



MALAWI GOVERNMENT

LAND (AMENDMENT ACT (No. 5 OF 2022)

Printed and published by THE GOVERNMENT PRINTER, Lilongwe, Malawi

(Published 31st March, 2022)

Act

No. 5 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
31st March, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 57:01
3. Replacement of s. 3 of the principal Act
4. Replacement of s. 7 of the principal Act
5. Insertion of ss. 9A and 9B into the principal Act
6. Amendment of s.11 of the principal Act
7. Amendment of s. 12 of the principal Act
8. Insertion of s. 20A into the principal Act
9. Replacement of s. 37 of the principal Act
10. Repeal of s. 38 of the principal Act
11. Replacement of s. 39 of the principal Act
12. Insertion of ss. 44A and 44 B into the principal Act

An Act to amend the Land Act

ENACTED by the Parliament of Malawi as follows —

1. This Act may be cited as the Land (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*. Short title and commencement
2. The Land Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by— Amendment of s. 2 of Cap. 57:01

(a) deleting the definition of the term “customary land” and substituting therefor the following new definition—

““customary land” means land held, occupied and used in accordance with customary law”;

(b) deleting the definition of the term “customary law” and substituting therefor the following new definition—

““customary law” means customary law and practice prevailing in the traditional land management area”;

(c) inserting the following new definition immediately after the definition of the term “customary law” -

““freehold land” means a fee simple, fee tail or life estate”;

(d) deleting the definition of the term “Government land” and substituting therefor the following new definition—

““Government land” means land acquired and owned by the Government, but does not include a public road”;

(e) deleting paragraph (c) and paragraph (d) under the definition of the term “public land” and substituting therefor the following new paragraphs—

“(c) land *gazetted* for national parks, recreation areas, forest reserves, conservation areas, historic and cultural sites;” and

“(d) land vested in Government as a result of uncertain ownership, abandonment or land that cannot be used for any purposes;”

(f) deleting paragraph (e) under the definition of “public land”;

(g) inserting the following new definition immediately after the definition of the term “rules of good husbandry”—

““Traditional Authority” has the meaning assigned thereto in the General Interpretation Act;” and

(h) deleting the definition of the term “traditional land management area” and substituting therefor the following new definition—

““traditional land management area” means customary land demarcated and held by a Traditional Authority on trust for the residents under his jurisdiction.”.

Cap. 1:01

Replacement
of s. 3 of the
principal Act

3. Section 3 of the principal Act is repealed and replaced with the following new section 3—

3.— (1) There shall be a Commissioner for Lands (in this Act otherwise referred to as the “Commissioner”) who shall be a public officer.

“Commissioner for Lands

(2) A person shall not qualify for appointment as Commissioner unless he—

(a) holds a minimum education qualification of a Bachelor’s degree obtained from an institution recognised or accredited under the National Council for Higher Education Act; and

Cap. 30:12

(b) has not less than 10 years’ experience in land law and policy.”.

4. Section 7 of the principal Act is repealed and replaced with the following new section 7—

Replacement of s. 7 of the principal Act

“Categories of land

7. Land shall be categorized as public land, customary land or private land.”.

5. The principal Act is amended by inserting, immediately after section 9, new sections 9A and 9B as follows—

Insertion of ss. 9A and 9B into the principal Act

“Access to land

9A.— (1) Subject to the availability of land and a person’s means, every person shall have the right to access land for shelter and livelihood.

(2) Government shall ensure that there is no concentration of land in a few individuals to the disadvantage of other deserving persons.

(3) The Minister shall prescribe land ceilings taking into account the—

(a) availability of land;

(b) utilization of land; and

(c) capacity of a person to develop the land.

No sale of vacant land

9B. No person shall sell vacant leasehold or freehold land.”.

6. Section 11 of the principal Act is amended by inserting, immediately after subsection (2), new subsections (3) and (4) as follows—

Amendment of s. 11 of the principal Act

“(3) Land for investment allocated by the Malawi Investment and Trade Centre Limited shall be withdrawn if it is not developed within two years of the allocation.

Cap. 23:01

Amendment
of s. 12 of the
principal ActInsertion of s.
20A into the
principal Act

(4) Any underdeveloped plots shall be subdivided in accordance with the Physical Planning Act and may be reallocated.”.

7. Section 12 of the principal Act is amended, in subsection (4), by deleting the words “annual and”.

8. The principal Act is amended by inserting, immediately after section 20, a new section 20A as follows—

“Land
Eviction
Orders

20A.—(1) Notwithstanding section 45, the Minister or a local government authority may issue a land eviction order against any person who uses or occupies any public land without a valid grant, lease or disposition issued under any written law.

(2) A land eviction order shall be in a prescribed form and shall state—

(a) the particulars of land to which the eviction order relates;

(b) the particulars of the person against whom the eviction order is made;

(c) the period within which the person must vacate the land; and

(d) the penalty which may be imposed for non-compliance with the terms of the eviction order.

(3) For purposes of enforcing a land eviction order, the Minister or a local government authority—

(a) may enter the land to which the eviction order relates and take any appropriate action to enforce the order; and

(b) shall not be held responsible for the consequences of any action taken in good faith pursuant to the enforcement of the eviction order.

(4) The Minister or a local government authority may delegate the powers conferred under subsection (3) to any authorized officer or police officer.

(5) A land eviction order shall be served on the person against whom it is issued, or his agent or legal practitioner, or may be left and attached to a prominent place on the land to which the eviction order relates.

(6) Where the Minister or a local government authority takes any action for purposes of enforcing a land eviction order and incurs any costs by reason

thereof, the Minister or the local government authority may recover the costs as a civil debt against the person to whom the eviction order relates.”.

9. Section 37 of the principal Act is repealed and replaced with the following new section 37—

Replacement
of s. 37 of the
principal Act

“Land not to
be granted or
sold to a
person who is
not a citizen
of Malawi

37.— (1) Subject to section 11, land shall not be granted or sold to a person who is not a citizen of Malawi.

(2) Any existing grant in favour of a person who is not a citizen of Malawi shall be valid until it expires.

(3) Subject to subsection (4), any existing lease in favour of a person who is not a citizen of Malawi shall, upon expiry, not be renewed.

(4) An existing lease in favour of a person who is not a citizen of Malawi may, upon expiry, only be renewed if the land is—

(a) developed and;

(b) used as a residential home or for commercial or charitable purposes.”.

10. Section 38 of the principal Act is repealed.

Repeal of s.
38 of the
principal Act

11. Section 39 of the principal Act is repealed and replaced with the following new section 39—

Replacement
of s. 39 of the
principal Act

“Failure to
develop
freehold land

39.— (1) Where a holder of private land under freehold title has commenced development of the land within two years from the commencement of this Act, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law, by written notice sent to the person concerned and addressed to his registered or his last known address, demand voluntary surrender of the land by the person to the Government within a period of ninety days from the date of the written notice, failing which the Minister shall enter the land and register the freehold title in the name of the Government.

(2) Where the holder of a private land has not commenced development of the land within two years pursuant to subsection (1), he may apply to the Minister for the extension of the period within which to

commence development of the land, and the Minister may, upon being satisfied, grant the extension.

Insertion of
ss. 44A and
44B into the
principal Act

12. The principal Act is amended by inserting, immediately after section 44, new sections 44A and 44B as follows—

"Lease
granted by
the Minister
to revert to
public land

44A.— (1) Where a lease granted by the Minister in accordance with this Act expires, the land shall become public land.

(2) Where the expired lease referred to under subsection (1) was created out of customary land, the Minister may—

(a) convert the public land to customary land; and

(b) reallocate the land, giving priority to communities living in the area surrounding the land.

Surrender of
land upon
change of use
from
agricultural to
residential or
commercial
development
Cap. 23:01

44B. Where a land holder makes an application under the Physical Planning Act for change of use of the whole or any part of the land that was granted for agricultural purposes to residential or commercial development, any approval for the change of use of the land shall be granted on condition that—

(a) no vacant land shall be sold; and

(b) fifty per cent of the land intended for residential or commercial development shall, subject to payment of appropriate compensation, be surrendered to the Government.”.

Passed in Parliament this twenty fifth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament

(2) Any person who contravenes regulations 7 and 8 commits an offence and shall, upon conviction, be liable to—

(a) closure of the foreign currency denominated account and immediate liquidation of the balance into Malawi Kwacha by the holding bank;

(b) in the case of an individual, including the person who made the decision and the one who authorized the transaction, a fine not exceeding seven million Kwacha and imprisonment for four years; and

(c) in the case of a body corporate, there shall be no limit to the fine which may be imposed in respect of the offence thereof.

Made this 27th day of May, 2022.

S. A. GWENGWE
*Minister of Finance and
Economic Affairs*

CORRIGENDUM

Act No. 5 of 2022—Land (Amendment) Act, 2022, published in the *Gazette* dated 31st March 2022, in section 39, by adding the word “not” between the words “has” and “commenced” which appear in the second line of subsection (1). The word “not” was inadvertently omitted.



MALAWI GOVERNMENT

LAND SURVEY (AMENDMENT) ACT

(No. 11 OF 2022)

PHYSICAL PLANNING (AMENDMENT) ACT

(No. 12 OF 2022)

REGISTERED LAND (AMENDMENT) ACT

(No. 13 OF 2022)

**LAND ACQUISITION AND COMPENSATION
(AMENDMENT) ACT**

(No. 14 OF 2022)

CUSTOMERY LAND (AMENDMENT) ACT

(No. 15 OF 2022)

(Published 20th May, 2022)

Act

No. 11 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

12th May, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 59:03
3. Amendment of s. 3 of the principal Act
4. Replacement of s. 17 of the principal Act
5. Replacement of s. 28 of the principal Act
6. Replacement of s. 42 of the principal Act
7. Replacement of s. 46 of the principal Act
8. Replacement of s. 65 of the principal Act

An Act to amend the Land Survey Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Land Survey (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment

2. The Land Survey Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by inserting therein, in the correct alphabetical order, the following new definitions -

Amendment
of s. 2 of
Cap. 59:03

““aerial survey” includes a survey conducted using aircraft, drone, balloon or any unmanned vessel”; and

““survey equipment” means any equipment which is certified to be fit for land survey measurements in Malawi and is registered as such by the Surveyor General in accordance with this Act;”.

Amendment of s. 3 of the principal Act 3. Section 3 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2) —

“(2) A person shall not be recruited as a Surveyor General unless the person —

(a) is licensed and registered as a surveyor under this Act; and

(b) has not less than 10 years’ experience in land surveying.”.

Replacement of s. 17 of the principal Act 4. Section 17 of the principal Act is repealed and replaced with the following new section 17 —

“Funds of the Board 17. The funds and property of the Board shall consist of —

(a) such sums of money as may, from time to time, be payable to the Board from moneys appropriated by Parliament for that purpose;

(b) other property, real or personal, as may be payable to, or vest in the Board pursuant to this Act or any other written law;

(c) other property, real or personal, as may be payable to or vest in the Board by way of a donation, or accrue to the Board from any trust; and

(d) any funds or sums of money that the Board may generate.”.

Replacement of s. 28 of the principal Act 5. Section 28 of the principal Act is repealed and replaced with the following new section 28 —

“Qualifications for licensed surveyors 28. — (1) A person shall not be registered as a licensed surveyor unless that person —

(a) holds a degree in land surveying from a university approved by the Board in consultation with the National Council for Higher Education for purposes of this Act; and

(b) produces a certificate that he has served for at least two years as an assistant in practical field surveys under the direct personal supervision of a licensed surveyor practising as such under this Act or in any country as the Minister may list by notice published in the *Gazette*:

Provided that not less than half of such period shall have been spent in doing title surveys the nature of which shall be approved by the Board; or

(c) possesses a commission or a licence entitling him to lawfully practise as a land surveyor in any country listed in the notice published in the *Gazette* pursuant to paragraph (b); or

(d) is a holder of the qualification of fellow or professional associate of the Royal Institute of Chartered Surveyors of the United Kingdom in land surveying; or

(e) has passed an examination set by the Board to confer a qualification equivalent to any of the qualifications referred to in paragraphs (a) and (b)."

6. Section 42 of the principal Act is repealed and replaced with the following new section 42 —

Replacement
of s. 42 of the
principal Act

"Aerial and
topographic
survey and
topographic
mapping

42. — (1) A person who intends to carry out an aerial survey of any land in Malawi, shall, at least thirty days before the survey is carried out, notify the Surveyor General in writing of his intention to carry out the survey.

(2) A person who carries out an aerial survey in accordance with subsection (1) and any topographic survey, shall, within thirty days of completion of the survey, submit to the Surveyor General —

(a) one printed copy of every photograph taken for the purpose of such aerial survey together with one copy of any plan made as a result of the survey;

(b) copies of all data and subsequent maps and plans; and

(c) a digital file of imagery and printed copy of the imagery.

(3) A surveyor shall, within thirty days of the completion of any topographical mapping in Malawi, submit copies of all data, subsequent maps and plans to the Surveyor General for quality control and archiving.

(4) The Surveyor General shall store all data, maps and plans relating to any topographical mapping in a good and secure place.

Cap. 49:03

(5) The Surveyor General shall, from time to time, compile non-existing maps and amend existing plans and maps, and sell information taking into account the provisions of the Copyright Act.

(6) No person shall, without the prior approval of the Surveyor General, obtain clearance from the Civil Aviation Authority to undertake an aerial survey in Malawi for purposes of acquiring survey data.

(7) No person shall, without the prior verification and certification by Surveyor General, use any newly procured satellite imagery.

(8) A person who fails to comply with this section commits an offence and shall, on conviction, be liable to —

(a) in case of a natural person, a fine of five hundred thousand kwacha and to imprisonment for twelve months; and

(b) in case of a legal person, a fine of one million kwacha.”.

Replacement
of s. 46 of the
principal Act

7. Section 46 of the principal Act is repealed and replaced with the following new section 46 —

“Survey of
Traditional
Land
Management
Areas etc

46. — (1) The boundaries of any area declared as a Traditional Land Management Area, a district or a local government area, shall be demarcated and mapped.

(2) Where a Traditional Land Management Area is demarcated, all individual land parcels within that area shall be surveyed, mapped and registered.”.

Replacement of
s. 65 of the
principal Act

8. Section 65 of the principal Act is repealed and replaced with the following new section 65 —

“Funds of the
Council

65. The funds and property of the Council shall consist of —

(a) such sums as may, from time to time, be payable to the Council from moneys appropriated by Parliament for that purpose;

(b) sums of money or other property, real or personal, as may be payable to or vest in the Council pursuant to this Act or any other written law;

(c) such sums of money or other property, real or personal, as may be payable to or vest in the Council

by way of a donation, or accrue to the Council from any trust; and

(d) any funds or sums of money that the Council may generate.”.

Passed in Parliament this twenty eighth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament

(Published 20th May, 2022)

Act

No. 12 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

12th May, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 23:01
3. Replacement of s. 4 of the principal Act
4. Replacement of s. 20 of the principal Act
5. Amendment of s. 33 of the principal Act
6. Insertion of s. 43A into the principal Act
7. Replacement of s. 45 of the principal Act
8. Amendment of s. 46 of the principal Act
9. Repeal of s. 57 of the principal Act
10. Amendment of s. 59 of the principal Act
11. Amendment of s. 67 of the principal Act
12. Amendment of s. 74 of the principal Act
13. Amendment of the First Schedule to the principal Act

An Act to amend the Physical Planning Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Physical Planning (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.
Short title
and
commencement
2. The Physical Planning Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by deleting the definition of the term “responsible authority” and substituting therefor the following new definition—
Amendment
of s. 2 of
Cap. 23:01

“responsible authority” includes—

- (a) the planning committee;
- (b) the Council;
- (c) the Commissioner; and
- (d) the Minister;”.

Replacement of
s. 4 of the
principal Act

3. Section 4 of the principal Act is repealed and replaced with the following new section 4 —

“Commissioner
for Physical
Planning

4. — (1) There shall be a Commissioner for Physical Planning (in this Act otherwise referred to as the “Commissioner”) who shall be a public officer.

(2) A person shall not qualify for appointment as Commissioner unless he—

- (a) holds a bachelor’s degree in physical planning;
- (b) is licensed as a physical planner under this Act; and
- (c) has not less than 10 years’ experience in physical planning.”.

Replacement of
s. 20 of the
principal Act

4. Section 20 of the principal Act is repealed and replaced with the following new section 20—

“Composition,
procedure,
functions and
powers of a
planning
committee

20. — (1) A planning committee shall consist of the following members—

(a) in the case of a City Council, Municipal Council or Town Council—

- (i) the Director of Planning and Development, who shall be the Secretary;
- (ii) the Urban Physical Planning Officer;
- (iii) the Urban Lands Officer;
- (iv) the Urban Engineer;
- (v) the Urban Surveyor;
- (vi) the Urban Water Engineer;
- (vii) the Urban Architect;
- (viii) the Director of Social Services of the Council;
- (ix) the Urban Environmental Officer;
- (x) a member of the Urban Development Committee;

-
- (xi) a member of the Urban Works Committee;
 - (xii) a registered physical planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Board; and
 - (xiii) a member of the civil society representing the human settlement sector; and
- (b) in the case of a District Council—
- (i) the District Physical Planning Officer, who shall be the Secretary;
 - (ii) the District Lands Officer;
 - (iii) the District Engineer;
 - (iv) the District Surveyor;
 - (v) the District Agricultural Officer;
 - (vi) the District Education Officer;
 - (vii) the District Community Development Officer;
 - (viii) the District Public Health Officer;
 - (ix) the District Environmental Officer;
 - (x) a member of the District Development Committee;
 - (xi) a member of the District Works Committee;
 - (xii) a registered physical planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Board; and
 - (xiii) a member of the civil society representing the human settlement sector.
- (2) The members shall, at the first meeting of the planning committee, elect a chairperson from amongst their number.
- (3) The planning committee shall elect its chairperson by secret ballot and by a simple majority;
- (4) An *ex-officio* member of the planning committee shall not be eligible to be elected as chairperson;

(5) A planning committee may appoint such sub-committees as may be required to assist the committee in discharging its functions under the Act.

(6) The planning committee shall be responsible for—

(a) the review and determination of applications for planning permission, taking into account applicable plans;

(b) overseeing construction activities and ensuring that the activities are consistent with applicable master plans;

(c) providing guidance on land use and management in its area of jurisdiction; and

(d) providing guidance in enforcement activities in its area of jurisdiction.

(7) Where a member of a planning committee has a financial or proprietary interest in any matter coming before the planning committee in respect of the exercise of its functions under the Act, the member shall disclose such interest to the planning committee and, if it is a matter on which a vote is to be taken, the member shall not vote on the matter.”

Amendment of
s. 33 of the
principal Act

5. Section 33 of the principal Act is amended, in subsection (1), by adding a new paragraph (e) as follows —

“(e) a rural layout plan, which shall be a simple land use plan for the whole of a village area.”.

Insertion of
s. 43A into the
principal Act

6. The principal Act is amended by inserting, immediately after section 43, a new section 43A as follows -

“Malawi as a
planning area

43A. Subject to this Act, a person shall not carry out any development in Malawi without a planning permission granted under this Part.”.

Replacement of
s. 45 of the
principal Act

7. Section 45 of the principal Act is repealed and replaced with the following new section 45 —

“Types of
development
permission

45. The types of development permission that may be granted under this Part are as follows—

(a) an outline development permission and development permission for development anywhere in Malawi including within a land development control area;

(b) an advertisement permission for the display of advertisements anywhere in Malawi;

(c) a subdivision permission for the subdivision of land;

(d) a permission for change of use of land or building;

(e) a permission for construction of utilities and services such as roads, power lines, water pipes and sewer lines; and

(f) a permission for amalgamation of plots.”.

8. Section 46 of the principal Act is amended —

Amendment
of s. 46 of the
principal Act

(a) in subsection (1), by deleting paragraph (a) and substituting therefor the following new paragraph (a) —

“(a) made to a local government authority, where there is a planning committee, or to the Commissioner, where there is no planning committee;” and

(b) by deleting subsection (8) and substituting therefor the following new subsection (8) —

“(8) The responsible authority shall, within thirty days of the receipt of an application for development permission, inform the applicant of the decision on the application, or where no decision has been made, of the progress on the application, and the likely date by which a decision will be made:

Provided that where the responsible authority fails to make a decision or to advise the applicant of the progress on the application within sixty days of the receipt of the application for development permission, the applicant shall be at liberty to commence development.”.

9. Section 57 of the principal Act is repealed.

Repeal of s.
57 of the
principal Act

10. Section 59 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2) —

Amendment
of s. 59 of the
principal Act

“(2) A person who feels aggrieved by the stop notice issued pursuant to subsection (1) may appeal to the Council within thirty days from the date of service of the notice:

Provided that the person shall not continue with the development until the appeal is disposed of in his favour.”.

Amendment of s. 67 of the principal Act 11. Section 67 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2) —

“(2) Any acquisition of land and any payment of compensation therefor under this Act shall be in accordance with the Lands Acquisition and Compensation Act.”.

Amendment of s. 46 of the principal Act 12. Section 74 of the principal Act is amended, in subsection (1), by deleting the word “Registrar” and substituting therefor the word “Commissioner”.

Amendment of the First Schedule to the principal Act 13. The First Schedule to the principal Act is amended by deleting paragraph (a) and substituting therefor the following new paragraph (a) —

“(a) the building by the lessee or licensee of or under which the plot is held and any rules regulating building operations within a traditional housing area and subject to the provisions of section 43 of this Act;”.

Passed in Parliament this twenty ninth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament

(Published 20th May, 2022)

Act

No. 13 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

12th May, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 45 of Cap. 58:01
3. Amendment of s. 49 of the principal Act
4. Amendment of s. 71 of the principal Act
5. Amendment of s. 108 of the principal Act
6. Amendment of s. 134 of the principal Act
7. Replacement of s. 139 of the principal Act

An Act to amend the Registered Land Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Registered Land (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.
Short title and commencement
2. The Registered Land Act (hereinafter referred to as the “principal Act”) is amended, in section 45, by deleting subsection (2) and substituting therefor the following new subsection (2)—
“(2) Where a lessee continues to occupy the land after the termination of the lease, acceptance of payment of rent which accrued after the termination of the lease shall not constitute acceptance of a periodic lease, tenancy or any other lease by the lessor.”.
Amendment of s. 45 of Cap. 58:01
3. Section 49 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection (3)—
Amendment of s. 49 of the principal Act

“(3) A lessor shall not be deemed to have waived his right of forfeiture by reason only that he accepted payment of rent which became due after the breach of agreement or condition which entitled the lessor to forfeit the lease, unless the lessor, with full knowledge of the breach, has taken any other positive action showing an intention to treat the lease as subsisting.”.

Amendment
of s. 71
of the
principal Act

4. Section 71 of the principal Act is amended, in subsection (1), by inserting the words “upon recommendation of a registered Government valuer” immediately after the words “the Registrar may”.

Amendment
of s.108
of the
principal Act

5. Section 108 of the principal Act is amended, in subsection (1), by deleting the words “twenty-one years” and substituting therefor the words “eighteen years”.

Amendment of
s. 134
of the
principal Act

6. Section 134 of the principal Act is amended, in the proviso to subsection (1), by inserting the word “estate” immediately after the word “customary”.

Replacement of
s.139
of the
principal Act

7. Section 139 of the principal Act is repealed and replaced with the following new section 139—

“Rectification
by court

139.—(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud, corrupt practice or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud, corrupt practice or mistake in consequence of which the rectification is sought, or caused such omission, fraud, corrupt practice or mistake or substantially contributed to it by his act, neglect or default.”.

Passed in Parliament this twenty eighth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament

(Published 20th May, 2022)

Act

No. 14 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

12th May, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 58:04
3. Insertion of s. 3A into the principal Act
4. Replacement of s. 10 of the principal Act

An Act to amend the Lands Acquisition and Compensation Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Lands Acquisition and Compensation (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*. Short title and commencement

2. The Lands Acquisition and Compensation Act (hereinafter referred to as “the principal Act”) is amended, in section 2, by inserting therein, in the correct alphabetical order, the following new definitions— Amendment of section 2 of Cap. 58:04

“customary estate” has the meaning assigned thereto in the Customary Land Act”; Cap. 59:01

“customary land” has the meaning assigned thereto in the Land Act”; Cap. 57:01

“injurious affection” means the reduction in the market value of a remaining piece of land caused by the acquisition of land, or

by the construction of works on the acquired land, or use of the acquired land for construction works”;

““private developer” means any person, organization or body corporate other than a Government entity”; and

““severance” means the act of severing a piece of land from a larger tract of land, resulting in the loss of market value of the severed land;”.

Insertion of s.
3A into the
principal Act

3. The principal Act is amended by inserting, immediately after section 3, a new section 3A as follows—

“Acquisition
of customary
land by a
private
developer

3A. Subject to any written law, where a private developer acquires customary land or a customary estate, the private developer shall—

(a) pay compensation, to be assessed by a valuer appointed by the Minister; and

(b) pay the costs of the valuer.”.

4. Section 10 of the principal Act is repealed and replaced with the following new section 10—

Assessment
of
compensation

10.— (1) Appropriate compensation of any acquisition of land by Government shall be assessed by a valuer appointed by the Minister.

(2) Where a person is dissatisfied with the appointment of a valuer by the Minister, the person may appoint a licensed valuer of his choice, provided that the costs of the valuer shall be paid by the person that appoints the valuer.

(3) An assessment of compensation shall be calculated based on any of the following grounds—

(a) loss of occupational rights;

(b) loss of land;

(c) loss of structure;

(d) loss of business;

(e) relocation costs;

(f) loss of good will;

(g) costs of professional advice;

(h) nuisance;

(i) injurious affection;

(j) severance;

- (k) loss or reduction of tenure; or
- (l) disturbance, if it is not too remote and is a natural and reasonable consequence of the disposition of the land.”.

Passed in Parliament this twenty eighth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament

(Published 20th May, 2022)

Act

No. 15 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
12th May, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 59:01
3. Replacement of s. 3 of the principal Act
4. Amendment of s. 5 of the principal Act
5. Amendment of s. 6 of the principal Act
6. Amendment of s. 8 of the principal Act
7. Replacement of s. 9 of the principal Act
8. Amendment of s. 13 of the principal Act
9. Replacement of s. 14 of the principal Act
10. Amendment of s. 15 of the principal Act
11. Insertion of s. 15A into the principal Act
12. Amendment of s. 17 of the principal Act
13. Replacement of s. 20 of the principal Act
14. Amendment of s. 21 of the principal Act
15. Amendment of s. 23 of the principal Act
16. Replacement of s. 28 of the principal Act
17. Replacement of s. 33 of the principal Act
18. Insertion of s. 36A into the principal Act
19. Amendment of s. 40 of the principal Act
20. Amendment of s. 44 of the principal Act
21. Amendment of s. 46 of the principal Act
22. Amendment of s. 48 of the principal Act

- 23. Replacement of s. 50 of the principal Act
- 24. Amendment of s. 51 of the principal Act
- 25. Replacement of s. 52 of the principal Act

An Act to amend the Customary Land Act

ENACTED by the Parliament of Malawi as follows—

Short title and
commence-
ment

1. This Act may be cited as the Customary Land (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Amendment
of s. 2 of
Cap. 59:01

2. The Customary Land Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by—

(a) inserting, in the correct alphabetical order, the following new definition of the word “adjudication”—

““adjudication” means ascertaining ownership to land or interest in land;”;

(b) inserting, in the correct alphabetical order, the following new definition of the term “communal land”—

““communal land” means customary land that has habitually been used, as a matter of practice or under customary law, by the community and is managed by a land committee for the benefit of the community;”;

(c) deleting the definition of the term “customary land” and substituting therefor the following new definition—

Cap. 57:01

““customary land” has the meaning assigned thereto in the Land Act;”;

(d) inserting, in the correct alphabetical order, the following new definition of the term “customary law”—

Cap. 57:01

““customary law” has the meaning assigned thereto in the Land Act;”;

(e) inserting, in the correct alphabetical order, the following new definition of the term “indigenous Malawian”—

““indigenous Malawian” means a person who is a citizen of Malawi and can trace his descent from any of the ethnic groups in Malawi;”;

(f) inserting, in the correct alphabetical order, the following new definition of the term “Traditional Authority”—

““Traditional Authority” has the meaning assigned thereto in the General Interpretation Act;”;

(g) deleting the definition of the term "Traditional Land Management Area" and substituting therefor the following new definition—

““Traditional Land Management Area” has the meaning assigned thereto in the Land Act.”.

Cap. 57:01

3. Section 3 of the principal Act is repealed and replaced with the following new section 3—

Replacement
of s. 3 of the
principal Act

“Traditional Land Management Area shall—

Area

(a) be held by the Traditional Authority on trust for the people in the Traditional Land Management Area; and

(b) subject to this Act and any other written law, be administered in accordance with customary law prevailing in the Traditional Land Management Area.

(2) The Surveyor General shall produce and issue a map for every Traditional Land Management Area in accordance with agreed boundaries.

(3) Where a Traditional Land Management Area has been altered in accordance with the Chiefs Act, the Surveyor General shall carry out a subdivision of the Traditional Land Management Area and produce new maps showing revised Traditional Land Management Areas.

Cap. 22:03

(4) Every district land registry shall maintain a register of Traditional Land Management Areas in accordance with rules prescribed by the Minister.

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

4. Section 5 of the principal Act is amended—

Amendment
of s. 5 of the
principal Act

(a) by deleting subsections (3) and (4), and substituting therefor the following new subsections (3) and (4)—

“(3) A member of a customary land committee, other than the Chairperson, 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, other than the chairperson, 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 of performing his duties as a result of any disability.”; and

(b) by adding a new subsection (5) as follows—

“(5) A group village headman shall preside over a customary land committee by virtue of his office as a group village headman and shall vacate the office of chairperson of the committee in accordance with the Chiefs Act.”.

Cap. 22:03

Amendment
of s. 6 of the
principal Act

5. Section 6 of the principal Act is amended—

(a) by deleting subsection (1), and substituting therefor the following new subsection (1)—

“(1) Subject to this Act, and in exercising their powers and functions, a land committee and a Traditional Authority shall manage the customary land within their areas of jurisdiction in accordance with the prevailing customary law, on trust, as if the committee or the Traditional Authority were a trustee of, and the residents in the area were beneficiaries under, a trust of the customary land.”; and

(b) by deleting subsection (4), and substituting therefor the following new subsection (4)—

“(4) The Commissioner shall, in consultation with the Commissioner for Physical Planning and the Surveyor General, issue guidelines for the management, by the land committees, of customary land and customary estates in any part of Malawi.”.

Amendment
of s. 8 of the
principal Act

6. Section 8 of the principal Act is amended, in subsection (2), by deleting paragraph (b) and substituting therefor the following new paragraph (b)—

“(b) hold a certificate in land administration from a recognized institution;”.

Replacement
of s. 9 of the
principal Act

7. Section 9 of the principal Act is repealed and replaced with the following new section 9—

“Advice by
government
authorities

9. A local government authority shall provide advice and technical support to a land committee on the management of customary land in accordance with the guidelines issued by the Commissioner under section 6, and every land committee shall comply with the advice.”.

8. Section 13 of the principal Act is amended—

Amendment
of s. 13 of the
principal Act

(a) by deleting the marginal note and substituting therefor the following new marginal note—

“Customary land in a traditional land management area”;
and

(b) by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1) A Traditional Land Management Area shall comprise of the following classes of customary land—

(a) land which is occupied and used, or is 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.”.

9. Section 14 of the principal Act is repealed and replaced with the following new section 14—

Replacement
of s. 14 of the
principal Act

“Communal
land

14.— (1) A land committee shall, in consultation with relevant village headmen, identify a portion of customary land to be set aside as communal land and determine the intended use of the portion of land.

(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 the communal land designated under this section in accordance with the rules which may be prescribed.”.

10. Section 15 of the principal Act is amended—

Amendment
of s. 15 of the
principal Act

(a) by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1) Where any person, body or organization holds a lease in a Traditional Land Management Area, the lease shall continue to be in force until its expiry or termination, and the Minister shall thereafter determine its use in accordance with guidelines or regulations made under the Land Act.”; and

Cap. 57:01

(b) by deleting subsection (2) and substituting therefor the following new subsection (2)—

Cap. 57:01

“(2) Subject to section 12 of the Land Act relating to the disposition of leases, the Commissioner shall continue to be responsible for the management of leases to which this section applies.”.

Insertion of
s. 15A into
the principal
Act

11. The principal Act is amended by inserting, immediately after section 15, a new section 15A as follows—

“Conversion
of leases to
customary
estates

15A. Where a holder of a lease created out of customary land intends to convert the lease to a customary estate, the lessee may surrender the lease and the Minister may convert the public land to customary land.”.

Amendment
of s. 17 of the
principal Act

12. Section 17 of the principal Act is amended, by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1) Where the Minister intends to convert any customary land in a Traditional Land Management Area to public land in the public interest, the Minister shall direct the Commissioner to consult the land committee and the Traditional Authority for that Area, before the conversion is made.”.

Replacement
of s. 20 of the
principal Act

13. Section 20 of the principal Act is repealed and replaced with the following new section 20—

“Customary
estate

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

(a) an indigenous Malawian, or a family of indigenous Malawians; or

(b) a group of two or more indigenous Malawians, whether associated together under any law or not.

(2) The land committee shall not allocate a customary estate to a partnership or a corporate body whose members or shareholders are not indigenous Malawians.

(3) A customary estate shall be—

(a) of indefinite duration; and

(b) inheritable and transmissible by will and, subject to any conditions set out in section 27 or any other conditions as the land committee having jurisdiction over that land, may prescribe.”.

14. Section 21 of the principal Act is amended, in subsection (2), by deleting paragraph (c) and substituting therefor the following new paragraph (c)—

Amendment
of s. 21 of the
principal Act

“(c) accompanied by a prescribed fee, except in a case of an application by an individual or a family in the Traditional Land Management Area.”

15. Section 23 of the principal Act is amended—

Amendment
of s. 23 of the
principal Act

(a) by deleting subsections (1) and (2) and substituting therefor the following new subsections (1) and (2)—

“(1) The land committee shall review applications for the grant of a customary estate and make its recommendations to the Traditional Authority who shall, within thirty days of the receipt of the recommendation, indicate whether or not the application is approved, and where the application is refused, the Traditional Authority shall give reasons for the refusal.

(2) Where the Traditional Authority approves the application, the land committee shall issue a certificate of customary estate in favour of the applicant.”;

(b) by deleting subsection (3); and

(c) by renumbering subsection (4) as subsection (3), and subsection (5) as subsection (4).

16. Section 28 of the principal Act is repealed and replaced with the following new section 28—

Replacement
of s. 28 of the
principal Act

“No sale of
customary
estate

28. —(1) A customary estate shall not be sold.

(2) A customary estate granted to a person or a family unit may be leased only with the written approval of a land committee and the Traditional Authority in whose jurisdiction the land is situated.

(3) The land committee shall review applications for lease of a customary estate and make its recommendations to the Traditional Authority who shall, within thirty days of the receipt of the recommendation, indicate whether or not the application is approved, and where the application is refused, the Traditional Authority shall give reasons for the refusal.

(4) In considering whether or not to make the recommendation or grant the approval under subsection (3), the land committee and the Traditional Authority,

as the case may be, shall take into account the following matters—

(a) the reason for the proposed lease of the customary estate;

(b) the terms of the lease, including the proposed period of the lease, the proposed development of the land, and agreement on the reversion of the land after the expiry of the lease;

(c) evidence of alternative land available to the lessor and his family;

(d) a list of all the dependents or members of the family unit of the lessor; and

(e) evidence that all the dependents of the lessor who are above the age of eighteen have agreed to the transaction.”.

Replacement
of s. 33 of the
principal Act

17. Section 33 of the principal Act is repealed and replaced with the following new section 33—

“Revocation
of customary
estate granted
to an
organization
or body

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

Insertion of
s. 36A into
the principal
Act

18. The principal Act is amended by inserting, immediately after section 36, a new section 36A as follows—

“Principles of
parcel
demarcation

Cap. 59:03

36A.—(1) A land committee shall demarcate any land which, in its opinion, should appear as a piece on the demarcation map prepared by a surveyor in accordance with the Land Survey Act and regulations made thereunder, and may—

(a) set aside, out of the land which may, in its opinion, be required for the present or future needs of the community, such as roads, sites for villages, schools, public buildings, graveyards and open places, and, any detriment caused by the setting aside to owners of pieces of land shall be shared as equitably as possible between or among the owners in the area:

Provided that in such case, the land committee shall consult with, and have regard to the views of, the Commissioner for Physical Planning and relevant village headmen;

(b) effect such measures as shall be required by any development scheme prescribed by the Minister;

(c) if the land committee considers the existing layout of the land to be uneconomic or inconvenient for the use of the land or inconsistent with any development scheme, prepare a fresh layout and, by exchange of land or otherwise, adjust the existing layout;

(d) demarcate any right of way that is necessary to give access to a public road or water in favour of any piece of land that is completely surrounded by other pieces of land;

(e) terminate any customary right if the land committee considers such right unnecessary or inconsistent with any development scheme prescribed by the Minister;

(f) make such alignment of boundaries of land adjoining a public road as may be required in the public interest; and

(g) clear any boundary or other line which it may consider necessary to clear for the purpose of such demarcation.

(2) A land committee may request any person, having an interest in any land, to assist in the demarcation of such land and in such manner as the land committee may require.”

19. Section 40 of the principal Act is amended by adding a new subsection (5) as follows—

Amendment
of s. 40 of the
principal Act

“(5) Where an adjudication process is underway, any court matter that is related to the adjudication shall be pended until the process of adjudication is completed.”

20. Section 44 of the principal Act is amended, in subsection (2), by deleting paragraph (b) and substituting therefor the following new paragraph (b)—

Amendment
of s. 44 of the

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

21. Section 46 of the principal Act is amended, in subsection (1)—

Amendment
of s. 46 of the
principal Act

(a) by deleting paragraph (a) and substituting therefor the following new paragraph (a)—

“(a) a presiding chairperson who shall be the most senior Traditional Authority in the district;”; and

(b) by deleting paragraph (c) and substituting therefor the following new paragraph (c)—

“(c) a Resident Magistrate;”.

Amendment
of s. 48 of the
principal Act

22 Section 48 of the principal Act is amended, in subsection (1)—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph (a) —

“(a) a presiding chairperson who shall be a Paramount Chief, and shall serve for a period of three years;”; and

(b) by deleting paragraph (c) and substituting therefor the following new paragraph (c)—

“(c) a Chief Resident Magistrate;”.

Replacement
of s. 50 of the
principal Act

23. Section 50 of the principal Act is repealed and replaced with the following new section 50—

“Effect of
disposition of
customary
land

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

Amendment
of s. 51 of the
principal Act

24. Section 51 of the principal Act is amended, by deleting subsection (1), and substituting therefor the following new subsection (1)—

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

Replacement
of s. 52 of the
principal Act

25. Section 52 of the principal Act is repealed and replaced with the following new section 52—

“Private land
to become
customary
estate
Cap. 58:01

52. Any private land registered under the Registered Land Act in accordance with the Customary Land (Development) Act (repealed) and the Local Land Boards Act (repealed) shall become a customary estate and shall be administered and managed in accordance with this Act.”.

Passed in Parliament this twenty ninth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament