

Malawi

National Child Protection Legislation

National Legislation

- Age of Child – **Below 18 years old**
[Marriage, Divorce, and Family Relations Law](#)
Part 1, Sec. 2
A “child” means a person who is below the age of eighteen years.
- Age of Consent – **14 years old for females. 12 years for males**
[Penal Code](#)
Chapter 4, Sec. 14
A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

Chapter 25, Sec. 137(2)
It shall be no defence to a charge for an indecent assault on a girl under the age of thirteen years to prove that she consented to the act of indecency.
- Age of Marriage – **18 years old**
[Marriage, Divorce, and Family Relations Law](#)
Part 3, Section 14
Capacity to enter into a valid marriage: Subject to [section 22](#) of the Constitution, two persons of the opposite sex who are both not below the age of eighteen years, and are of sound mind, may enter into marriage with each other.
- Age of Criminal Responsibility – **7 years old**
[Penal Code](#)
Chapter 4, Sec. 14
A person under the age of seven years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission, he had capacity to know that he ought not to do the act or make the omission.

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- **Extraterritoriality**

[Penal Code](#)

Territorial Application of this Code

Art. 5 – Offence committed partly within and partly beyond the jurisdiction

When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

Art. 6 – Jurisdiction and procedure in respect of certain offences committed in countries outside Malawi

- (1) Any Malawi citizen being a person employed in the public service of Malawi who commits, in any other country, when acting or purporting to act in the course of his employment, any offence which, if committed in Malawi, would be punishable in Malawi, shall be guilty of an offence of the same nature, and subject to the same punishment, as if the offence had been committed in Malawi.
- (2) A person may be proceeded against, charged, tried and punished for an offence against this section in any place in Malawi in which he is apprehended or is in custody as if the offence had been committed in that place; and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

▪ **Dual Criminality**

[Extradition Act](#)

Art. 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 Extradition 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 included references to the law of any part of that country.

▪ **Mandatory reporting requirements**

[The Child Care, Protection and Justice Act 2010](#)

Art. 33 – Duty of a medical officer

- (1) A medical officer shall, if he believes on reasonable grounds that a child being examined or treated is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, immediately inform a social welfare officer or police officer.
- (2) A medical officer who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.

Art. 34 – Duty of members of the family

- (1) If any member of the family of a child believes on reasonable grounds that the child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he/she shall immediately inform a social welfare officer or a police officer.
- (2) A member of the family who fails to comply with subsection (1) commits an offence and shall be released on a binding agreement on conditions to be determined by the court.

Art. 35 – Duty of child care provider

- (1) If a child care provider believes on reasonable grounds that a child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he/she shall inform a social welfare officer or a police officer.
- (2) If a child care provider fails to comply with subsection (1) commits an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Art. 36 – Duty of members of the community

- (1) If a member of the community believes on reasonable grounds that a child is physically, psychologically or emotionally injured, abandoned, or exposed, or is sexually abused, he/she shall immediately inform a chief, a police officer or a social welfare officer.
- (2) A member of the community who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.

Art. 75 – Duty to report infringement of a child's rights

- (1) It shall be the duty of any member of the community who has evidence that a child's rights are being infringed or that a parent, guardian or any person having custody of a child, who is able to but refuses or neglects to provide the child with adequate good, shelter, clothing, medical care or education, to report the matter to the local government authority of the area.

- **Obligations of Educational Institutions**

Not found in law.

- **Prohibition to hold certain positions**

Not found in law.

- **Employment Law**

[Employment Act, 2012](#)

Art. 35

- (3) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself/herself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Art. 56

- (1) An employer shall be entitled to take disciplinary action, other than dismissal, when it is reasonable to do so considering all the circumstances.

- (2) For the purposes of this Part a “disciplinary action” includes –
 - a. A written warning;
 - b. Suspension; and
 - c. Demotion
- (3) Subject to subsection (4), no employer shall impose a fine or other monetary penalty on an employee:

Provided that the employer may not pay wages to the employee for the period he has been absent from work without permission of the employer and without reasonable excuse.
- (4) An employer may deduct an amount of money from an employee’s wages as restitution for property damaged by the employee.
- (5) In deciding whether the employer had acted reasonably, regard shall be had to the nature of the violation, the employee’s duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

Art. 57

- (1) The employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking.

Justification of dismissal

- (2) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide the opportunity.

Art. 59

- (1) An employer is entitled to dismiss summarily an employee on the following grounds –
 - (a) where an employee is guilty of serious misconduct inconsistent with the fulfillment of the expressed or implied conditions of his contract of employment such that it would be unreasonable to require the employer to continue the employment relationship;
 - (b) habitual or substantial neglect of his duties;
 - (c) lack of skill that the employee expressly or by implication holds himself to possess;
 - (d) willful disobedience to lawful orders given by the employer; or
 - (e) absence from work without permission of the employer and without reasonable excuse.
- (2) In subsection (1), “summary dismissal” means termination of the contract of employment by the employer without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

▪ **Private Fostering**

[The Child Care, Protection and Justice Act 2010](#)

Art. 47 – Private foster homes

- (1) A person or an organization may apply to the Minister to appoint a home or place of that person or organization to be a foster home.
- (2) The Minister, upon being satisfied that the application meets the necessary requirements in accordance with this Act, may designate the home or place as a private foster home for the purposes of foster-care placements.
- (3) The establishment of a private foster home under this section shall be by order published in the Gazette.

- (4) The referred to in subsection (3) shall state whether the home is for female or male children or for both and shall specify the number of children to be kept in that home.

Art. 53 – Responsibilities of foster parents

A foster parent in whose care a child is committed shall, while the child remains in his care, have the same responsibilities in respect of the maintenance of the child as if such foster parent were the parent of the child.

Art 55 – Procedure before placement

- (1) A child shall not be placed with a foster parent who is not a relative of the child, unless –
- (a) a social welfare officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;
 - (b) a social welfare officer has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;
 - (c) two reputable persons who know the prospective foster parent have confirmed on his or her good character and suitability to care for the child;
 - (d) it has been established by a social welfare officer that no person in the household of the prospective foster parent is suffering from any physical or mental illness likely to affect the child adversely;
 - (e) it has been established from the officer-in-charge of a police station in the area that no person in the home has been convicted of a serious criminal offence rendering it undesirable for the child to associate with that person; and
 - (f) the wishes of the child so far as can be ascertained concerning the proposed fostering have been ascertained and have, so far as practicable, been taken into account.
- (2) The social welfare officer concerned with the fostering shall make a written report which shall contain the following –
- (a) The information required in section (1);
 - (b) Details of the name, approximate age, religion and employment of the prospective foster parents; and
 - (c) The number and approximate ages of other persons living in the household of the prospective foster parent.

▪ **Criminal Law – Defamation**

[Penal Code](#)

Art. 200 – Definition of Libel

Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, shall be guilty of the misdemeanour termed “libel”.

Art. 201 – Definition of defamatory matter

Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead: Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Director of Public Prosecutions

Sexual Offenses Against Children

[The Child Care, Protection and Justice Act 2010](#)

Art. 79 – Child trafficking

- (1) A person who takes part in any transaction the object or one of the objects of which is child trafficking commits an offence and shall be liable to imprisonment for life.
- (2) For purposes of this section, child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation.

[Penal Code](#)

Art. 132 – Definition of Rape

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, shall be guilty of the felony termed rape.

Art. 133 – Punishment of rape

Any person who commits the offence of rape shall be liable to be punished with death or with imprisonment for life, with or without corporal punishment.

Art. 134 – Attempted Rape

Any person who attempts to commit rape shall be guilty of a felony and liable to imprisonment for life, with or without corporal punishment.

Art. 135 – Abduction

Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, shall be guilty of a felony and shall be liable to imprisonment for seven years.

Art. 137 – Indecent assaults on females

- (1) Any person who unlawfully and indecently assaults any woman or girl shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.
- (2) It shall be no defence to a charge for an indecent assault on a girl under the age of thirteen years to prove that she consented to the act of indecency.

Art. 138 – Defilement of girls under thirteen years of age

- (1) Any person who unlawfully and carnally knows any girl under the age of thirteen years shall be guilty of a felony and shall be liable to imprisonment for life, with or without corporal punishment.
- (2) Any person who attempts to have unlawful carnal knowledge of any girl under the age of thirteen years shall be guilty of felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court, jury or assessors before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of thirteen years.

Art. 139 – Defilement of idiots or imbeciles

Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile,

shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.

Art. 140 – Procuration

Any person who—

- (a) procures or attempts to procure any girl or woman under the age of twenty-one years to have unlawful carnal connection, either in Malawi or elsewhere, with any other person or persons; or
- (b) procures or attempts to procure any woman or girl to become, either in Malawi or elsewhere, a common prostitute; or
- (c) procures or attempts to procure any woman or girl to leave Malawi with intent that she may become an inmate of or frequent a brothel elsewhere; or
- (d) procures or attempts to procure any woman or girl to leave her usual place of abode in Malawi with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in the Republic or elsewhere,

shall be guilty of a misdemeanour and, if a male person, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence shall be sentenced to corporal punishment:

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Art. 141 – Procuring defilement of woman by threats or fraud or administering drugs

Any person who—

- (a) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection, either in Malawi or elsewhere; or
- (b) by false pretences or false representations procures any woman or girl to have any unlawful carnal connection, either in Malawi or elsewhere; or
- (c) applies, administers to, or causes to be taken by any woman or girl any drug, matter, or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl,

shall be guilty of a misdemeanour: Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Art. 142 – Householder, etc., permitting defilement of girl under thirteen years of age on his premises

Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of thirteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, shall be guilty of a felony, and shall be liable to imprisonment for five years: Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Art. 143 – Detention with intent or in brothel

Any person who detains any woman or girl against her will—

- (a) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or
- (b) in any brothel,

shall be guilty of a misdemeanour.

Constructive detention by withholding clothes –

When a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel, if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied. No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

Art. 148 Conspiracy to defile

Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her shall be guilty of a felony, and shall be liable to imprisonment for three years, with or without corporal punishment

Art. 155 – Indecent assault of boys under fourteen

Any person who unlawfully and indecently assaults a boy under the age of fourteen years shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.

Art. 152 – Knowledge of age of female immaterial

Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age, that the accused person did not know that the woman or girl was under that age or believed that she was not under that age.

Art. 157 – Incest by males

(1) Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister, or mother, shall be guilty of a felony and shall be liable to imprisonment for five years:

Provided that if it is alleged in the information or charge and proved that the female person is under the age of thirteen years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the female person.

(3) If any male person attempts to commit any such offence as aforesaid, he shall be guilty of a misdemeanour.

(4) On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of twenty-one years, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or any less period:

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

Art. 158 – Incest by Females

Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother, or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother, or son, as the case may be), shall be guilty of a felony and shall be liable to imprisonment for five years.

[Electronic Transactions and Cybersecurity Act](#)

Art. 2 – Interpretation

“child pornography” means visual and pornographic material that depicts, presents or represents a person under the age of eighteen engaged in sexually explicit conduct or an image representing a person under the age of eighteen engaged in sexually explicit conduct

Art. 85 – Child Pornography

(1) Child pornography in an electronic form is prohibited under this act.

(2) Any person who__

- (a) produces pornographic material for the purpose of its distribution through a computer system;
- (b) reproduces pornographic material for the purpose of its distribution through an information system;
- (c) offers or makes available any pornographic material through an information system;
- (d) exposes a child to pornographic material through an information system;
- (e) distributes or transmits any pornographic material through an information system;
- (f) procures any pornographic material through a computer system for oneself or for another person; or
- (g) possesses any child pornographic material in a computer system or on a computer data storage medium, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for fifteen years.

(3) For the sake of protecting children from pornography as provided in subsection (1) –

- (a) establishments serving the public, and places open to the public proposing access to internet shall use an adequate pornography filtering software as defined by subsidiary legislation made under this Act;
- (b) failure to comply with the obligation provided in this subsection shall be an offence punishable, upon conviction, with a fine of K10,000,000 and to imprisonment for fifteen years.

- **Female Genital Mutilation (FGM)**

[The Child Care, Protection and Justice Act 2010](#)

Art. 80 – Harmful cultural practices

No person shall subject a child to a social or customary practice that is harmful to the health or general development of the child.