



MALAWI GOVERNMENT

CUSTOMARY LAND ACT

(No. 19 OF 2016)

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ACT

No. 19 of 2016

I assent

PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

1st September, 2016

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—ADMINISTRATION AND MANAGEMENT OF CUSTOMARY LAND

3. Customary land committees
4. Administration and management of customary land
5. Customary land committees
6. Functions of a land committee
7. Procedure for land committees
8. Land clerks
9. Advice by local government authorities
10. Complaints concerning management of customary land
11. Joint customary land use agreements between land committees
12. Joint customary land use agreements between Traditional Land Management Areas
13. Division of a Traditional Land Management Area
14. Communal customary land
15. Occupation of customary land by organizations and other bodies
16. Conflict of interest

PART III—TRANSFERS

17. Transfer of customary land to Government or reserved land

SECTION

18. Transfer of Government or reserved land into customary land

PART IV—DECLARATION OF HAZARDOUS LAND

19. Declaration of hazardous land

PART V—GRANT AND MANAGEMENT OF CUSTOMARY ESTATES

20. Customary estate
21. Application for a customary estate
22. Determination of application of customary estate
23. Procedure on grant of customary estate
24. Payment of fees on grant of customary estate to an organization or body
25. Customary estate lease and sublease
26. Rent
27. Conditions for grant of customary estate
28. Approval required for disposal of customary estate
29. Surrender of customary estate
30. Re-grant of surrendered customary estate
31. Breach of condition for customary estate
32. Fine for breach of condition
33. Revocation of customary estate granted to an organization or body
34. Abandonment of a customary estate
35. Application for relief

PART VI—ADJUDICATION OF INTEREST IN CUSTOMARY LAND

36. Grant of customary estate require adjudication
37. Types of adjudication
38. Area adjudication
39. Procedure for area adjudication
40. Appeal against area adjudication
41. District adjudication
42. Spot adjudication
43. Guiding principles for adjudication

PART VII—DISPUTE SETTLEMENT

44. Customary land tribunals
45. Appeals from customary land tribunals
46. District land tribunals
47. Appeals from district land tribunals

SECTION

- 48. Central Land Board
- 49. Guiding principles for land tribunals

PART VIII—MISCELLANEOUS

- 50. Effect of disposition of customary land
- 51. Register of customary land
- 52. Corrupt transactions
- 53. Regulations
- 54. Repeal and savings

An Act to provide for the management and administration of customary land and for matters connected therewith and incidental thereto

PART I—PRELIMINARY

1. This Act may be cited as the Customary Land Act, 2016 and shall come into operation on a date the Minister may appoint, by notice published in the *Gazette*.

Short title and
commence-
ment

2. In this Act, unless the context otherwise requires—

Interpretation

“adjudication officer” means any person appointed to carry out adjudication functions pursuant to section 42;

“Central Land Board” means a tribunal established under section 48;

“Commissioner” bears the meaning ascribed to that term in the Land Act, 2016;

Act No. 16 of
2016

“communal customary land” means customary land set aside as such under section 14;

“customary estate” bears the meaning ascribed to that term in the Land Act, 2016;

Act No. 16 of
2016

“customary land use agreement” means an agreement adopted and approved pursuant section 11;

“customary land” means all land declared as customary land in accordance with section 3;

“customary land committee” means a committee appointed under section 5;

“customary land tribunal” means a tribunal established under section 44;

“district land tribunal” means a tribunal established under section 46;

“hazardous land” means land declared to be hazardous under section 19;

“land clerk” means a clerk appointed under section 8;

Cap 58:01

“Registrar” means the Land Registrar or Assistant Land Registrar in charge of a District Registry established under the Registered Land Act for a registration district in which the Traditional Land Management Area is situated;

“spot adjudication” means adjudication pursuant to section 42;

Act No 16 of
2016

“Traditional Land Management Area” bears the meaning ascribed to that term in the Land Act, 2016.

PART II—ADMINISTRATION AND MANAGEMENT OF CUSTOMARY LAND

Customary
Land

3.—(1) Customary land shall consist of—

(a) land within the boundaries of a Traditional Land Management Area other than Government or reserved land;

Act No. 16 of
2016

(b) land designated as customary land under the Land Act, 2016;

(c) land, the boundaries of which have been demarcated as customary land under any written law or administrative procedure in force at any time before this Act came into operation whether that demarcation has been formally approved or published in the *gazette*; and

(d) land, the boundaries of which have been agreed upon by a land committee claiming jurisdiction over that land.

(2) The Commissioner shall issue a certificate of customary land, in the prescribed form, for every Traditional Land Management Area in respect of which the boundaries to the area have been demarcated or agreed in accordance with this section or under any law or administrative procedure referred to in this section.

(3) A certificate of customary land in a Traditional Land Management Area shall—

(a) be issued in the name of a Traditional Authority having jurisdiction in the area;

(b) confer upon land committees in that area, the functions of management of customary land; and

(c) affirm the occupation and use of customary land by the persons in the Traditional Land Management Area in accordance with the customary law applicable to land in the area.

(4) It shall be the responsibility of the Traditional Authority, at all times, to which a certificate of customary land has been issued to maintain and to keep secure the certificate of customary land.

(5) Where the boundaries of a Traditional Land Management Area are altered or amended, the Commissioner shall direct the Traditional Authority responsible for the area where the boundaries have been altered or amended, to send to the Commissioner the certificate of customary land for endorsement of the alteration or amendment of the boundaries, and the Traditional Authority shall comply with that direction.

(6) The Commissioner shall maintain a register of Traditional Land Management Areas in accordance with prescribed rules.

(7) Reference to the boundaries of Traditional Land Management Areas in this Part shall be to general boundaries.

4. Land committees shall, subject to the provisions of this Act, be responsible for the management of all customary land in a Traditional Land Management Area.

Administration and management of customary land

5.—(1) There shall be established in each Traditional Land Management Area, customary land committees at a group village headman level.

Customary land committees

(2) A land committee shall consist of—

- (a) a group village headman who shall be the chairperson;
- (b) six other persons elected by and from within the community, at least three of whom shall be women.

(3) A member of a customary land committee shall hold office for a term of three years, and shall be eligible for election for a further term of three years.

(4) A member of a customary land committee shall vacate office if he—

- (a) resigns;
- (b) is convicted of any offence involving dishonesty or moral turpitude;
- (c) is dismissed for failure to declare interest pursuant to section 16; or
- (d) becomes incapable to perform his duties as a result of any disability.

6.—(1) A land committee shall manage the customary land within its area of jurisdiction, on trust, as if the committee were a trustee of and the residents in the area were beneficiaries under a trust of the customary land.

Functions of the land committee

(2) In the management of customary land, a land committee shall have regard to—

(a) the principle of sustainable development in the management of customary land and the relationship between land use, natural resources and the environment contiguous to the customary land;

(b) the need to consult and take into account the views and, where it is so provided, comply with any decisions or orders of any public authority having jurisdiction over any matter in the area where the customary land is situated; and

(c) the need to consult, and take into account the views of other local government authorities having jurisdiction in the area where the customary land is situated.

(3) A land committee shall not allocate land or grant a customary estate without prior approval of the relevant Traditional Authority whose approval shall not be unreasonably withheld.

(4) The Commissioner may give any advice, either generally to all land committees, or to a specific land committee, on the management of customary land which he considers necessary or desirable and all land committees to which that advice is given shall comply with that advice.

Procedure for
land
committees

7. A land committee shall follow the procedure prescribed by the Minister.

Land clerks

8.—(1) There shall be appointed a land clerk for each Traditional Land Management Area to serve as a secretary to any land committee appointed for the purposes of this Act.

(2) The land clerk shall be an employee of a local government authority having jurisdiction in that area and shall—

(a) possess a minimum of a Malawi School Certificate of Education, or its equivalent;

(b) be trained in land tenure management issues; and

(c) be competent in basic map preparation and land use planning.

(3) A land clerk shall have the duty to—

(a) carry out such survey work as may be required in the execution of the allocation process in accordance with the Land Survey Act, 2016;

(b) prepare or cause to be prepared a basic map for each Traditional Land Management Area in accordance with the Land Survey Act, 2016;

Act No. 18 of
2016

Act No. 18 of
2016

(c) maintain a register of land transactions occurring within a Traditional Land Management Area in accordance with the Land Survey Act, 2016; Act No. 18. of 2016

(d) prepare land use plans in accordance with the Physical Planning Act, 2016; Act No. 17 of 2016

(e) provide technical advice on land matters to members of the land committee; and

(f) monitor compliance with this Act and the Registered Land Act. Cap. 58:01

9.—(1) A local government authority may, on the basis of guidelines issued by the Commissioner, advise and guide any land committee situated within its area of jurisdiction concerning the management by that land committee of customary land, either in response to a request for that advice and guidance or of its own motion, and any land committee to which that advice and guidance is given shall comply with the advice and guidance. Advice by local government authorities

(2) No advice and guidance given by a local government authority shall contradict, or conflict with, any advice given by the Commissioner under section 6 of this Act and section 4 of the Physical Planning Act, 2016. Act No. 17 of 2016

10.—(1) Where a land committee is not managing customary land in accordance with this Act and other relevant laws or with regard to the duties applicable to a trustee, any person in the relevant Traditional Land Management Area may lodge a complaint with a local government authority responsible for the area. Complaints concerning management of customary land

(2) The local government authority shall inform the Commissioner of the matter and subject to any agreement, he may reach with the local government authority, the local government authority shall either—

(a) advise the complainant to amicably settle the matter by using the machinery of a Traditional Authority to resolve the issue;

(b) through a meeting of persons in the Traditional Land Management Area, use its best endeavours to resolve the issue and advise the land committee as to its future conduct in the management of customary land;

(c) request the Commissioner to issue a directive to the land committee on the management of the customary land; or

(d) recommend to the Commissioner the institution of an inquiry to investigate a complaint and make recommendations on it.

(3) An inquiry instituted under subsection (1) (d) may recommend to the Minister the dissolution of a land committee and the appointment of a new committee.

(4) Where the Commissioner, or an inquiry, determines that the land committee has, in relation to customary land, taken an action which is contrary to law, the Commissioner shall take all necessary action to re-establish the lawful management of the customary land and the proper allocation of interests in that customary land.

(5) The Minister may, in consultation with the Minister responsible for local government, by regulations, make arrangements for the management of customary land jointly between-

(a) two or more Traditional Land Management Areas;

(b) one or more Traditional Land Management Areas and the local government authority having jurisdiction in the area where the Traditional Land Management Area or Areas which are to be part of an arrangement of joint management are situate; or

(c) one or more Traditional Land Management Areas and an urban authority within whose boundaries that Traditional Land Management Area or Areas are situate.

(6) A person who is aggrieved by the management of customary land by a land committee, including management by a land committee as part of any arrangement for joint management, may refer the matter to the customary land tribunal for resolution.

Joint customary
land use
agreements
between land
committees

11.—(1) In the exercise of the powers of management, a land committee shall have powers to enter into an agreement, to be known as a "customary land use agreement" with any other land committee within a Traditional Land Management Area concerning the use by any one or more groups of persons, of land traditionally used by those groups, being land which is partly within the jurisdiction of one land committee and partly within the jurisdiction of another land committee with which an agreement is to be entered into and the agreement may be amended, modified or varied, from time to time.

(2) Where the land committee intends to enter into an agreement under subsection (1), the land committee shall—

(a) convene one or more meetings of the groups of persons using the land which is to be the subject of the agreement—

(i) to give the groups an opportunity to make representations about their use of land and the content of any agreement about that use; and

(ii) explain the nature, purpose and proposed content of that agreement to those groups;

(b) prepare a draft agreement which shall take into account any representations made at any meeting convened under paragraph (a) (i); and

(c) inform the Traditional Authority responsible for the Traditional Land Management Area and submit the draft agreement for his approval.

(3) An agreement made in accordance with this section shall not take effect unless it is approved by the Traditional Authority responsible for the Traditional Land Management Area.

(4) An agreement made under this section may include matters concerning—

(a) the boundaries of the land covered by the agreement;

(b) the use of the land, or parts of it, by different groups of persons, and the periods of time when that group may use the land or part of it, including arrangement for the dual use of land or part of it by one group or more groups of persons using the land for different purposes at the same time;

(c) the nature and scope of any rights to, or interests in, land recognized by the rules of customary law applicable to the land covered by the agreement, and where more than one set of rules of customary law are applicable to that land, the manner of resolving any conflict between the set of rules;

(d) the manner of resolving disputes about the use of the land covered by the agreement; or

(e) any other matters which may be prescribed, or which the land committee considers necessary or desirable.

12.—(1) In the exercise of the powers of management, a Traditional Authority shall have power to enter into an agreement with another Traditional Authority concerning the use by any one or more groups of persons, of land traditionally used by those groups, being the land which is partly within the jurisdiction of one Traditional Land Management Area and partly within the jurisdiction of another Traditional Land Management Area with respect to which an agreement is to be entered into, and the agreement may be amended, modified or varied from time to time.

Joint custom-
ary land use
agreement
between
Traditional
Land
Management
Areas

(2) Where Traditional Authorities intend to enter into an agreement under subsection (1), the Traditional Authorities shall inform the local government authority or other authorities who have jurisdiction in the area where the land covered by the proposed agreement is located.

Division of a
Traditional
Land
Management
Area

13.—(1) A Traditional Land Management Area shall be divided into—

(a) land which is occupied and used or available for occupation and use on a communal or public basis, to be known as communal land;

(b) land which is occupied or used by an individual or family or a group of persons under customary law; or

(c) land which may be available for communal or individual occupation and use through allocation by a land committee in accordance with the provisions of this Part.

(2) Customary land referred to in subsection (1) (b) and (c) may be made the subject of a grant of a customary estate, in accordance with the provisions of this Part, by a land committee to the occupier of that land if the occupier is a citizen of Malawi, or to any person who is a citizen of Malawi.

(3) Customary land referred to in subsection (1) (c) may be made the subject of a derivative right granted by a land committee in accordance with the provisions of this Part.

Communal
customary land

14.—(1) A land committee shall determine a portion of customary land to be set aside as communal customary land, and the intended purpose of the portion.

(2) A local government authority shall provide advice and guidance to a land committee, through a land clerk, on the exercise of its functions under this section.

(3) A land committee shall maintain a register of communal customary land in accordance with any rules which may be prescribed.

(4) Any land—

(a) which has been set aside by a land committee for communal or public occupation and use; or

(b) which is or has been, since the formation of a Traditional Land Management Area, habitually used whether as a matter of practice or under customary law or regarded as available for use as communal or public land before this Act came into force,

shall be deemed to be communal land under this Act.

Occupation of
customary land
by
organizations
and bodies

15.—(1) Where, at the commencement of this Act, any organization or body occupies customary land under a lease, that lease shall, notwithstanding that it exists in Traditional Land Management Area, continue to be a lease for the remainder of its term.

(2) Subject to section 11 of the Land Act, 2016 relating to the disposition of leases, the Commissioner shall continue to be responsible for the management of leases to which this section applies. Act No. 16 of 2016

(3) Any organization or body which wishes to obtain a lease of customary land after the commencement of this Act may apply to a land committee responsible for that land, and the land committee shall recommend to the Commissioner for the grant or refusal of the lease.

(4) Any association—

(a) of persons formed in accordance with customary law for the purpose of occupying, using and managing land; or

(b) which is recognized within the community of which it is a part as an association of persons formed to occupy, use and manage land in an urban or peri-urban area,

shall, if the persons forming the association register it in accordance with the provisions of the Trustees Incorporation Act, be recognized under this Act. Cap. 5:03

(5) For the purposes of this section, an organization or body includes—

(a) a Government department, any office or part of it;

(b) a statutory or other parastatal body, any office, part, division or its subsidiary; or

(c) a body corporate, a majority of whose members or shareholders are citizens registered or licensed to operate under any written law for the time being in force in Malawi.

16.—(1) Where any matter concerning land in which any member of a land committee exercising functions under this Act or a member of his immediate family has an interest, comes to that member of a land committee for his advice, assistance or decision, the member shall not exercise any functions under this Act in respect of that land. Conflict of interest

(2) Where a conflict of interest arises in respect of administration of customary land, any member of a land committee affected shall declare his interest and shall take no further part nor attend any meeting of the land committee where the land which is subject of his interest is on the agenda, and any person who fails to declare his interest or who contravenes this provision shall render himself liable to removal from the land committee.

(3) For purposes of this section, “immediate family” includes any person related to a member as—

- (a) father, mother, father in-law or mother in-law;
- (b) son, daughter, son in-law or daughter in-law;
- (c) spouse;
- (d) brother, sister, brother in-law or sister in-law; or
- (e) nephew or niece,

and where the member has more than one spouse, shall include all spouses and all in-laws.

PART III—TRANSFERS

Transfer of
customary land
to Government
or reserved land

17.—(1) Where the Minister intends to transfer any customary land in a Traditional Land Management Area to Government or reserve land for public interest, he may direct the Commissioner to proceed in accordance with the provisions of this section.

(2) For the purposes of subsection (1), “public interest” includes investments of national interest.

(3) The Minister shall cause to be published in the *Gazette* and sent to the land committee having jurisdiction over the land which is the subject of the proposed transfer, a notice specifying—

(a) the location of the area of the customary land to be transferred;

(b) the extent of the boundaries of the customary land to be transferred;

(c) a brief statement of the reasons for the proposed transfer; and

(d) the date, being not less than ninety days from the date of the publication of the notice, when the Minister may exercise his power to transfer the land or a part of it.

(4) Where any portion of the customary land to be transferred has been allocated to a person or a group of persons under a customary estate or a derivative right to use the land, the land committee shall inform those persons or, where any one of those persons is absent, a member of the family occupying or using the land with that person, of the contents of the notice.

(5) Any person referred to in subsection (4) may make representations to the Commissioner and to the land committee on the proposed transfer of the land and the person to whom those representations are made shall take them into account in any decision or recommendation that he may make on the proposed transfer.

(6) The land committee shall prepare and submit details of the land to be transferred to an assembly of persons in the Traditional Land Management Area for its information.

(7) The Commissioner or an authorized officer shall attend a meeting of the land committee or an assembly of persons in a Traditional Land Management Area, as the case may be, to explain the reasons for the proposed transfer and answer questions thereon and any person who, or a representative of any organization which, is proposing to use and occupy the land under a lease, at the invitation of the land committee or the assembly of persons as the case may be, may address the meeting and answer questions, if any about the proposed use of land.

(8) The customary land shall be transferred subject to—

(a) payment of appropriate compensation as assessed by a registered valuer and agreed upon between—

- (i) the land committee and the Commissioner; or
- (ii) where subsections (4) and (10) apply, the persons referred to in those subsections and the Commissioner; or

(b) if Government or reserved land is to be exchanged with customary land which is the subject of the transfer, Government will identify an alternative piece of land to be transferred to the Traditional Land Management Area or the affected persons as the case may be.

(9) Where the relevant body under subsection (6) has been notified, the Minister may exercise his power to transfer that customary land or part of it to Government or reserved land.

(10) Where the customary land which is the subject of the transfer or any part of it is occupied by persons to whom subsection (4) applies, the Minister shall, determine whether those persons may continue to occupy and use the land, subject to any terms and conditions, which he may impose, or whether the rights of those persons shall be compulsorily acquired, subject to the payment of compensation.

(11) The Minister may direct that any compensation payable under this section shall be paid by the person to whom or an organization to which the customary land has been transferred to and is granted under a lease.

(12) A transfer of customary land to Government land or reserved land shall be notified in the *Gazette* and shall come into effect thirty days after the date of the publication of the notice.

Transfer of
Government
land or reserved
land into
customary land
Act No. 16. of
2016

18. The Minister may direct the transfer of any area of Government land or reserved land to customary land subject to the Land Act, 2016.

PART IV—DECLARATION OF HAZARDOUS LAND

Declaration of
hazardous land

19.—(1) The Minister may declare any customary land in a Traditional Land Management Area to be hazardous land in accordance with the provisions of this section.

(2) Notwithstanding subsection (1), any local government authority having jurisdiction in any village may advise the Minister to declare any customary land as hazardous land if in its opinion it is necessary to do so.

(3) For the purposes of this section, “hazardous land” means land the development of which is likely to pose danger to life or to lead to the degradation of, or environmental destruction on, that or contiguous land, and includes—

(a) wetlands and offshore island in the lakes and other water bodies;

(b) land designated or used for the dumping of hazardous waste;

(c) land within sixty metres of a river bank or the shoreline of an inland lake or such other distance as the Minister may specify;

(d) land slopes with a gradient exceeding any angle which the Minister shall, after taking account of proper scientific advice, specify;

(e) land specified by an appropriate authority as land which should not be developed on account of its fragile nature; or

(f) land specified by an appropriate authority as being land which should not be developed on account of its environmental significance.

(4) Where the Minister considers that an area of land should be declared to be hazardous land, in this section referred to as “proposed hazardous land”, the Minister shall publish a notice in the *Gazette* specifying—

(a) the location of the proposed hazardous land;

(b) the boundaries and extent of the proposed hazardous land;

(c) a brief statement of the reasons of the proposed declaration;
and

(d) the date, being not less than sixty days from the date of the publication of the notice, when the declaration may be made.

(5) A copy of the notice referred to in subsection (4) shall be—

(a) served on all persons occupying and using the proposed hazardous land in a manner and form as will be understandable to those persons;

(b) served on all local government authorities having jurisdiction in the area of the proposed hazardous land; and

(c) put up in conspicuous places within the area of the proposed hazardous land.

(6)—(a) all persons and authorities on whom a notice has been served;

(b) all persons on whom, and organizations on which, a notice should have been served but was not; and

(c) any other person or organization with an interest in the proposed hazardous land,

may, within thirty days after the date of service of notice, make representations to the Commissioner on the proposed declaration, and the Commissioner shall hear and record the representations, and take them into account in determining whether to recommend to the Minister that the land, or any part of the land, be declared to be hazardous land.

(7) Where the Minister, after considering a report prepared by the Commissioner under subsection (6), determines that the proposed hazardous land or any part thereof should be declared to be hazardous land, he may, subject to subsection (8), make a declaration accordingly.

(8) Where the proposed hazardous land or part thereof is occupied and used by any person under a lease or customary estate, the Minister shall, if he considers that the land or a part of the land should be declared to be hazardous land, declare the land to be hazardous land, and any such declaration shall operate to compulsorily acquire any interest in that land without payment of any compensation therefor.

(9) A notice of a declaration of hazardous land shall be published in the *Gazette* and shall come into force thirty days after the date of the publication of the notice.

PART V—GRANT AND MANAGEMENT OF CUSTOMARY ESTATES

20.—(1) A customary estate shall be allocated by a land committee to—

Customary
estate

(a) a citizen of Malawi, or a family of citizens of Malawi;

(b) a group of two or more citizens of Malawi whether associated together under any law or not; or

(c) a partnership or a corporate body, the majority of whose members or shareholders are citizens of Malawi.

(2) A customary estate shall be—

(a) of indefinite duration;

(b) inheritable, and transmissible by will;

(c) subject to any conditions set out in section 27 or as may be prescribed, and to any other conditions which the land committee having jurisdiction over that land, may prescribe; and

(d) liable, subject to adequate notification and prompt payment of full and appropriate compensation, to acquisition by Government in the public interest, in accordance with the Lands Acquisition Act.

Cap 58:03

Application for
customary
estate

21.—(1) A person, family unit, a group of persons recognized under customary law or who have formed themselves together as an association, a co-operative society or as any other body recognized by any written law, may apply to a land committee responsible for that land for the grant of a customary estate.

(2) An application for a customary estate shall be—

(a) in the prescribed form;

(b) signed—

(i) by the applicant;

(ii) where the application is made by a family unit, by not less than two persons from the family unit;

(iii) where the application is by a group of persons recognized under customary law, by not less than two persons who are recognized, by that law, as leaders or elders of the group;

(iv) where the application is by an association, a co-operative society or a body under any written law, by not less than two duly authorized officers; or

(v) a duly authorized agent of any of the applicants referred to in paragraphs (i) to (iv); and

(c) accompanied by a prescribed fee.

(3) A land committee may require an applicant to submit further relevant information which it may specify and shall not be obliged to determine an application until that further information has been submitted.

22.—(1) A land committee shall, within ninety days of receipt of an application for a customary estate or within ninety days of the submission of further information, determine the application.

Determina-
tion of
application of
customary
estate

(2) In determining whether or not to grant a customary estate, a land committee shall—

(a) comply with the decisions that have been reached by a relevant authority on the adjudication of the boundaries to, and rights in, the land which is the subject of the application for a customary estate;

(b) have regard to any guidance from the Commissioner concerning an application made by an organization or body under section 21;

(c) have regard to equality of all persons, such as—

(i) treat an application from a woman, or a group of women, a person with a disability, or a group of persons with disability, no less favourably than an equivalent application from a man, a group of men or a mixed group of men and women; and

(ii) adopt or apply no adverse discriminatory practices or attitudes towards any person who has applied for a customary estate;

(d) where the application is from a person or group of persons ordinarily resident in the village, have regard to—

(i) where the applicant already occupies land under a customary estate, whether the allocation of additional land would cause the applicant to exceed the prescribed amount of land which a person or group of persons may occupy in the village;

(ii) where the applicant already occupies land under a customary estate, whether all the terms and conditions subject to which that customary estate is held and all other regulations relating to the use of that land have been strictly complied with;

(iii) whether the applicant has, or is likely to obtain, access to the necessary skills and knowledge to enable him to use the land applied for productively and in accordance with the terms and conditions subject to which the customary estate will be granted and all other regulations applying to the use of the land for which the right of occupancy is being applied for; and

(iv) any other matters which may be prescribed;

(e) where the applicant is a person or group of persons not ordinarily resident in the Traditional Land Management Area,—

(c) the occupier shall pay any applicable rent, fees, charges, taxes and other requirements, if applicable, in respect of his occupation of the land;

(d) the occupier shall comply with all rules, including by-laws applicable to the land and all lawful orders and directions given to him by a land committee relating to the use and occupation of the land; and

(e) the occupier will retain and keep safe all boundary marks, whether natural or otherwise.

(3) The Commissioner and a land committee representative may enter and inspect whether the conditions under which a customary estate is granted are being complied with.

Approval
required for
disposal of
customary
estate

28.—(1) All transactions involving customary estates during the first five years of registering and titling the estates shall be approved by a land committee and the Traditional Authority in whose jurisdiction the land is situated.

(2) A disposition of a customary estate granted to a person or family unit shall not be permissible outside the immediate family during the first five years of titling of the estate.

(3) The restriction under subsection (2) may be waived—

(a) in cases of emergency; and

(b) where it is established by the land committee that all the dependants or named members of the family unit are, as the case may be, above eighteen years of age, have agreed to the disposal.

(4) A sale of a customary estate which was granted to a family unit without written consent of all persons named on the land certificate shall be invalid.

Surrender of
customary
estate

29.—(1) A person, family unit, group of persons holding a customary estate may, subject to this section, at any time, surrender the customary estate.

(2) A surrender under this section which has, or for which it is reasonable to deduce that its purpose or effect is to deprive, or place impediments in the way of a woman from occupying land which she would, but for that surrender of land, be entitled to occupy under customary law or otherwise, shall not be a valid surrender.

(3) A surrender of a customary estate which has, or for which it is reasonable to deduce that its purpose is the fraudulent, dishonest or unjust deprivation of dependants who are below the age of eighteen years shall not be a valid surrender.

(4) A person who surrenders a customary estate shall remain liable for any breach of a condition to which the customary estate was subject and for a breach of any rule relating to the use of that land which occurred during the occupation of the land up to the time of the surrender.

(5) A surrender of a customary estate shall be—

(a) made in the prescribed form;

(b) signed by a person or the duly authorized representative of the group of persons surrendering the customary estate;

(c) accompanied by any evidence which may be prescribed or which is considered by a land committee to be satisfactory that all persons—

(i) dependent on a person who is surrendering that customary estate are aware of the surrender and have agreed to it; and

(ii) having derivative rights in that customary estate are aware of the surrender.

(6) A derivative right granted out of a customary estate surrendered under this section shall, as from the date of the surrender, be held by the land committee on the same terms and conditions on which it was held by the person who has surrendered the customary estate.

30.—(1) A land committee, before publicizing the availability of a surrendered customary estate, shall offer the land to the following persons in the following order—

Re-grant of
surrendered
customary
estate

(a) where the person who has surrendered the customary estate is a man—

(i) his wife;

(ii) where he has more than one wife, his wives in order of seniority;

(iii) where he has no wife, or all wives have declined to accept the offer, any of his children over the age of eighteen years; and

(iv) where all of the above have declined to accept the offer, any of his other dependants;

(b) where the person who has surrendered the customary estate is a woman—

(i) her husband;

(ii) where she has no husband, or is divorced, or her husband has declined to accept the offer, any of her children over the age of eighteen years; and

(iii) where all of the above have declined to accept the offer, any of her dependants.

(2) Subject to subsection (1), a customary estate shall be re-granted to any other person, free of any standing debts which may have burdened the surrendered customary estate.

Breach of
condition of
customary
estate

31.—(1) Where any condition consists of an obligation to comply with regulations made by any local government authority or other authority, or the lawful orders of a land committee having jurisdiction in the area where the land held for a customary estate is situated, failure to comply with the regulations or orders shall constitute a breach of the condition.

(2) Where an occupier is in breach of a condition, the land committee shall consider—

(a) the nature and gravity of the breach and whether it may be waived;

(b) the circumstances of the occupier; and

(c) whether the condition that has been breached may be remedied so as to obviate the breach.

(3) Before proceeding to take any action in respect of a breach, a land committee shall issue a warning to the occupier and demand rectification of the breach.

Fine for breach
of condition

32.—(1) Where the occupier of a customary estate is in breach of a condition, a land committee may impose a fine upon the occupier.

(2) The Minister may make regulations prescribing fines which may be imposed by a land committee in respect of breach of conditions.

Revocation of
customary
estate granted
to an organiza-
tion or body

33.—The Minister may, on his own volition, or on the recommendation of the land committee, revoke a customary estate granted to an organization or body under section 22.

Abandonment
of a customary
estate

34.—(1) A customary estate shall be taken to be abandoned where—

(a) the occupier has not occupied or used the land for any purpose for which the land may lawfully be occupied and used, including allowing land to lie fallow for five years or more; or

(b) the occupier has left the country without making arrangement for any person to be responsible for the land and for ensuring that the conditions subject to which the customary estate was granted are complied with and has not given appropriate notification to a land committee.

(2) In determining whether land has been abandoned in terms of subsection (1) (a), the land committee shall have regard to—

(a) the means of the occupier of the land, and where the occupier is an individual, the age and physical condition of the occupier;

(b) the weather conditions in the area during the preceding three years;

(c) any advice on the matter sought by the land committee or given to it by the Commissioner.

(3) Where the land committee considers that any customary estate has been abandoned, it shall publish a notice in the prescribed form at the offices of the land committee and affix a copy in a prominent place on that land—

(a) stating that the question of whether that land has been abandoned shall be determined by the committee at a time which shall not be less than thirty days from the date of the publication of the notice; and

(b) inviting any person in the area with an interest in the land to show cause why the land should not be declared to be abandoned.

(4) A copy of a notice under subsection (3) shall be sent to the Commissioner who may make representations to the land committee on the matter.

(5) A land committee may issue a provisional order of abandonment, a copy of which shall be—

(a) affixed in a conspicuous place on the land to which it refers; and

(b) sent to the Commissioner.

(6) A provisional order of abandonment shall become a final order of abandonment ninety days from the date of the declaration of the provisional order.

(7) The land committee shall not pay compensation for any unexhausted improvements on land which has been declared to be abandoned by the Minister by an Order published in the *Gazette*.

35.—(1) An occupier or other person who has an interest in a customary estate may apply to a customary land tribunal for relief against any of the actions, notices, orders, or declarations which may be made against him by a land committee, or the Commissioner, under this Part.

Application
for relief

(2) The customary land tribunal may—

- (a) cancel any notice, order or declaration;
- (b) vary the operation of any action, notice, order or declaration;
- (c) postpone the operation of any notice, order or declaration;
- (d) substitute a different remedy for the one determined upon by the land committee, or the Commissioner; or
- (e) confirm any action, notice, order or declaration made, notwithstanding that some procedural errors took place during the making of that action, notice, order or declaration, if the tribunal is satisfied that—
 - (i) the occupier or other person applying for relief was made fully aware of the substance of the action, notice, order or declaration; and
 - (ii) no injustice will be done by confirming that action, notice, order or declaration.

PART VI—ADJUDICATION OF INTEREST IN CUSTOMARY LAND

Grant of
customary
estate require
adjudication

36. A grant of a customary estate shall not be made to a person, group of persons, organization or body unless the boundaries and interest in that land have been adjudicated in accordance with this Part.

Types of
adjudication

37.—(1) Adjudication shall be either—

- (a) Traditional Land Management Area adjudication (hereinafter referred to as “area adjudication”); or
- (b) district adjudication.

(2) The responsibility for adjudication of a Traditional Land Management Area is hereby vested in a land committee and shall be conducted in accordance with this section.

(3) The responsibility for district adjudication is hereby vested in a local government authority having jurisdiction, and shall be conducted in accordance with section 41.

(4) Where a complaint is made to a local government authority by any person or group of persons with interest in land to which the area adjudication is being applied, that the adjudication is being applied improperly or unfairly, the local government authority shall investigate the complaint, and on being satisfied on the accuracy of the complaint, shall—

- (a) issue any directive which it considers necessary to a relevant land committee to correct and improve the process of land adjudication; or

- (b) issue a directive to the land committee to-
 - (i) cease exercising any powers of adjudication;
 - (ii) send all records and other information specified in the directive to the local government authority; and
 - (iii) cooperate fully with any officers who the local government authority may authorize to apply district adjudication; and
- (c) apply district adjudication to the land to which the area adjudication was being applied.

38.—(1) A local government authority may, either of its own motion or on the application of not less than fifty persons in a Traditional Land Management Area, recommend to a Traditional Authority that a process of area adjudication be applied to the whole or defined portion of land available for grants of customary estates.

Area
adjudication

- (2) A recommendation under this section shall—
 - (a) contain a brief statement of reasons for the recommendation;
 - (b) specify the approximate area of land to which it is proposed to apply the area adjudication;
 - (c) summarize the procedures to be followed in the process of area adjudication; and
 - (d) be copied to the Commissioner.

(3) The Traditional Authority shall, after receipt of the recommendation from a local government authority, inform all the relevant land committees and require them to begin the process of area adjudication.

39.—(1) Where area adjudication is to be applied to customary land or a portion of that land, a notice shall be published and posted in a conspicuous place in the area and on the land which is to be adjudicated—

Procedure for
area
adjudication

- (a) specifying the approximate area of land to be adjudicated;
- (b) requiring all persons who claim any interest in the land to attend a meeting at a specified place, on a specified day and time to submit their claims; and
- (c) requiring any person who claims to occupy land within the adjudication area to mark or indicate the boundaries of the land, in the manner and before the date which may be specified in the notice.

- (2) A land committee shall cause to be prepared—

Act No. 18 of
2016

(a) a provisional demarcation map in accordance with the Land Survey Act, 2016;

(b) a provisional adjudication record in a prescribed manner of the claims to the adjudicated land which it has determined pursuant to subsection (1) and shall post that record in a conspicuous place within the area.

(3) A provisional adjudication record shall, unless an appeal is lodged under section 40, become a final adjudication record thirty days after it has been published and shall thereupon become a part of the register of the Traditional Land Management Area.

(4) A provisional adjudication record shall, where an appeal has been lodged, become a final adjudication record thirty days after the final disposition of that appeal.

Appeal against
area
adjudication

40.—(1) Any person who is aggrieved by a determination of a land committee may, within thirty days of the publication of the adjudication record and demarcation map, appeal to a customary land tribunal against that determination.

(2) A customary land tribunal shall, in hearing any appeal—

(a) have all powers and comply with all the procedures applicable to a land committee; and

(b) reach a decision which appears to it to be just, in the circumstances, and, without limiting the generality of that power, may—

(i) amend the adjudication record;

(ii) amend the demarcation map;

(iii) correct any error in the adjudication record; or

(iv) direct that a land clerk conduct further investigations into the subject matter of the appeal.

(3) Where a customary land tribunal proposes to make a decision which may adversely affect the interests of any person in the adjudication area who has not appealed, the tribunal shall give that person an opportunity to be heard before it makes that decision.

(4) An applicant or person, referred to in subsection (3), aggrieved by a decision of a customary land tribunal given under this section, may appeal to a District Tribunal of Traditional Authorities and the Tribunal may make any decision or order which it considers just in all the circumstances of the case.

District
adjudication

41.—(1) Where a local government authority has determined that district adjudication shall be applied to land within a Traditional Land Management Area, or where the local government authority

has issued a directive under section 37 (4) (b), the local government authority shall empower a land clerk to be in charge of and to exercise general supervision and control over the adjudication process.

(2) A land clerk shall have jurisdiction to determine all claims made under a process of district adjudication relating to interests in land in an adjudication area and shall be competent to administer oaths and to issue summons, notices or orders requiring the attendance of any person or the production of any documents which he may consider necessary for the carrying out of that adjudication.

(3) Any person aggrieved by any act or decision of a land clerk in his capacity as adjudication officer at district level may, within thirty days of the publication of a provisional adjudication record, appeal to the Land Tribunal and may further appeal to the Central Land Board.

(4) On any appeal under subsection (3), the Land Tribunal or the Central Land Board may make any decision or order which is considered just in all circumstances of the case.

42.—(1) A person or group of persons may, on making an application to a land committee for a customary estate, apply, in the prescribed form, for adjudication (hereinafter referred to as a “spot adjudication”) to be applied to the land in respect of which the application for a customary estate relates.

Spot
adjudication

(2) The land committee may determine whether spot adjudication may be applied to the land in respect of which it has been requested, or whether it is necessary, in order for adjudication to be applied in a proper manner, to apply adjudication to land contiguous to, or in the vicinity of, the land for which adjudication has been requested.

(3) Where the land committee determines that it is necessary to apply spot adjudication to land contiguous to, and in the vicinity of, the land for which adjudication has been requested, it shall—

(a) inform the Traditional Authority who has jurisdiction over that land of the determination and the reasons for it; and

(b) inform the applicants of the determination and the reasons for it.

43.—(1) In preparing the provisional adjudication record, a land committee or an adjudication officer, as the case may be, if satisfied that—

Guiding
principles for
adjudication

(a) a person is or has been in peaceable, open and uninterrupted occupation of customary land under customary law

for not less than twelve years, shall determine that person to be entitled to a customary estate;

(b) a group of persons is in peaceable, open and uninterrupted occupation of land or is similarly using the land under an arrangement whether under customary or written law relating to land, and whether that occupation can be evidenced by a document in writing or not, shall determine the nature, incidents and extent of that occupancy and declare that group of persons to occupy that land under the type of occupancy so determined whether it be a customary estate or a derivative right;

(c) an organization or body is in occupation of customary land without any right or interest so to be, shall determine that organization or body to be an unauthorized occupier, permitted to remain on the land for twelve months as a licensee;

(d) a person or group of persons is entitled to an interest in customary land, whether under customary law or otherwise, not amounting to occupation under customary law, or under a derivative right, shall determine the nature, incidents and extent of those interests to enable it to be recorded in the name of the person or group of persons entitled to benefit from it;

(e) the customary land is free of occupation or use or any right of occupation or use by any person or group of persons, shall determine that land to be communal land; or

(f) the land alleged to be customary land is not customary land, shall declare that land to be public land.

(2) In making any determination under subsection (1), a land committee or an adjudication officer shall have regard and treat the rights of women and other vulnerable groups to occupy or use or have an interest in land not less favourably than the rights of men.

PART VII—DISPUTE SETTLEMENT

Customary land
tribunals

44.—(1) There shall be established in every Traditional Land Management Area, a customary land tribunal to adjudicate on any disputes concerning customary land in the area.

(2) A customary land tribunal shall consist of—

(a) a presiding chairperson who shall be the Traditional Authority responsible for the area; and

(b) six members of the community nominated by the Traditional Authority and approved by the Commissioner, at least three of whom shall be women.

(3) The members to the customary land tribunal shall be appointed on the basis of—

- (a) knowledge of customary land law of the area, including boundaries and the history of people settlement in the area;
- (b) experience in handling social issues; and
- (c) standing and reputation of a nominee in the community as a person of integrity.

(4) A person shall not be eligible for nomination to a customary land tribunal or continue as a member, if he is—

- (a) a member of a land committee;
- (b) not ordinarily resident in the Traditional Land Management Area in which the tribunal is to function;
- (c) a member of the National Assembly;
- (d) a ward councilor;
- (e) a magistrate;
- (f) a public officer;
- (g) a person holding a political party office;
- (h) a person under the age of eighteen years;
- (i) a mentally unfit person;
- (j) a person who has been convicted of a criminal offence involving dishonesty or moral turpitude; or
- (k) a person who is not a citizen of Malawi.

(5) A member of a customary land tribunal shall, unless the member sooner resigns, dies, or falls within the category set out in subsection (4), serve for three years, and shall be eligible for re-appointment for one further term.

(6) The quorum of a meeting of a customary land tribunal shall be satisfied by attendance of at least four members, two of whom shall be women.

45. A person who is aggrieved by a decision of a customary land tribunal may appeal to a district land tribunal.

Appeals from
customary
land tribunals

46.—(1) There shall be established in every district, a district land tribunal which shall consist of the following—

District land
tribunals

- (a) a presiding chair person who shall be the District Commissioner responsible for the District;
- (b) up to three Traditional Authorities;
- (c) three reputable persons that come from and reside in the

district, two of whom shall be women, who shall be in office for a renewal term of three years; and

(d) the District Land Registrar who shall be the secretary.

(2) Members of a district land tribunal shall be appointed by a local government authority responsible for the district.

(3) A member to the district land tribunal shall be appointed on the basis of—

(a) knowledge of customary land law of the area, including boundaries and the history of settlement of the people in the area;

(b) experience in handling social issues; and

(c) standing and reputation in the community as a person of integrity.

(4) A person shall not be eligible for nomination to a district land tribunal, or continue as a member, if the person is—

(a) a member of a land committee;

(b) not ordinarily resident in the District in which the tribunal is to function;

(c) a member of the National Assembly;

(d) a ward councilor;

(e) a magistrate;

(f) a political party official;

(g) a person under the age of eighteen years;

(h) a mentally unfit person;

(i) a person who has been convicted of a criminal offence involving dishonesty or moral turpitude; or

(j) a person who is not a citizen of Malawi.

(5) A member of the district land tribunal appointed under subsection (1) (b) and (c) shall, unless the member sooner resigns, dies, or falls within the category set out in subsection (4), serve for three years, and shall be eligible for re-appointment for one further term of three years.

Appeals from
district land
tribunals

47. An appeal from a district land tribunal shall lie to the Central Land Board.

Central Land
Board

48.—(1) There shall be established a Central Land Board consisting of the following—

(a) Resident Magistrate who shall preside over proceedings of the Board;

(b) three Traditional Authorities, one from each region of Malawi, one of whom shall be a woman; and

(c) two other members with good standing in society, one of whom shall be a woman.

(2) Members of the Central Land Board shall be appointed by the Commissioner, with the approval of the Minister.

(3) A person who—

(a) is an undischarged bankrupt;

(b) has been convicted for an offence under this Act;

(c) has, within the preceding three years, been convicted of an offence under any written law and sentenced to a term of imprisonment; or

(d) has been convicted within the preceding seven years of an offence involving dishonesty or fraud,

shall be disqualified from appointment to, or continue to hold office as, a member of the Board.

(4) The office of a member of the Board, not being an *ex-officio* member, shall become vacant if—

(a) the member dies;

(b) the member resigns; and

(c) in accordance with subsection (3), the member becomes disqualified from continuing to hold the office.

(5) A vacancy in the Board shall be filled by a person appointed in accordance with subsection (1).

(6) The Minister shall cause a notice of every appointment to the Board to be published in the *Gazette*, and shall, in such notice, publish the new membership of the Board.

(7) A member of the Board who is not an *ex-officio* member, shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

(8) The funds of the Board shall consist of—

(a) sums of money appropriated by Parliament to the Board for its functions; and

(b) money, or other property payable to, or vesting in the Board, pursuant to this Act or any other written law, or pursuant to any trust or gift.

(9) The Commissioner shall serve as secretary to the Board.

Guiding
principles for
land tribunals

49.—(1) A land tribunal, in the exercise of its functions under this Part, shall—

(a) be guided by the principles of objectivity, fairness and justice, giving consideration to, among other things,—

(i) the rights and obligations of the parties;

(ii) the customary and statutory laws and traditional practices, due regard being given to constitutional provisions; and

(iii) the circumstances surrounding the matter, including any previous dealings or disputes between the parties;

(b) conduct the proceedings in an appropriate manner, taking into account—

(i) the wishes of the parties to the dispute;

(ii) the circumstances of the case; and

(iii) the desirability of reaching a speedy settlement;

(c) meet or communicate with the parties together or separately;

(d) at any stage of the proceedings, make proposals, in writing, with reasons for the settlement of any dispute between the parties;

(e) where it appears that there are elements of an agreement or settlement which may be acceptable to the parties, formulate the terms of the agreement or settlement and explain the terms to the parties and, after receiving comments from the parties, reformulate those terms taking into account those comments; and

(f) if a member of a dispute settlement tribunal has an interest, direct or indirect, in any matter before the tribunal and is present at the hearing of the matter, shall as soon as practicable, disclose the fact and shall not take part in the hearing of the matter.

(2) A tribunal may require the attendance of any party to, or any person interested in, or affected by, any matter before the tribunal, and may demand the production of any document or other evidence relating to the matter.

(3) Where any person whose presence is required is not present, or any document, the production of which has been demanded, is not produced, the tribunal may postpone hearing the matter to give reasonable opportunity for the appearance of the person or the production of the document:

Provided that where the person does not appear after due notice on two occasions or the document is not produced without valid reasons, the tribunal shall proceed to make a decision on the matter.

(4) Where an agreement or settlement has been reached between parties, a land tribunal shall draw up a written agreement which, once signed by all parties, shall be binding on all parties.

(5) Where parties to a dispute fail to agree, a land tribunal shall proceed to make its decision and shall advise any aggrieved party of their rights to appeal against the decision to a higher dispute settlement tribunal, or the High Court, as the case may be.

PART VIII—MISCELLANEOUS

50. A disposition of customary land shall not transfer the residual property interest vested in the community but the registered usufructuary right in the grantor.

Effect of
disposition of
customary
land

51.—(1) A land committee shall maintain a register of customary land in a Traditional Land Management Area in accordance with rules prescribed by the Minister; and a land clerk shall be responsible for keeping that register.

Register of
customary
land

(2) A District Land Registry shall fall under the jurisdiction and be subject to the supervision and direction of the District Land Registrar.

52.—(1) Nothing in this Act shall be taken to validate or give legal effect to a grant of a certificate of customary estate or a disposition which was obtained or procured by any corrupt practice, on the part of a member of a land committee or officer of the Government or local government authority.

Corrupt
transactions

(2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption where—

(a) any party involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption under the Corrupt Practices Act in connection with the transaction, and all final appeals arising from that conviction have been concluded;

Cap. 7:04

(b) a member of a land committee is dismissed or a Government or local government authority officer is interdicted or retired in the public interest on account of corrupt actions that involve that transaction; or

(c) an investigation body reports that it is satisfied that the transaction was procured by corrupt practices.

53. The Minister may make regulations for carrying out or giving effect to the provisions of this Act.

Regulations

Repeal and
savings
Cap. 59:01
Cap. 59:02

54.—(1) The Customary Land (Development) Act and the Local Land Boards Act are hereby repealed.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act, and be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, revoked or amended by subsidiary legislation made under this Act.

(3) Any grant, right of occupancy, disposition, permit or licence made, issued, or given under the Acts repealed under subsection (1) shall be valid, and shall have effect as if they were made, issued or given under this Act.

Passed in Parliament this fourteenth day of July, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament