

Malawi

Extradition Act

Chapter 8:03

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1968/9/eng@2014-12-31

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PDF created on 9 July 2022 at 20:33.

Collection last checked for updates: 31 December 2014.

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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 Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), 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.