

Malawi

## Anatomy Act

### Chapter 34:03

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# Anatomy Act

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# Malawi

## Anatomy Act

### Chapter 34:03

Commenced on 1 April 1991

*[This is the version of this document at 31 December 2017.]*

*[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.]*

*[34 of 1990; G.N. 39/1991]*

**An Act to make provision for the donation, examination and use of bodies, or parts of bodies, of deceased persons for educational, scientific, research, therapeutic or diagnostic purposes; to re-enact the law dealing with human tissue and to provide for matters incidental thereto or connected therewith**

## Part I – Preliminary

### 1. Short title

This Act may be cited as the Anatomy Act.

### 2. Interpretation

In this Act, unless the context otherwise requires—

“**approved school of anatomy**” means any school, college, hospital or other institution authorized under this Act to receive, acquire, preserve, issue or use the bodies of deceased persons for educational, scientific, therapeutic or diagnostic purposes;

“**body**” means the human body;

“**dentist**” means a person registered as such under the Medical Practitioners and Dentists Act;

*[Cap 36:01]*

“**examine anatomically**” includes dissection of a body;

“**medical practitioner**” means a person registered as such under the Medical Practitioners and Dentists Act;

*[Cap 36:01]*

“**scientific purposes**” means—

- (a) any medical or dental education or research; or
- (b) the advancement of medical or dental science;

“**therapeutic purposes**”, in relation to the use of tissue removed from the body of a person, means therapy of, including use in, the body of any other living person;

“**tissue**” means any human tissue including any human flesh, organ, bone, body fluid or derivative of any human tissue.



## Part II – Authority for anatomical examination of the body of a deceased person

### 3. Authority for anatomical examination of the body of a deceased person

- (1) If any person, either in writing signed by him at any time or orally in the presence of two or more witnesses during the illness from which he died—
  - (a) has directed or expressed the wish that his body after his death be examined anatomically; or
  - (b) has nominated any person to examine his body anatomically after his death,the person lawfully in possession of that person's body after his death shall, if such direction, wish or nomination is made known to him before he has disposed of the body, in writing authorize that the body be examined anatomically or, in the case of nomination, shall in writing authorize the person nominated to examine the body anatomically, in either case, in an approved school of anatomy, unless the person lawfully in possession of the body has reason to believe that the direction or nomination was withdrawn by the deceased, or that the surviving spouse or a close relative of the deceased person objects to the body being examined anatomically.
- (2) No authority shall be given under subsection (1) in respect of a body of a deceased person by a person lawfully in possession of the body for the purpose only of its cremation or interment.

### 4. Inquests, postmortems, etc.

Where a person has reason to believe that, in accordance with any written law—

- (a) an inquest may be required to be held on a body of a deceased person; or
- (b) a postmortem may be required to be carried out on a body of a deceased person; or
- (c) a body of a deceased person or any part of the body may be required to be dealt with or disposed of in any other manner prescribed by or under such written law or any other written law,

he shall not give authority under [section 3](#) in respect of that body or part thereof or act on such authority given by any other person.

### 5. Persons who may give authority in respect of bodies lying in hospitals, etc.

Where the body of a deceased person which is to be examined anatomically lies in a hospital, nursing home, prison or other institution, authority required to be given under [section 3](#) may be given by the person having the control and management of that institution or by a person duly authorized to act on behalf of such person or by a medical practitioner serving at, or visiting, the institution.

### 6. Examination of bodies to be under supervision of a medical practitioner or a dentist

- (1) No examination of the body of a deceased person or any part thereof required to be conducted in accordance with authority given under this Act, shall be carried out otherwise than by or in accordance with the instructions of, and under supervision by, a medical practitioner or dentist who shall first have satisfied himself by his own personal examination of the body that life is extinct.
- (2) No removal of a part of the body of a deceased person in accordance with authority given under this Act shall be effected except by a medical practitioner or a dentist who shall first have satisfied himself by his own personal examination of the body that life is extinct.



## **7. Conditions to be complied with before a body is examined**

- (1) The body of a deceased person shall not be examined anatomically or removed for anatomical examination from the place where the person died unless—
  - (a) written notice of the intended anatomical examination has been given to the person who is in lawful possession of the body; and
  - (b) the person to examine the body or any part thereof or the person to remove the body for anatomical examination, has first obtained a death certificate in accordance with subsection (2); and
  - (c) the person removing the body or any part thereof has first placed it in a decent coffin or in a manner acceptable under the culture or religion of the deceased person.
- (2) The death certificate required for the purpose of subsection (1)(b) shall—
  - (a) state the cause of the death;
  - (b) be signed by the medical practitioner who was present at the death of the deceased or attended the deceased person during his last illness, not being the person referred to in subsection (1)(b); or
  - (c) where there is no such medical practitioner as is referred to in paragraph (b) be signed by a medical practitioner called in soon after the death of the deceased to view the body who shall state in the certificate the manner or cause of death according to the best of his knowledge and belief.
- (3) Where the death certificate is obtained by the person who removes the body for anatomical examination, such person, on delivering the body for anatomical examination, shall deliver a copy of the certificate to the person who receives the body.

## **8. Disposal of body anatomically examined and notice thereof**

- (1) Any person who receives the body of a deceased person for anatomical examination shall, except as provided in subsection (3), make provision for such body, after having been examined anatomically, to be decently cremated or decently interred in consecrated ground or in some public burial ground devoted to persons of the deceased person's culture or religion, or in any other manner provided by law.
- (2) After a body has been cremated or interred in accordance with subsection (1), the person who received the body for anatomical examination shall as soon as possible give written notice of such cremation or interment to the person who was in lawful possession of the body.
- (3) Where a body which is examined anatomically is the body of a person who has been executed pursuant to death warrant, the person to whom the warrant was directed shall make provision for the body, after having been examined anatomically, to be disposed of in accordance with the directions contained in the warrant.
- (4) A person who contravenes this section shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a period of one year.

## **9. Illegal taking or removing of parts of a deceased person**

- (1) Where authority under this Act has been given for the body of a deceased person to be anatomically examined, no person shall—
  - (a) take or remove from that body any part thereof before the body is received into an approved school of anatomy;



- (b) take or remove from an approved school of anatomy any part of the body except for cremation or burial or for educational, scientific, research, therapeutic or diagnostic purposes permissible under this Act;
  - (c) receive any part of the body taken or removed in contravention of paragraph (a) or (b).
- (2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a period of one year.

#### **10. Postmortem examination of a body**

Any medical practitioner may, with the prior approval of a close relative of the deceased person or, in case where a close relative is not known, the police officer in charge of a police station, carry out a postmortem examination on the body of a deceased person before its burial or examination in order to establish the cause of death.

#### **11. Removal of tissue from bodies of living persons**

Any medical practitioner or any other authorized person may remove tissue from the body of a living person for educational, scientific, research, therapeutic or diagnostic purposes with the consent of—

- (a) that person or his spouse or close relative;
- (b) in the case of a minor or a mentally handicapped person, with the consent of a parent, guardian or close relative:

Provided that, in either case, the close relative is not himself a minor or a mentally handicapped person.

### **Part III – Conduct of anatomical examinations and approved schools of anatomy**

#### **12. Conduct of anatomical examination of bodies**

- (1) No anatomical examination in an approved school of anatomy shall be conducted, except by—
  - (a) a medical practitioner or dentist;
  - (b) a professor, lecturer or teacher of anatomy;
  - (c) a person registered as a student of any approved school of anatomy; or
  - (d) a person who practises a profession or calling allied to medicine and whose work is concerned closely with the prevention or treatment of physical or mental ailment in human beings:

Provided that in the case of a person referred to in paragraphs (c) and (d) he shall at all times act under the supervision of a person specified in paragraph (a) or (b).

- (2) Authority given under this section shall, subject to this Act, entitle the person to whom it is given to conduct anatomical examination in an approved school of anatomy and to receive for the purpose of such examination, the body of a deceased person.
- (3) A person who—
  - (a) not being qualified under this section to do so, examines anatomically or receives for the purpose of anatomical examination any body of a deceased person;
  - (b) whether or not qualified under this section, examines anatomically the body of a deceased person at a place other than an approved school of anatomy; or



- (c) practises anatomy in contravention, or not in accordance with the requirements, of this Act, shall be guilty of an offence and liable to a fine of three thousand Kwacha and to imprisonment for a period of two years.

### 13. Designation of schools of anatomy

- (1) The Minister may, by order published in the *Gazette*, designate any school, college, hospital or any other similar institution to be an approved school of anatomy and may in such order prescribe any conditions or requirements to be fulfilled by an institution so designated.
- (2) A person—
  - (a) in charge of any premises which are not an approved school of anatomy, who permits anatomy to be practised at such premises; or
  - (b) in charge of an approved school of anatomy who permits anatomy to be practised at such premises by any person not authorized in accordance with this Act to practise anatomy,shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

## Part IV – Miscellaneous provisions

### 14. Acquisition, preservation, receiving, use, etc., by authorized institutions

- (1) The Minister may, by order published in the *Gazette*, authorize institutions specified in the order to receive, acquire, preserve, use or issue any tissue which has been lawfully removed from the body of a deceased person or a living person.
- (2) An institution authorized under subsection (1) may at any time issue any tissue in its possession to an approved school of anatomy, a medical practitioner, a dentist or any person authorized under this Act for any educational, scientific, research, therapeutic or diagnostic purposes.

### 15. Control over the body or tissue

A person to whom the body of a deceased person or tissue is donated or who acquires any body or tissue under this Act shall, upon delivery of the body or tissue to him, be vested, subject to this Act, with the exclusive control over the body or tissue.

### 16. Prohibition of sale of body or tissue

A person who—

- (a) sells or buys the body of a deceased person or a tissue removed from the body of a deceased or living person; or
- (b) for gain or profit, supplies to any person for educational, scientific, research, therapeutic or diagnostic purposes, or any other purpose whatsoever, tissue removed from the body of a deceased or living person,

shall be guilty of an offence and liable to a fine of fifteen thousand Kwacha and to imprisonment for a period of ten years.



## 17. Prohibition of publication of identity of donor or recipient of a body or tissue

- (1) Subject to subsection (2), no person shall publish to any other person any fact whereby the identity of—
  - (a) the deceased person; or
  - (b) the donor of the body of a deceased person; or
  - (c) the donor of the tissue removed from the body of a deceased or living person; or
  - (d) the recipient of any tissue removed from the body of a deceased person or the body of a living person,unless such donor, living person, recipient or, prior to his death, the deceased consented in writing to such publication:

Provided that where the recipient dies without giving consent or the deceased did not give consent but such recipient or deceased did not indicate that he would not be prepared to give consent, consent may be given in writing signed by a close relative who is himself not a minor or a mentally handicapped person.
- (2) This section shall not apply in respect of any communication reasonably necessary in connexion with the removal, storage or use of the tissue or body.

## 18. Offences and penalties

- (1) A person who—
  - (a) removes any tissue from the body of a deceased person or the body of a living person otherwise than in accordance with this Act or any other written law or, in pursuance of a profession or calling he lawfully practises; or
  - (b) conducts a postmortem on the body of a deceased person otherwise than in accordance with this Act or any other written law; or
  - (c) not being the person empowered to do so under this Act, purports to give authority for the body of a deceased person or for any tissue to be examined anatomically;
  - (d) being lawfully in possession of the body of a deceased person or of any tissue, delivers up such possession to another person knowing or having reason to believe that the body or tissue will be examined anatomically otherwise than in accordance with this Act; and
  - (e) receives for anatomical examination or examines anatomically, the body of a deceased person or any tissue in respect of which authority under this Act has not been given,shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

## 19. Documentation

- (1) A person who sends to another person the body of a deceased person for anatomical examination under this Act shall, along with the body, send to such other person a copy of the death certificate referred to in [section 7](#).
- (2) A person who receives the body of a deceased person for anatomical examination under this Act shall enter or cause to be entered, in a book to be kept by him for that purpose, the following particulars—
  - (a) the day and hour he has received the body;
  - (b) the name and address of the person who delivered the body;



- (c) the date and place of death;
  - (d) sex, name, age and last place of abode of the deceased person,
- and shall send to the sender of the body a return showing all those particulars and shall forward a copy of the return to the Minister.
- (3) Any person who contravenes this section shall be guilty of an offence and liable to a fine of five hundred Kwacha and to imprisonment for a period of one year.

## 20. Inspection

- (1) A person authorized by the Minister in writing to do so, or any police officer of or above the rank of sub-inspector may—
  - (a) upon production of his proper identity, enter and inspect at any reasonable time any approved school of anatomy and inspect any body of a deceased person which has been received for anatomical examination and inspect any book which is required to be kept under [section 19](#) (2);
  - (b) require any person who authorized the body of a deceased person to be examined anatomically or any person who received such body for the purpose of examining it anatomically, to give such information and produce any relevant documents as he may reasonably require for the purpose of ascertaining that the provisions of this Act are complied with.
- (2) A person who resists, hinders or obstructs any person acting in pursuance of subsection (1) or who wilfully withholds any information or gives any information which he knows or has reason to believe that it is false or misleading, shall be guilty of an offence and liable to a fine of two thousand Kwacha and to imprisonment for a period of one year.

## 21. Dispatch of bodies or tissue between Mala#i and other countries

- (1) Where the Minister is satisfied that arrangements of a reciprocal nature or effect have been or are to be made by the competent authority in a foreign country, he may make arrangements with that authority—
  - (a) for the dispatch from Mala#i to that country of a body of a deceased person or any tissue for anatomical examination in a school of anatomy established under the laws of that country; or
  - (b) for the receipt in Mala#i of the body of a deceased person or tissue dispatched from that country for anatomical examination in an approved school of anatomy in Mala#i.
- (2) Any arrangement made under subsection (1) shall include a requirement that—
  - (a) the person in charge of the school of anatomy where the body of a deceased person or tissue dispatched from Mala#i be examined anatomically shall make provision that the body, after having been anatomically examined, be decently cremated or decently interred in consecrated ground or in some public burial ground in use for persons of the deceased person's culture or religion; and
  - (b) a written confirmation of the cremation or interment of the body or disposal of tissue shall be transmitted to the Minister soon after the body has been cremated or after the tissue has been disposed of.
- (3) Any person in lawful possession of the body of a deceased person may in writing authorize any other person to receive the body for the purpose of—
  - (a) dispatching it to a foreign country; or



- (b) conveying it to an approved school of anatomy, pursuant to arrangements made under this section:

Provided that no body of a deceased person shall be dispatched or conveyed by the person so authorized, unless it is accompanied with a death certificate given under [section 7](#) or under any relevant written law of the foreign country concerned.

## **22. Prohibition against unauthorized exportation of tissue**

- (1) No person shall dispatch to a person outside Mala#i for histo-pathological examination any tissue removed from a person in Mala#i except under the authority of a pathologist or of any person duly designated by a pathologist to act, in that respect, on his behalf.
- (2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of five thousand Kwacha and to imprisonment for a period of three years.

## **23. Regulations**

The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may make provision for —

- (a) the conduct, equipment, inspection and control of approved schools of anatomy;
- (b) prescribing the form of application, authority, certificate and return to be used under this Act;
- (c) prescribing the fees to be paid under this Act;
- (d) relating to the receipt, preservation, use, possession, issue or disposal of any tissue removed from the body of a deceased person or a living person under this Act;
- (e) prescribing the requirements with which an authorized institution shall comply; and
- (f) any other matters required to be prescribed under this Act.

## **24. Repeal of Cap. 34:03**

The Human Tissue Act is hereby repealed.