

# MALAWI

Last updated: 9 September 2016

## RULES/GENERAL LAWS

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| <b>General</b>                               | <b>1. The Constitution of the Republic of Malawi.</b><br><a href="http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/MALAWI-CONSTITUTION.pdf">http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/MALAWI-CONSTITUTION.pdf</a>  |
|  | <b>2. The Defence Act, 2004</b> (Chapter 12:01 of the Laws of Malawi).<br><a href="http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Malawi/malawi_defence_2004_en.pdf">http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Malawi/malawi_defence_2004_en.pdf</a>   |
|  | <b>3. Standing Orders for Peace of the Malawi Defence Force.</b>  |
|  | <b>4. UN rules on SEA</b> are implemented in the field through pre-deployment training, routine training, counselling and monitoring by Military Commanders and Military Police.  |
| <b>SEA: military offence?</b>                | Yes, Sexual exploitation and sexual abuse is prohibited in the <b>Malawi Defence Force Standing Orders for Peace (SOP)</b> . Anyone who contravenes, these Standing Orders can be charged with an offence under <b>section 45 of the Defence Act, 2004</b> .  |
| <b>Powers of the Commanding Officer (CO)</b> | The Commanding Officer has powers to promulgate rules, policies and to issue specific orders. Apart from contravening section 45 aforementioned, anyone defying the order of the CO may be charged with the offence under <b>section 43 of the Defence Force Act, 2004</b> .<br><b>See the Defence Force Orders, Commanding Officers' Part One Orders</b><br>The CO can investigate, prosecute and punish perpetrators of sexual exploitation and abuse.<br><b>See Defence Force (Summary Jurisdiction) Regulations</b> |

## INVESTIGATION

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| <b>Who can investigate?</b>                 | The Military Police, Regimental Police and anyone authorised by the CO. The Military Police has power to arrest military personnel and Civilian police has power to arrest where a civil offence has been committed.<br><b>See section 193 of the Defence Force Act, 2004</b> (Powers of the Military Police) |
| <b>National Investigation Officer (NIO)</b> | Only military police and regimental police are deployed with units and can conduct investigation on allegations of Sexual Exploitation and Abuse.   |

## PROSECUTION

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| <b>Referral</b>        | Military Police refer cases to Military Commanders and Public investigators refer cases to officers in charge of police units/stations.   |
| <b>Who can charge?</b> | The victim, his or her parents, guardian or next of kin as well as any witness can bring a charge of Sexual Exploitation and Abuse. The Military Commanders and Public Prosecutors can prosecute. |

## JUSTICE

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| <b>Military justice</b>          | Yes, <b>See Defence Force Act, 2004</b> .  |
| <b>Deployable Court Martial?</b> | Malawi has an established court martial system governed by the <b>Defence Force Act, 2004</b> . The Defence Force Act, 2004 applies extraterritorially and commanders can convene court martials anywhere, whether in peace time, in war zone or peace support mission area. |

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