appeal to the National Traditional Appeal Court. No appeal shall lie from any judgment of the National Traditional Appeal Court.
- (2) Any person aggrieved by any judgment in any proceedings, civil or criminal, before any Traditional Court (other than a Court referred to in subsection (1)) may within thirty days of the delivery of such judgment appeal to the Traditional Appeal Court having jurisdiction to hear such appeal.
- (3) Leave to appeal under this section out of time may be given by the Court having power to hear the appeal.
- (4) In this section,
  - (a) “District Traditional Court” means any Traditional Court having the word “District” as part of its name;
  - (b) “National Traditional Appeal Court” means the Traditional Appeal Court so named in its warrant;
  - (c) “Regional Traditional Court” means any Traditional Court having the word “Regional” as part of its name.

*[38 of 1970]*

*[5 of 1976]*

### 35. Power on appeal

A Traditional Appeal Court in exercise of appellate jurisdiction in any cause or matter under this Act may require the aid of such persons as assessors as the court shall think fit, and may—

- (a) make any such order or pass any such sentence as the court of the first instance could have made or passed in such cause or matter; and
- (b) order any such cause or matter to be retried before the court of the first instance or before any other Traditional Court.

*[1 of 1969]*

*[38 of 1970]*

### 36. Substantial justice to be done without undue regard to technicalities

No proceedings in a Traditional Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal or under [section 32](#) solely by reason of any defect in procedure or want of form, and every court exercising appellate powers under this Act, or the Chief Traditional Courts Commissioner, as the case may be, shall decide all matters according to substantial justice without undue regard to technicalities.

### 37. Execution of orders of High Court, subordinate courts or other Traditional Courts

A Traditional Court shall carry into execution any decrees or orders of the High Court or of any subordinate court or of any other Traditional Court directed to the court, and shall execute all warrants, and serve all process issued by any such courts and directed to the court for execution or service and shall generally give such assistance to any such courts as may be required.

### 38. Powers of remand in criminal cases

- (1) Whenever a person is arrested for any criminal offence and taken into custody, whether with or without warrant, within the local limits of jurisdiction of a Traditional Court, then, notwithstanding that the charge is not one which is within the competence of the Traditional Court concerned to hear and determine, such person may be brought before the Traditional Court concerned for remand.
- (2) Upon any person being brought before a Traditional Court under subsection (1), the Traditional Court may order that the person concerned—
  - (a) be remanded in custody and brought before a court of competent jurisdiction as soon as possible or on such date, not exceeding fourteen days later, as may be specified in such order; or
  - (b) be admitted to bail, subject to his appearance before a court of competent jurisdiction at such place and time as may be specified in such order.
- (3) A Traditional Court making any order under subsection (2) shall forthwith send a copy of such order to the court before which the accused person is required thereunder to be brought or to appear.

#### 38A. Effect of non-attendance of member

Where a Traditional Court, or a Traditional Appeal Court, consists of more than one member and, because of death, illness or some other reason one, but not more than one, member is unable to be present continuously throughout a case, it shall be lawful for the case to be continued as if all the members were

present and any judgment given by the remaining members shall be of the same validity as if it had been given by the Court consisting of its full number of members.

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### **38B. Alternate members**

- (1) The Minister may appoint any person as alternate to any Chairman or member of a Traditional Court or Traditional Appeal Court.
- (2) If any person has been appointed as alternate under subsection (1), he shall act as Chairman or member, as the case may be, only when the Chairman or member to whom he is alternate is absent from Malawi, ill, or for some other reason unable to perform his duties as such Chairman or member:

Provided that no alternate Chairman or member shall act under this subsection in respect of any case which has already been partly heard.

- (3) While acting under subsection (2), the alternate Chairman or member shall have all the powers of the person to whom he is alternate.

### **39. Indemnity of officers acting judicially and of officers executing warrants and orders**

No person shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of jurisdiction conferred by this Act, whether or not within the limits of his jurisdiction, if at the time of such act or order he believed in good faith that he had jurisdiction to do such act or to make such order; and no officer of any Traditional Court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Act shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute, if the person issuing the same had been acting in the exercise of lawful authority.

### **40. Rules**

- (1) The Minister may make rules for carrying this Act into effect.
- (2) In particular, and without prejudice to the generality of the foregoing power; such rules may provide for—
  - (a) the practice and procedure of Traditional Courts in their original and appellate jurisdiction;
  - (b) the procedure relating to the institution of criminal complaints and civil proceedings;
  - (c) the practice relating to the arrest of accused persons;
  - (d) the provisions relating to bail;
  - (e) the practice relating to the remand of accused persons;
  - (f) the provisions relating to execution and attachment in cases of a criminal and civil nature;
  - (g) the fees to be charged in Traditional Courts;
  - (h) the disposal and application of fines and fees received in Traditional Courts;
  - (i) the practice governing the imposition and administration of corporal punishment, including provisions as to the confirmation of any such orders and the detention or admission to bail of persons sentenced to corporal punishment pending confirmation or appeal;
  - (j) the empowering and requiring of Traditional Courts to enforce decrees, serve summonses and execute warrants made or issued by other Traditional Courts;
  - (k) the costs to be allowed in cases of a criminal or civil nature;

- (l) the procedure regulating the institution of appeals;
  - (m) the records to be kept by Traditional Courts;
  - (n) the forms to be used;
  - (o) the terms and conditions of service of members, officers and staff of Traditional Courts, and the remuneration to be paid to assessors;
  - (p) the powers and duties of assessors.
- (3) Any rules made under subsections (1) or (2) may apply to all Traditional Courts or to such class of Traditional Courts or such particular Traditional Court as may be specified therein.