MALAWI GOVERNMENT

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Act

No. 8 of 2023

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
18th February, 2023

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An Act to amend the Penal Code

ENACTED by the Parliament of Malawi as follows—

Short title

1. This Act may be cited as the Penal Code (Amendment) Act, 2023.

Amendment of s. 4 of Cap. 7:01

2. The Penal Code (hereinafter referred to as the "principal Act") is amended in section 4 by inserting, in the correct alphabetical order, the following new definitions—

""child" means a person under the age of eighteen years;

"terrorist act" means—

(*a*) an act or omission whether committed in or outside Malawi, which constitutes an offence within the scope of the United Nations counter-terrorism conventions; and

(*b*) an act, or threat of action in or outside Malawi which—

(i) involves serious bodily harm to a person;

(ii) involves serious damage to property;

(iii) endangers the life of a person;

(iv) creates a serious risk to the health or safety of the public or a section of the public;

(v) involves the use of firearms or explosives;

(vi) involves releasing into the environment or any part thereof, or distributing or exposing the public or any part thereof, to any dangerous, hazardous, radioactive or harmful substance; any toxic chemical; or any microbial or other biological agent or toxin;

(vii) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;

(viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil, defence or medical services;

(ix) prejudices national security or public safety; or

(x) involves participating in the activities of a terrorist group, including the supplying of information or material resources, or the funding of its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group, and is intended, or by its nature and context, may reasonably be regarded as being intended, to intimidate the public or a section of the public; or compel a Government or an international organization to do, or refrain from doing, an act; or seriously destabilize or destroy the fundamental, political, constitutional, economic or social structures of a country or an international organization, and for the purpose of advancing a political, ideological, or religious cause; but does not include an act which disrupts any services, and is committed in pursuance of a protest, demonstration or stoppage of work, as long as, and as long as only, the act is not intended to result in any harm referred to in this paragraph;

"terrorist organization" means a legal person or any group of terrorists that, directly or indirectly—

(*a*) unlawfully and willfully, commits or attempts to commit, a terrorist act by any means;

(*b*) participates as an accomplice in a terrorist act;

(*c*) organizes or directs others to commit a terrorist act; or

(*d*) contributes to the commission of a terrorist act by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act; and

"terrorist property" means—

(*a*) proceeds from the commission of a terrorist act;

(*b*) money or other property which has been, or is likely to be used to commit a terrorist act; and

(*c*) money or other property which has been, is being, or is likely to be used by a terrorist group;".

Repeal of s. 50 of the principal Act

3. The principal Act is amended by repealing section 50.

Repeal of s. 51 of the principal Act

4. The principal Act is amended by repealing section 51.

Repeal of s. 52 of the principal Act

5. The principal Act is amended by repealing section 52.

Repeal of s. 53 of the principal Act

6. The principal Act is amended by repealing section 53.

Substitution of s.136 of the principal Act

7. The principal Act is amended by deleting section 136 and substituting therefor a new section as follows—

"Abduction of child

136.—Any person who unlawfully takes a child out of the custody or protection of the father, mother or other person having the lawful care or charge of the child, against the will of the father, mother or other person, commits an offence and shall, upon conviction, be liable to imprisonment for seven years.".

Amendment of s.137 of the principal Act

8. The principal Act is amended in section 137 (2) by deleting the words "sixteen years", immediately after the words "age of", and substituting therefor the words "eighteen years".

Substitution of s.138 of the principal Act

9. The principal Act is amended by deleting section 138 and substituting therefor a new section as follows—

"Sexual intercourse with a child

"138.— (1) Any male person who has sexual intercourse with a female child shall be guilty of a felony and shall, upon conviction, be liable to imprisonment for life.

(2) Any female person who has sexual intercourse with a male child shall be guilty of a felony and shall, upon conviction, be liable to imprisonment for life.

(3) It shall be a defence to a charge under subsection (1) or subsection (2) if it is proved to the court that the male person or female person so charged is a child and—

(*a*) the age difference between the person so charged and the female child or male child against whom the offence is alleged to have been committed is two years or less; and

(*b*) the female child or male child against whom the offence is alleged to have been committed consented to the sexual intercourse.".

Insertion of s. 138A into the principal Act

10. The principal Act is amended by inserting, immediately after section 138, a new section 138A as follows—

"Attempted sexual intercourse with a child

138A.—(1) Any male person who attempts to have sexual intercourse with a female child shall be guilty of a felony and shall, upon conviction, be liable to imprisonment for twenty-one years.

(2) Any female person who attempts to have sexual intercourse with a male child shall be guilty of a felony and shall, upon conviction, be liable to imprisonment for twenty-one years.

(2) It shall be a defence to a charge under subsection (1) or subsection (2) if it is proved to the court that the male person or female person so charged is a child and—

(*a*) the age difference between the person so charged and the female child or male child against whom the offence is alleged to have been committed is two years or less; and

(*b*) the female child or male child against whom the offence is alleged to have been committed consented to the attempted sexual intercourse.".

Substitution s. 139 of the principal Act

11. The principal Act is amended by deleting section 139 and substituting therefor a new section as follows—

"Sexual intercourse with a woman or girl with a mental disability

139.—Any man who, knowing a woman or a girl to be a person with a mental disability has or attempts to have sexual intercourse with the woman or girl, 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 has a mental disability, commits an offence and shall, upon conviction, be liable to imprisonment for life.

Insertion of ss.139A and 139B into the principal Act

12. The principal Act is amended by inserting, immediately after section 139, new sections 139A and 139B as follows—

"Sexual intercourse with a man or boy with a mental disability

139A. Any woman who, knowing a man or a boy to be a person with a mental disability has or attempts to have sexual intercourse with the man or boy under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the man or boy has a mental disability, commits an offence and shall, upon conviction, be liable to imprisonment for life.

"Definition of mental disability

139B. For the purposes of this Chapter, "person with a mental disability" means a person affected by any mental disorder including any disorder of the mind, to the extent that the person, at the time of the alleged offence is—

(*a*) unable to appreciate the nature or reasonably foresee the consequences of the sexual act;

(*b*) able to appreciate the nature of the act and reasonably foresee consequences of the act, but unable to act in accordance with the appreciation;

(*c*) unable to resist the commission of the act; or

(*d*) unable to communicate his or her unwillingness to participate in the act.".

Amendment of s.140 of the principal Act

13. The principal Act is amended in section 140 by deleting the words—

(*a*) "twenty-one years", in paragraph (*a*), immediately after the words "age of" and substituting therefor the words "eighteen years"; and

(*b*) "fourteen years" immediately after the words "imprisonment for" and substituting therefor the word "life".

Amendment of s.142 of the principal Act

14. The principal Act is amended in section 142 by deleting the words—

(*a*) "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years"; and

(*b*) "five years" immediately after the words "imprisonment for" and substituting therefor the words "twenty-one years".

Amendment of s.143 of the principal Act

15. The principal Act is amended in section 143 (1) by deleting the words "five years" immediately after the words "imprisonment for" and substituting therefor the words "twenty-one years".

Amendment of s.144 of the principal Act

16. The principal Act is amended in section 144 (3) by—

(*a*) inserting the word "either" immediately after the words; "and"; and

(*b*) deleting paragraphs (*a*), (*b*) and (*c*) and substituting therefor new paragraphs as follows—

"(*a*) is under the age of eighteen years; or

(*b*) if she is of or over the age of eighteen years, is so detained against her will.".

Substitution of s. 155 of the principal Act

17. The principal Act is amended by deleting section 155 and substituting therefor a new section as follows—

"Indecent assault of boys under eighteen years

155.—(1) Any person who unlawfully and indecently assaults a boy under the age of eighteen years shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

(2) It shall be no defence to a charge for an indecent assault on a boy under the age of eighteen years to prove that the boy consented to the act of indecency.".

Substitution s. 155A of the principal Act

18. The principal Act is amended by deleting section 155A and substituting therefor a new section as follows—

"Indecent assault against persons with a mental disability

155A. Any person who indecently assaults another person, knowing that other person to be a person with a mental disability, shall be guilty of an offence and shall, upon conviction, be liable to imprisonment for twenty-one years.".

Amendment of s.157 of the principal Act

19. The principal Act is amended in section 157—

(*a*) in the proviso to subsection (1), by deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years"; and

(*b*) in subsection (4), by deleting the words "twenty-one years" immediately after the words "age of" and substituting therefor the words "eighteen years".

Amendment of s.158 of the principal Act

20. The principal Act is amended in section 158 by—

(*a*) deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years";

(*b*) deleting the word "." at the end and substituting therefor the word ":"; and

(*c*) inserting a proviso thereto as follows—

"Provided that if it is alleged in the charge and proved that the male person is under the age of eighteen years, the offender shall be liable to imprisonment for life.".

Amendment of s.159A of the principal Act

21. The principal Act is amended in section 159A by deleting the words—

(*a*) "twenty-one years" immediately after the words "age of" and substituting therefor the words "eighteen years";

(*b*) "five years" immediately after the words "imprisonment for" and substituting therefor the words "life"; and

(*c*) "minors" in the marginal note, and substituting therefor the words "a child".

Insertion of s.159B into the principal Act

22. The principal Act is amended by inserting, immediately after section 159A, a new section 159B as follows—

"Abuse of position of trust or authority

159B. Any person who, being in a position of trust or authority towards another person takes advantage of that position or authority to have sexual intercourse with that other person, such sexual intercourse not amounting to rape or defilement, commits an offence and shall, upon conviction, be liable to imprisonment for seven years. ".

Amendment of s.160A of the principal Act

23. The principal Act is amended in section 160A by deleting—

(*a*) the definition of the word "child"; and

(*b*) in the definition of the words "offensive material" in paragraph (*b*), deleting the words "sixteen years" and substituting therefor the words "eighteen years".

Amendment of s.160B of the principal Act

24. The principal Act is amended in section 160B—

(*a*) in subsection (1), by deleting the words "fourteen years" immediately after the words "imprisonment for" and substituting therefor the words "twenty-one years";

(*b*) in subsection (2), by deleting the words "twenty-one years" immediately after the words "imprisonment for" and substituting therefor the word "life"; and

(*c*) by inserting a new subsection immediately after subsection (3), as follows—

"(4) It shall be a defence to a charge under subsection (1) if it is proved to the court that the person so charged is a child and—

(*a*) the age difference between the person so changed and the child against whom the offence is alleged to have been committed is two years or less; and

(*b*) the child against whom the offence is alleged to have been committed consented to the sexual activity.".

Amendment of s.160F of the principal Act

25. The principal Act is amended in section 160F by deleting the words "K100,000" in subsection (1)(*b*), immediately after the words "fine of" and substituting therefor the words "K10,000,000".

Amendment of s.160G of the principal Act

26. The principal Act is amended in section 160G by deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years".

Amendment of s.164 of the principal Act

27. The principal Act is amended in section 164 by deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years".

Amendment of s.165 of the principal Act

28. The principal Act is amended in section 165 by deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years".

Amendment of s.167 of the principal Act

29. The principal Act is amended in section 167(1), by deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years".

Insertion of Chapter XIXB into the principal Act

30. The principal Act is amended by inserting, immediately after Chapter XIXA, a new Chapter XIXB as follows—

"CHAPTER XIXB

TERRORISM

Terrorism

217B.—(1) Any person who carries out a terrorist act commits an offence and shall, upon conviction, be liable to imprisonment for life.

(2) Any person who aids, abets or attempts to carry out a terrorist act commits an offence and shall, upon conviction, be liable to imprisonment for life.

Provision of property or service for commission of a terrorist act

217C. Any person who provides, attempts to provide or causes another person to provide any property or service intending, knowing or having reasonable grounds to believe that the property or service may be used—

(*a*) by a terrorist or terrorist organization for any purpose; or

(*b*) to carry out a terrorist act or facilitate the carrying out of a terrorist act,

commits an offence and shall, upon conviction, be liable to imprisonment for life.

Acquisition or possession of property for commission of terrorist act

217D. Any person who solicits, acquires or possesses any property intending that it be used, or knowing that it may be used in whole or in part, to carry out a terrorist act, commits an offence and shall, upon conviction, be liable to imprisonment for life.

Recruitment of members of a terrorist organization

217E. Any person who knowingly recruits or facilitates the recruitment of another person—

(*a*) to be a member of a terrorist organization; or

(*b*) to carry out a terrorist act,

commits an offence and shall, upon conviction, be liable to imprisonment for life.

Providing or facilitating training for terrorists

217F.— (1) Any person who provides or facilitates the training of a member of a terrorist organization or any other person—

(*a*) intending that the knowledge and skills acquired be used to carry out a terrorist act; or

(*b*) knowing that the knowledge and skills acquired may be used to carry out a terrorist act,

commits an offence and shall, upon conviction, be liable to imprisonment for life.

(2) Any person who receives training for the purpose of carrying out a terrorist act commits an offence and shall, upon conviction, be liable to imprisonment for life.

Harbouring, concealing of, hindering, or interfering with arrest of persons committing terrorist acts

217G. Any person who—

(*a*) harbours or conceals another person; or

(*b*) prevents, hinders or interferes with the arrest of another person,

knowing or having reasonable grounds to believe that the other person—

(i) has carried out terrorist act;

(ii) intends to carry out a terrorist act; or

(iii) is a member of a terrorist organization,

commits an offence and shall, upon conviction, be liable to imprisonment for life.

Provision of weapons for commission of terrorist acts

217H Any person who knowingly offers to provide or provides a weapon to—

(*a*) a terrorist organization;

(*b*) a member of a terrorist organization; or

(*c*) any other person for use by that other person to carry out a terrorist act,

commits an offence and shall, upon conviction, be liable to imprisonment for life.

Jurisdiction in respect of terrorist offences committed outside Malaŵi

217I. Any person who—

(*a*) commits an offence under this chapter in another country; or

(*b*) while being in Malawi, carries out or aids or abets the carrying out of an offence under this chapter in another country,

may be tried and punished in Malawi as if the offence was wholly committed within the Republic.".

Amendment of s.219 of the principal Act

31. The principal Act is amended in section 219 by deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years".

Amendment of s.220 of the principal Act

32. The principal Act is amended in section 220 by deleting the words "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years".

Amendment of s.258 of the principal Act

33. The principal Act is amended in section 258 by deleting the words—

(*a*) "sixteen years" immediately after the words "age of" and substituting therefor the words "eighteen years"; and

(*b*) "of unsound mind" wherever they appear and substituting therefor the words "with a mental disability".

Amendment of s.265 of the principal Act

34. The principal Act is amended in section 265 by deleting—

(*a*) the words "under the age of sixteen years" immediately after the words "any child"; and

(*b*) the words "under sixteen years" in the marginal note.

Substitution of s. 331A of the principal Act

35. The principal Act is amended by deleting section 331A and substituting therefor a new section as follows—

"Money laundering

331A.—(1) Any person who, knowingly or who has reasonable grounds to believe that any property, including his own property, in whole or in part, directly or indirectly, represents proceeds of a predicate offence—

(*a*) converts or transfers the property with the aim of—

(i) concealing or disguising the illicit origin of that property; or

(ii) aiding any person, including himself, involved in the commission of the offence to evade the legal consequences thereof,

(*b*) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property;

(*c*) acquires, possesses or uses that property; or

(*d*) participates in, associates with or conspires to commit, attempts to commit or aids, abets or facilitates the commission of any act or omission referred to in paragraphs (*a*), (*b*) or (*c*),

commits an offence.

(2) A person who commits an offence under this section shall, upon conviction, be liable to—

(*a*) in the case of a natural person, to imprisonment for life; or

(*b*) in the case of a legal person, to a fine of K500,000,000 and revocation of his business licence.

(3) For purposes of this section "proceeds of a predicate offence" has the meaning ascribed to that term in the Financial Crimes Act.".

Cap 7:07

Passed in Parliament this twenty first day of November, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament