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Act

No. 15 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

12th May, 2022

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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;”;

and

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 Section 3 of the principal Act is repealed and replaced with the following new section 3—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

3.— (1) Customary land in a 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